◀ This document has Bookmarks by Order Number and Petitioner for easier navigation.

NH.PUC*01/02/90*[50855]*75 NH PUC 1*Rosebrook Water Company, Inc.

[Go to End of 50855]

75 NH PUC 1

Re Rosebrook Water Company, Inc.

DR 89-031
Order No. 19,661

New Hampshire Public Utilities Commission

January 2, 1990

ORDER adopting a water rate settlement.

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1. RATES, § 595 — Water rate design — Settlement.

[N.H.] The commission adopted a settlement establishing the rate base, rate of return on equity, revenue requirement, and rate design for a water utility. p. 2.

2. RETURN, § 26.4 — Cost of equity capital — Stipulation — Water utility.

[N.H.] A stipulated rate of return on equity of 10% was adopted in a water rate case. p. 2.

3. RATES, § 595 — Water rate design — Fixed charges — Consumption rate — Fire protection — Settlement.

[N.H.] Pursuant to a rate settlement, a water utility was authorized to charge residential customers a fixed customer charge of $67.35, an annual fire protection charge of $33.68, and a consumption rate per 100 gallons of $0.49.34; commercial customers would be charged a graduated customer and fire protection charge depending on meter size. p. 2.

4. RATES, § 260 — Surcharges — Temporary rate deficiency — Recoupment — Water utility.

[N.H.] Pursuant to a rate settlement, a water utility was authorized to recover, through a surcharge, the difference between the revenue level finally approved and the level provided for in its temporary rates. p. 2.

5. RATES, § 597 — Water — Special factors — Plant additions — Step adjustment.

[N.H.] A water utility was authorized to make, on or after the anniversary date of its rate settlement, a step adjustment to its rates to reflect additions to fixed plant; any such adjustment would go into effect as a temporary rate until the commission has had a full opportunity to review or audit the utility to ensure that all reported plant additions are reasonable, prudent, and actually in service. p. 3.

6. RATES, § 616 — Water utility — Fire protection charge — Settlement — Precedential effect.

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[N.H.] In adopting a water rate settlement, the commission noted that its acceptance of a fire protection charge should not be viewed as precedent for any other water utility or municipality. p. 3.

7. VALUATION, § 28 — Value for ratemaking — Purchase price and accounts payable — Water utility.

[N.H.] Commission acceptance of a rate settlement involving a water utility that had changed hands a number of times was influenced by the fact that the rate base of the utility had been lowered to reflect the purchase price paid and accounts payable. p. 3.

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf of Rosebrook Water Company, Inc.; Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

In Docket DE 74-37, order no. 11,423, the commission granted a franchise to Bretton

Woods Water Company, Inc. (Bretton Woods) in limited areas of Bethlehem, Carroll and Crawford Purchase, New Hampshire. In December 1984 Bretton Woods went into bankruptcy. Its assets were acquired by Institutional Investor Trust which created Rosebrook Water Company, Inc. (Rosebrook). In Docket DE 80-27, order no. 14,183 the commission transferred Bretton Woods franchise to Rosebrook to operate a public utility in those areas previously franchised to Bretton Woods. By letter dated June 30, 1988, the Satter Company of Bretton Woods (Satter) informed the commission of its acquisition of all outstanding capital stock of Rosebrook. In Docket DE 88-101, order no. 19,137 (73 NH PUC 282) the commission approved the acquisition of the stock of Rosebrook by Satter. From the record before us in this docket Satter sold the stock of Rosebrook to Richard Barber, Joan Satter and Kim DiSalvo for $77,400. Satter, Barber and DiSalvo also assumed a debt of $78,305 payable by Rosebrook to its affiliate, the Satter Companies of Bretton Woods.

On February 17, 1989 Rosebrook filed a notice of intent to file rate schedules and a request for a waiver of certain filing requirements. On March 1, 1989 the commission approved the waiver request and on March 15, 1989 the company filed its petition to increase rates. In its rate filing the company requested that the commission establish permanent rates pursuant to our RSA 378:6 and temporary rates pursuant to our RSA 378:27. On April 11, 1989 the commission issued order no. 19,368 suspending the company's rate filing and establishing May 4, 1989 as the date for a hearing on the company's request for temporary rates and a prehearing conference to address procedural matters on the permanent rate increase request. On May 4, 1989 the company conferred with the staff and stipulated to a procedural schedule and an acceptable level of

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temporary rates. On May 25, 1989 the commission issued its report and order no. 19,413 granting the stipulated level of temporary rates (a 50% increase above the company's present rates) for the duration of this proceeding and establishing a procedural schedule.

Throughout the proceeding the parties engaged in discovery and met in further consultation several times for the purposes of narrowing issues and reaching a stipulation. On August 22, 1989 the hearing was held for the commission in which the company and the staff presented the stipulation.

II. *Stipulation of the Parties*

[1-4] The stipulation agreed to the following components:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base                $162,879
Rate of Return on Equity    10%
Revenue Requirement      50,968
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In regard to rate structure, the company and staff agreed that the company would be allowed to charge an annual fixed charge of $67.35, an annual fire protection charge of $33.68 and a consumption rate per 100 gallons of $0.4934. Commercial customers will be charged a graduated customer and fire protection rate depending on meter size and the same consumption charge as residential customers. Said fixed charges for commercial customers were established in conformance with the American Water Works Association Manual of Water Supply Practices, AWWA M1 and consists of the following: a 5/8” meter would consist of one meter point; a 3/4” meter would equal 1.1 meter points; a 2” meter would equal 2.9 meter points.

Based on the point schedule the commercial customers would pay whatever meter points times the commercial charge and fire protection charge. Thus, for example, the sports club with a 2” meter would have 2.9 meter points and would pay 2.9 times more for fixed customer charge and fire protection charge. Staff and the company also agreed the company would be allowed to recover the difference between the revenue level finally approved and the revenue level provided for in the company's temporary rates by a surcharge over a one-year period in accordance with RSA 378:29. The stipulation also called for the company to submit revised tariff reflecting the permanent rate increase and the surcharge.

Page 2

Staff and the company also agreed that on or after the anniversary date of the commission order approving this settlement agreement, the company would be entitled to file for an adjustment in its rate base to reflect additions to its fixed plant and that as a result of said adjustment, the company would be entitled to adjust its rates to reflect the additions to fixed plant which are, at the time of the adjustment, completed and in service to customers with staff review of the additions to fixed capital and customer base.

III. *Commission Analysis*

[5] The commission adopts the stipulation of the parties and finds the rate increase to be just and reasonable pursuant to RSA 378:7. In regard to the step adjustment the commission will accept said adjustment subject to the caveat that any adjustment will go into effect as a

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temporary rate until staff and commission have had a full opportunity to review or audit the company to insure that all the capital additions reported by the company are reasonable, prudent and actual.

[6] Furthermore, the commission notes that it is accepting a fire protection charge in this case as the community serviced by Rosebrook is self contained, and, could be considered a "municipality" unto itself. Thus, this funding shall not set a precedent for any other water utility or municipality.

[7] The commission notes from its previous reports and orders as noted in the procedural history in this case that Rosebrook Water Company has been acquired by a number of companies. The commission further notes from the record in this case that the company proposed a much greater rate base which was reduced to reflect the purchase price paid and accounts payable. The commission accepts the stipulation of the parties in light of this adjustment; that is, the commission accepts the stipulation due to the fact that rate base has been lowered to reflect the purchase price of the stock of Rosebrook Water Company.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the stipulation of the parties is accepted subject to the caveat set forth in the preceding order; and it is

FURTHER ORDERED, that the company submit tariff pages with supporting documentation, for the permanent rate increase effective for all service rendered as of the date of this order in accordance with the foregoing report as well as a tariff page specifying the recoupment of the difference between temporary and permanent rates.

By order of the Public Utilities Commission of New Hampshire this second day of January, 1990.

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NH.PUC*01/02/90*[50856]*75 NH PUC 3*New England Telephone and Telegraph Company, Inc.

[Go to End of 50856]

75 NH PUC 3

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,662

New Hampshire Public Utilities Commission

January 2, 1990

ORDER granting a motion for a protective order.

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PROCEDURE, § 16 — Discovery and inspection — Protective order — Proprietary information — Bellcore reports — Local exchange telephone carrier.

[N.H.] The commission granted a motion for a protective order preventing public disclosure of proprietary Bellcore reports to be provided by a local exchange telephone carrier in response to a discovery request; it was found that the motion conformed with the requirements of a prior order that established standards for confidentiality of discovery responses.

Page 3

By the COMMISSION:

REPORT ON THE DECEMBER 21, 1989, MOTION FOR PROTECTIVE ORDER

In this report and order we consider New England Telephone Company's (NET) December 21, 1989 motion for protective order. This order approves the motion with respect to all requests and applies the standards set forth in our report and order no. 19,536 (74 NH PUC 307) (Sept. 19, 1989).

I. *The Motion*

On December 21, 1989, NET filed, pursuant to NH Admin. Code Puc 203.04 and report and order no. 19,536, a motion for protective order. This motion requests a protective order for the following items.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Data Responses

1. PUC Staff Set #14, Item 525
2. Voice Set #4, Item 8
3. Voice Set #6, Item 4
4. Voice Set #6, No. 7
5. Voice Set #6, No. 14

Concerning staff data request 525, NET has stated that, due to the voluminous nature of this requested information, they would make it available at a mutually convenient date, time and place.

Concerning Voice data requests Set 4, item 8; set 6, item 4; and set 6, item 7 NET only requests proprietary treatment for the portions of its responses which require production of proprietary Bellcore reports. In response to VOICE data request set 6, No. 14, NET only requests confidentiality for the Operator Services ticket study and procedures, and proprietary Bellcore study and procedures.

II. *Commission Analysis*

The motion conforms with the requirements for confidentiality set forth in our report and order no. 19,536. Thus, we will allow the data responses to be protected under the procedures set forth in that order. For the voluminous information which responds to staff data request 525, we

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will require that NET make it available at an appropriate office in New Hampshire. For this data request and the four VOICE data requests, we grant confidentiality only for those Bellcore reports which relate directly to these questions and will require NET to provide a complete list of those reports as part of their response.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's December 21, 1989 motion for protective order is granted.

By order of the Public Utilities Commission of New Hampshire this second day of January, 1990.

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NH.PUC*01/03/90*[50857]*75 NH PUC 4*Granite State Electric Company

[Go to End of 50857]

75 NH PUC 4

Re Granite State Electric Company

DR 89-221
Order No. 19,663

New Hampshire Public Utilities Commission

January 3, 1990

ORDER revising the fuel adjustment clause, oil conservation adjustment, and qualifying facility power purchase rates of a retail electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel adjustment clause — Rate revision — Retail electric utility.

[N.H.] The fuel adjustment clause rate of a retail electric utility was revised to reflect an overcollection from the prior period, as partially

Page 4

offset by increased fuel costs. p. 6.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Practice and procedure — Witnesses — Fuel adjustment clause hearings.

[N.H.] A retail electric utility was encouraged to have available at future fuel adjustment clause hearings witnesses who can provide first-hand information to the commission on oil and gas prices as well as general power supply issues. p. 6.

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3. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel adjustment clause — Rate revision — Retail electric utility.

[N.H.] Based on the evidence provided, and subject to reservations as to the reasonableness of recovery of replacement energy costs associated with a generating plant outage, the proposed fuel adjustment clause rate of a retail electric utility was approved as just and reasonable. p. 6.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Oil conservation adjustment — Rate revision — Retail electric utility.

[N.H.] Based on the evidence provided, and subject to reservations as to the reasonableness of recovery of replacement energy costs associated with a generating plant outage, the proposed oil conservation adjustment rate of a retail electric utility was approved as just and reasonable. p. 6.

5. COGENERATION, § 25 — Rates — Avoided costs — Short-term energy and capacity.

[N.H.] Revised short-term avoided energy and capacity rates for purchases by a retail electric utility from qualifying cogeneration and small power production facilities (QFs) were calculated based on an average of an increment and decrement to load in order to reflect more accurately avoided marginal energy costs; however, because the method of calculation represented a deviation from previously-approved settlement agreement, QFs and other interested parties were offered an opportunity to object. p. 6.

APPEARANCES: Cynthia A. Arcate, Esquire for Granite State Electric Company; Janet Gail Besser, Thomas C. Frantz, James T. Rodier; and Eugene F. Sullivan, Jr. for the PUC Staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 20, 1989 to review the Fuel Adjustment Clause (FAC), Oil Conservation Adjustment (OCA) and Qualifying Facility Power Purchase Rate for the first half of 1990, all contained in Granite State's filing on December 1. The Commission issued its Order of Notice on December 5th and publication was made in the Union Leader on December 9th.

The requested fuel factor is $.00387 per kWh or 38.7¢ per 100 kWh, a decrease of $.00014 per kWh from the current fuel factor of $.00401. Granite State is requesting an OCA factor of $.00116 per kWh. This would be a decrease of $.00028 per kWh from the OCA factor of $.00144 per kWh currently in effect.

The proposed QF energy rate at the subtransmission distribution level was 3.696¢ in the peak period, 2.951¢ in the off-peak period, and 3.292¢ on the average. At the primary distribution level, the rate was 3.970¢ on-peak, and 3.096¢ off-peak, and 3.496¢ on average. The proposed QF rate for the secondary distribution level was 4.110¢ on-peak, 3.169C off-peak, and 3.600¢ per kWh on average. The requested capacity rate is $122.81 per kW/year at the subtransmission level, $134.47 per kW/year at its primary distribution level and $140.66 per kW/year at the secondary distribution level. It is payable to qualifying sellers on on-peak kWh only.

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In support of its filings, Granite State

presented two witnesses, Fiona J. Roman and James W. Hoch and submitted the following exhibits:

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GS-1  Testimony and Exhibits of Fiona J. Roman
GS-2  Fourteen Schedules
GS-3  Testimony of James W. Hoch
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[1-4] Ms. Roman testified that the decrease in the requested fuel adjustment factor is primarily the result of an overcollection from the prior period which will be incorporated into the factor for the first half of 1990. This decrease is being partially offset by slightly higher fuel costs from New England Power (NEP). Granite State's fuel factor for the second half of 1989 reflected an adjustment for an overcollection of $103,302. The overcollection adjustment going into 1990 is $301,295.

Ms. Roman also testified that the decrease in the OCA factor reflects amendments to NEP's OCA factor which went into effect on May 1, 1989. NEP's amendments to its OCA provision created a 1.1 mill per kWh floor in NEP's OCA factor.

Mr. Hoch testified that his unit oil price estimates would be somewhat higher than those contained in Exhibit GS-2 (Tr. 30-32) due to water shortages throughout New England and Europe and very cold weather in New England in December.

Through testimony and cross examination by Staff, the following issues were addressed:

1.) effect on fuel costs of Seabrook commercial operation and whether the FAC would be affected in that event;

2.) sales forecast;

3.) loss factors for NEP and Granite State;

4.) energy benefits associated with NEP's slice-of-system purchase from Northeast Utilities;

5.) NEP unit availability;

6.) The fire and resulting unscheduled outage at Brayton Point No.3 during the period from August 1 to September 7, 1989;

7.) PIP targets and operating results for NEP's units for 1989;

8.) gas conversion plans and how they might be effected by the demise of the Champlain pipeline;

9.) gas price estimates; and

10.) coal price differentials between, PSNH's Merrimack station and NEP's Brayton Point Station.

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During the hearing, Granite State agreed to submit further materials and data on these matters to the Commission for its information and ongoing review of Granite State's fuel costs.

With regard to the fire and ensuing outage at Brayton Point No. 3, we will take under advisement the reasonableness of Granite State's recovery of the replacement energy costs until we have had an opportunity to review NEP's report on this event. Moreover, while Ms. Roman and Mr. Hoch impressed us as capable and qualified witnesses during the hearing, we would encourage Granite State at future FAC hearings to have available a witness who can provide first-hand information to the commission on oil and gas prices as well as general power supply issues.

Based on the evidence provided, and subject to the above noted reservation, the commission finds that the proposed FAC rate and the proposed OCA rate are just and reasonable and will approve these rates for the six month period beginning January 1990 through June 1990.

[5] As noted earlier, Granite State Electric Company filed a revised tariff for its Qualifying Facility (QF) Power Purchase Rate (short term avoided energy and capacity rates) on December 1, 1989. In the hearing on December 20, 1989, Granite State indicated that it would file further revised short term avoided energy rates calculated based on an average of an increment and a decrement to load, instead of just a decrement to load. These revised short term avoided energy rates were filed December 28, 1989. Granite State's proposed short term capacity and energy rates for the period January through June 1990 are as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates by Voltage Level (cents/kWh):

Voltage Level	*Peak Period*	*Off-Peak Period*	*Average*
(1) Subtransmission	3.749	2.972	3.328
(2) primary Distribution	4.026	3.117	3.533
(3) Secondary Distribution	4.168	3.190	3.638

Capacity Rates by Voltage Level:

Voltage Level	*$/kW Year*	*$/kW Month*
(1) Subtransmission	$122.11	$10.23
(2) Primary Distribution	$134.47	$11.21
(3) Secondary Distribution	$140.66	$11.72

The capacity rates reflect Granite State's view of the short term market value of capacity and are consistent with a weighted average of the capacity costs of Granite State's wholesale supplier's short term power purchase contracts in effect in the first six months of 1990. Granite State also testified that the avoided capacity rate is consistent with the avoided cost used in the calculation of the credits in its Cooperative Interruptible Service program.

The calculation of Granite State's short term avoided energy rates was based on the use of an average of an increment and a decrement to load, rather than just a decrement to load as specified in the settlement agreement in DR 86-41, *et al.*, Phase I. Staff proposed the change in the calculation, and the company concurred, in order to reflect more accurately the marginal

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energy costs QFs avoid for the utility. The calculation based on an average of an increment and a decrement to load is also consistent with the way that Granite State's wholesale supplier calculates its marginal cost-based wholesale rates.

The commission finds the proposed short term avoided capacity rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous commission orders. We also find the short term avoided energy rates to be just and reasonable. However, because the calculation of the energy rates represents a deviation from the settlement agreement in DR 86-141, *et al.*, the commission will provide an opportunity for QFs and other interested parties to raise any concerns they may have. The short term avoided energy rates will be effective January 1, 1990 unless a QF or other interested party requests a hearing within twenty days of the effective date of the attached order.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the 29th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.00387 per kWh for the months of January through June 1990, be and hereby is, approved effective January 1, 1990; and it is

FURTHER ORDERED, that the Twenty-Fifth Revised Page 57 of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for an Oil Conversation surcharge of $.00116 per kWh for the months of January through June 1990, be, and hereby is, approved effective January 1, 1990; and it is

FURTHER ORDERED, NISI, that the short term avoided energy rates calculated on the basis of an increment and a decrement to load are approved; however, since the calculation of the energy rates in this manner represents a deviation from the settlement agreement in DR 86-41, *et al.*, the commission orders that Granite State Electric Company shall provide notice of this change by serving a copy of this order by first class mail on each of the QFs providing power to the company at this rate by January 15, 1990; and it is

FURTHER ORDERED, that Granite State Electric Company notify all interested parties by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to occur no later than January 15, 1990 said publication to be documented by affidavit filed with this office on or before January 23, 1990; and it is

FURTHER ORDERED, that interested parties shall have twenty (20) days from the date of this order to request a hearing on this matter; and it is

FURTHER ORDERED, NISI, that Thirteenth Revised Page 11-C of the Granite State Electric Company tariff NHPUC No. 10 — Electricity, providing for Qualifying Facility Power Purchase Rates as described in the foregoing report be, and hereby is permitted to become effective January 1, 1990, excepting that the energy rates will not become effective if a hearing

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is requested.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1990.

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[Go to End of 50858]

75 NH PUC 8

Re Franklin Savings Bank

DS 89-238
Order No. 19,664

New Hampshire Public Utilities Commission

January 3, 1990

ORDER nisi granting a license for the construction, use, repair and reconstruction of a sewer connector across state-owned railroad right-or-way.

CERTIFICATES, § 125 — Sewer construction — Connector — License to cross state-owned property.

[N.H.] The commission conditionally granted a license for the construction, use, repair and reconstruction of a sewer connector across state-owned railroad right-or-way; it was found that the construction would be in the public good and would not affect substantially public rights on state-owned property; the grant of the license was conditioned on the public being afforded an opportunity to respond either in support of, or in opposition to, the grant of the license.

By the COMMISSION:

ORDER

WHEREAS, on November 27, 1989, the Franklin Savings Bank filed with this commission a petition seeking license under RSA 371:17 to construct, use, repair and reconstruct a sewer connector across State-owned railroad right-of-way in the Town of Northfield, New Hampshire; and

WHEREAS, the proposed facility is required to connect to an existing 12 inch interceptor which lies within the State-owned Concord to Lincoln Railroad right-of-way and located at approximate Valuation Station 925+80 to 925+99, Map V21/53; and

WHEREAS, the petitioner avers that no abutting private property owners will be affected by the issuance of the license; and

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WHEREAS, the only affected property will be that of the New Hampshire Department of Transportation's Concord to Lincoln Railroad right-of-way; and

WHEREAS, the Licensee has agreed to pay to the State an initial preparation fee of $350.00, then $50.00 administrative fee per annum for the License for Sewer Connection; and

WHEREAS, the commission finds this construction across State land is in the public good without affecting substantially public rights on State-owned property of the Concord to Lincoln Railroad; and

WHEREAS, the commission finds such evidence justifies waiver of public hearing according to RSA 371:20; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than January 26, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Northfield region. Such publication to be no later than January 15, 1990, and documented by affidavit to be filed with this office on or before February 2, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq* to the Franklin Savings Bank, 387 Central Street, Franklin, New Hampshire 03235 for the construction, use, repair and reconstruction of sewer connector across public railroad right-of-way in Northfield, New Hampshire identified at approximate Valuation Station 925+80 to 925+99, Map V21/53; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (NHDOT), and as mandated by the Town of Northfield; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1990.

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NH.PUC*01/05/90*[50860]*75 NH PUC 10*Public Service Company of New Hampshire

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Re Public Service Company of New Hampshire

Additional applicant: King Ridge, Inc.

DR 89-171
Order No. 19,667

New Hampshire Public Utilities Commission

January 5, 1990

ORDER approving a special contract rate for electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 10.

2. RATES, § 321 — Electric — Special contract rate.

[N.H.] The commission approved a special contract rate for electric service where special circumstances existed that rendered departure from the general schedules of the utility just and consistent with the public interest. p. 10.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued Report and Order No. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

WHEREAS, in its Report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1, 2] WHEREAS, the commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed Contract with King Ridge Inc. (hereinafter King Ridge) which was filed with the commission on December 12, 1989 waives the requirement under the AVAILABILITY section which provides, in part, that services under Rate WI is permitted only to Rate GV and Rate TR customers; and

WHEREAS, the Contract will permit services under Rate WI to King Ridge's Rate G account; and

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WHEREAS, King Ridge's Designated Load is less than the 100 kilowatt minimum required under Rate WI; and

WHEREAS, Rate WI provides for a waiver of such 100 kilowatt minimum if the customer pays for the cost of metering of its Designated Load; and

WHEREAS, Public Service Company of New Hampshire has agreed to allow King Ridge to participate under Rate WI without

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making any payment for the cost of metering; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and King Ridge are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that King Ridge has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than January 15, 1990, said publication to be documented by affidavit filed with this office on or before January 25, 1990; and it is

FURTHER ORDERED, that the commission hereby waives that portion of PUC 1601.02(c), in that the Special Contract will be retroactively effective as requested as of December 5, 1989 unless otherwise provided by Commission order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than January 22, 1990; and it is

FURTHER ORDERED, that this Order Nisi will be retroactively effective on December 5, 1989 unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1990.

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NH.PUC*01/10/90*[50861]*75 NH PUC 11*Southern New Hampshire Water Company, Inc.

[Go to End of 50861]

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DE 88-163
Order No. 19,668

New Hampshire Public Utilities Commission

January 10, 1990

ORDER granting a motion for rehearing of a prior order that dismissed a petition by a water utility for an exemption from a local zoning ordinance. For prior order, see 74 NH PUC 440 [1989].

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1. ZONING — Local ordinances — Grant of exemptions — Conditions.

[N.H.] The public utility commission may attach reasonable conditions in consideration of the interests of local residents when it grants a utility's petition for exemption from zoning ordinances. p. 12.

2. ZONING — Local ordinances — Grant of exemptions — Conditions.

[N.H.] The commission agreed to reconsider its dismissal of a petition by a water utility for an exemption from a local zoning ordinance in order to construct a nonconforming water tower; on rehearing, the commission will consider granting the requested exemption, if the utility agrees to file a final plan for construction of the water tower and to notify potential residential abutters of its intent to construct a water tower of substantial size. p. 12.

By the COMMISSION:

REPORT

I. *Procedural History*

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On November 1, 1988, Southern New Hampshire Water Company, Inc. (Southern) filed a petition pursuant to RSA 674:30, III seeking exemption from the Town of Hudson Zoning Ordinance in order to construct a water tower which violated the town's height restrictions. The company has previously obtained the approval of the Town of Hudson Planning Board for construction of the tower. By an order of notice dated November 9, 1988, a prehearing conference was scheduled for December 5, 1988. At said prehearing conference the parties could not agree on a procedural schedule to govern the duration of the proceeding.

The company sought an immediate hearing so that blasting, necessary for the construction of the tower, could be expedited in order to avoid damage to homes that are currently being constructed in the area. Staff objected to an expedited hearing and proposed an extended schedule in light of the fact that the company had not yet finalized its plan as to the type of water tower to be constructed, had not yet established a plan for financing the construction, and had not received the permission of its parent company to go forward with the project.

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By report and order no. 19,262 (73 NH PUC 509) the commission rejected Southern's request for an expedited hearing in light of the fact that the company had not met staff's concerns specifically, those items listed above. The commission felt that it would not be in the public interest to grant an exemption from the provisions of the zoning ordinance when Southern's plans for a tower had not yet been finalized. On November 7, 1989, commission issued report and order no. 19,606 (74 NH PUC 440) said order denied Southern's request for a zoning variance based on *Appeal of Milford Water Works*, 126 NH 127 (1985).

The commission set out the standards required by *Appeal of Milford Water Works* and found that all these standards dealt with questions which the abutters to the project should be given an opportunity to address. As the record revealed that the area was under construction by a developer and that the "abutters" were not yet present as the company was not planning on building the tower until at least 1991, it was premature and inappropriate to grant the zoning variance at this time.

Furthermore, the commission determined that the company had neither obtained the approval of its parent company's board of directors nor had it worked out a financing plan as these issues will not come before the board of the parent company until Southern is prepared to go forward with the plan for the tower in the year of its construction. The commission believed that this merely reinforced its decision and did not base its decision on those last factors.

The commission ordered that the petition be dismissed without prejudice thus allowing the company to re-approach the commission when it was prepared to go forward with its plan and the "abutters" who would live next to the tank would be present to express any concerns they might have over the tank.

On November 27, 1989 Southern filed a motion for rehearing or reconsideration pursuant to RSA 541:3. Southern listed nineteen reasons why order no. 19,606 should be reconsidered. Basically these nineteen points express Southern's concern that RSA 674:33 and its explanation in *Appeal of Milford Water Works*, did not give the commission the discretion to dismiss the case, and, furthermore, that the commission decision was "arbitrary, capricious, unreasonable and contrary to law".

II. *Commission Analysis*

[1, 2] In *Appeal of Milford Water Works* the Supreme Court held that "[j]ust as reasonable conditions may be attached by a Zoning Board of Adjustment to approval of a variance to a zoning ordinance, ... [citation omitted] ... or by a planning board to approval of a site plan ... [citation omitted] ... so too may the PUC attach reasonable conditions in consideration of the interests of local residents when it grants a utilities petition for exemption from zoning ordinances ..." *Appeal of Milford Water Works*, 126 NH 127, 132 (1980).

In view of this, after review of Southern's motion for reconsideration and rehearing, we are willing to reconsider our decision contained in report and order no. 19,606 and consider granting such a zoning variance subject to the

attachment of reasonable conditions that address staff's concerns. Specifically, these concerns

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can be summarized as reflecting the following two related interests:

1) Southern does not presently have a final, firm plan for the timing, design, financing and construction of the water tower; and

2) due to the fact that the adjoining and neighboring residential properties are presently under development and since the current "abutter" is a land developer, the commission could not adequately address the standards set out in *Appeal of Milford Water Works* since these standards deal with questions that "abutters" should be given an opportunity to address and, the residential abutters do not presently exist but are likely to exist at the future time at which Southern would probably commence construction of the water tower.

Consequently, at a rehearing on these issues, we would be willing to consider granting the requested zoning variance if Southern is willing to agree and attest to certain conditions, such as, that construction plans have been finalized, and Form E-22 will be filed with the commission within a pre-determined time frame; and Southern is willing to consider methods, such as posting a sign prominently at the water tower site that would provide actual notice to any potential future residential abutters that a water tower of substantial size would be built on said site within the pre-determined period of time referred to above.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Southern's motion for rehearing and reconsideration be, and hereby, is granted and said hearing is hereby scheduled for Friday, February 2, 1990 at 2 o'clock in the afternoon at the commission offices at 8 Old Suncook Road, Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 1990.

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NH.PUC*01/18/90*[50863]*75 NH PUC 14*Claremont Gas Corporation

[Go to End of 50863]

75 NH PUC 14

Re Claremont Gas Corporation

DR 89-185
Order No. 19,670

New Hampshire Public Utilities Commission

January 18, 1990

ORDER scheduling a prehearing conference to address procedural matters and recommend a hearing schedule for determining the appropriate level of compensation for propane storage

services provided by a propane distributor to a non-regulated affiliate.

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1. RATES, § 384 — Gas — Propane storage — Service to affiliate.

[N.H.] The commission scheduled a preharing conference to address procedural matters and recommend a hearing schedule for determining the appropriate level of compensation for propane storage services provided by a propane distributor to a non-regulated affiliate; in a prior cost of gas adjustment proceeding, the commission had found that the storage rate charged to the affiliate was below current market value. p. 15.

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2. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Cost of gas adjustment — Storage — Propane distributor.

[N.H.] A prehearing conference was scheduled to address procedural matters and recommend a hearing schedule for determining the appropriate level of compensation for propane storage services provided by a natural gas utility to a non-regulated affiliate; in a prior cost of gas adjustment proceeding, the commission had found that the utility was charging below market rates to the affiliate. p. 15.

3. INTERCORPORATE RELATIONS, § 15 — Service to affiliate — Propane distributor.

[N.H.] A prehearing conference was scheduled to address procedural matters and recommend a hearing schedule for determining the appropriate level of compensation for propane storage services provided by a natural gas utility to a non-regulated affiliate. p. 15.

By the COMMISSION:

ORDER

[1-3] WHEREAS, Claremont Gas Corporation (Company) provides propane storage service to its non-regulated propane affiliate Synergy Corporation; and

WHEREAS, Commission report and order No. 19,611 (74 NH PUC 447) directed the Company to meet with staff to determine an appropriate level of compensation for such storage service prior to April 1, 1990; and

WHEREAS, on November 27, 1989 Mr. Broomell for the Company requested that the issue of compensation be discussed via a conference call between staff and the Company; and

WHEREAS, on December 1, 1989 a telephone conversation took place during which staff outlined its position on storage service charges and Mr. Broomell undertook to provide, within a couple of days, the Company's response; and

WHEREAS, on December 11, 1989 staff called Mr. Broomell to ascertain the reason for the delay in the Company's response; and

WHEREAS, Mr. Broomell stated that the instability in the energy market brought on by the

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abnormally cold weather had prevented the Company from reviewing staff's position; and

WHEREAS, staff has yet to receive a response from the company in this matter; it is hereby

ORDERED, that a prehearing conference to address procedural matters and recommend a hearing schedule for determining the level of compensation for propane storage service, to be effective April 1, 1990, be held before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire at two o'clock in the afternoon on January 30, 1990.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1990.

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NH.PUC*01/19/90*[50864]*75 NH PUC 15*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50864]

75 NH PUC 15

Re Northeast Utilities/Public Service Company of New Hampshire

Petitioner: Northeast Utilities Service Company

DR 89-244
Order No. 19,673

New Hampshire Public Utilities Commission

January 19, 1990

ORDER approving a stipulation waiving certain tariff filing requirements.

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1. RATES, § 237 — Filing requirements — Waiver.

[N.H.] The commission has authority to grant waivers of any provisions of its tariff filing requirements, provided that the waiver

Page 15

does not preclude the commission or any intervenor from subsequently requesting information the filing of which had been waived. p. 17.

2. RATES, § 237 — Filing requirements — Waiver — Stipulation.

[N.H.] The commission approved a stipulation waiving certain tariff filing requirements imposed on Northeast Utilities Service Company (NUSCO) in a proceeding to determine whether the acquisition of Public Service Company of New Hampshire (PSNH) by Northeast Utilities would be in the public good and whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of PSNH should be approved as just and

reasonable; it was found that the purpose of the filing requirements would be fulfilled by the information and data to be provided by NUSCO and PSNH in accordance with the stipulation. p. 17.

APPEARANCES: Northeast Utilities by Eve H. Oyer, Esquire and Thomas D. Rath, Esquire; New Hampshire Attorney General's Office by Harold T. Judd, Esquire; Business and Industry Association by John J. Lahey, Esquire; Official Committee of Unsecured Creditors by J. Michael Deasy, Esquire; Granite State Hydro Power Associates, *et. als.* by Howard M. Moffett, Esquire; Public Service Company of New Hampshire by Martin L. Gross, Esquire and Gerald M. Eaton, Esquire; Bio Mass Small Power Producers by Paul A. Savage, Esquire and Robert O. Olson, Esquire; Legislative Joint Committee to Monitor PSNH by John R. Michels, Esquire; Residential Ratepayers by Michael W. Holmes, Esquire and Joseph Rogers, Esquire; John V. Hilberg, *Pro Se*; and New Hampshire Public Utilities Commission by Wynn E. Arnold, Acting General Counsel, Dr. Sarah P. Voll, Chief Economist and Staff Coordinator and James T. Rodier, Staff Attorney

By the COMMISSION:

REPORT

I. *Procedural History*

On December 22, 1989, Northeast Utilities Service Company (NUSCO) petitioned the New Hampshire Public Utilities Commission ("NHPUC" or "commission"), *inter alia*, for waivers of certain provisions of the requirements of N.H. Admin. Rule Puc 1603.03 pursuant to and under the authority of N.H. Admin. Rule 1603.07. NUSCO requested said waivers, according to NUSCO, because certain information and materials, although relevant for traditional tariff filings, were not available to NUSCO, or were not filed because of NUSCO's belief that they are not relevant due to the unique and special nature of this proceeding. NUSCO's request for waivers asked that certain information and materials be omitted from the commission's filing requirements as applied to NUSCO, or that NUSCO be permitted to provide substitute materials in lieu thereof.

Information in response to Rule 1603.03(b), Requests 4, 8, 19, 20 and 25, was submitted by NUSCO in its December 22, 1989 filing, Volume II.

In its petition filed on December 22, 1989, NUSCO also requested a waiver of N.H. Admin. Rule Puc 1603.02 which requires the filing of a Notice of Intent to File Rate Schedules at least thirty (30) days prior to the filing of such schedules.

On January 11, 1990 members of the staff of the commission met with representatives of Northeast Utilities ("NU"), Public Service Company of New Hampshire ("PSNH"), Office of the Consumer Advocate, Bio Mass Small Power Producers, and John V. Hilberg, *pro se*, to review and discuss NUSCO's petition.

On January 18, 1989, a document entitled "STIPULATION ON NUSCO'S REQUESTS FOR WAIVERS OF CERTAIN FILING REQUIREMENTS" was filed with the commission containing the agreements of the parties with regard to NUSCO's request for waivers.

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A detailed list of the specific waivers and relief requested by NUSCO was attached to its

petition as Appendix A, and is also attached to the stipulation as Appendix A.

II. *Stipulations of the Parties*

A. *Items Claimed to be Filed with the Commission*:

At the time of the preparation of its petition, the information required by N.H. Admin. Rule 1603.03(b)-1, 2, 10, 13, 16, 17, 21, 22 and 24 was not readily available to NUSCO, but was believed by NUSCO to have been regularly provided to the commission by PSNH as part of PSNH's standard ongoing duty to provide information to the commission. At the aforementioned meeting, it was agreed by PSNH that said information would be provided to NUSCO by PSNH.

Although N.H. Admin. Rule 1603.03(b) normally requires 5 copies of the following information to be filed with the commission, Rule 1603.03(b) also permits responses to incorporate by reference information and documents already on file with the commission and additional copies need not be provided.

Nonetheless, due to the magnitude and importance of this proceeding, and the multiple parties and intervenors involved, the parties recommend and stipulate that NUSCO respond in the manner specified on pages 3 and 4 of the Stipulation.

With respect to each of the above requests, except Requests 13 and 21, NUSCO will, on or before January 24, 1990, produce one copy of each document to be kept on file at the PUC. With respect to Requests 13 and 21, NUSCO will, on or before January 24, 1990, produce 13 copies for the PUC and one copy each for the intervenors.

B. *Items Claimed to be Unavailable or Not Relevant to the Proceeding.*

In it petition, NUSCO also requested that the commission waive, under the authority of N.H. Admin. Rule Puc 1603.07, certain other requirements for filing information under N.H. Admin. Rule Puc 1603.03(a) (5) (see Rule Puc 1603.06 (a)-Appendix I.) and N.H. Admin. Rule Puc 1603.03(b)-3, 5, 6, 7, 9, 11, 12, 14, 15, 18 and 23. NUSCO believed that the information required by these provisions is not relevant or necessary to the determination before the commission under RSA 362-C:3. In addition, the information required in most of these requests was not available to NUSCO during the period that its filing was being prepared. Under the circumstances of the bankruptcy, NUSCO did not have access to PSNH detail accounting nor other internal records such that it could provide the requested information.

As discussed above in Section A, at the meeting on January 11, PSNH agreed to provide the necessary information to NUSCO. Moreover, certain of the parties believed that the following items of information may be relevant or necessary to the determination before the commission under RSA 362-C:3.

Consequently, the parties stipulated and recommended that NUSCO respond in the manner specified on pages 5 and 6 of the Stipulation.

Thirteen copies of the documents produced in response to the foregoing, except Request 7,

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will be filed with the PUC, and copies sent to each of the intervenors, on or before January 24, 1990. The latest fully allocated cost of service study described in Request 7 is already on file at the PUC; therefore NU will, on or before January 24, 1990, produce additional copy of the same to be kept on file at the PUC.

III. *Commission Analysis*

[1, 2] We have reviewed the agreement among the parties embodied in the "STIPULATION ON NUSCO'S REQUEST FOR WAIVERS OF CERTAIN FILING REQUIREMENTS" and find that it is a reasonable resolution of the issues raised by NUSCO'S Petition for Waiver of a number of the filing requirements of N.H. Admin. Rule Puc 1603.03.

The purpose of these rules is stated in Puc 1603.01:

Purpose of the Rules. The purpose of the rules to improve the efficiency of the commission's rate hearing process to raise its

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quality and to increase speed.

Under the authority of Rule Puc 1603.07 *Waiver*, we are able to grant waivers of any provision provided that "[w]aiver of any provision of these rules shall not preclude the commission or any intervenor from subsequently requesting an item..." that has been waived.

Given the unique and special circumstances of this proceeding, we find that the purpose of the commission's rules under Rule Puc 1603 is fulfilled by the information and data to be provided by NUSCO and PSNH in accordance with the Stipulation.

We note that of the approximately 30 items of information requested by Rule Puc 1603, NUSCO, in its filing of December 22, 1989, responded to 5 and requested waivers for the 25 remaining items on the basis that they were unavailable or irrelevant.

We note that representatives of PSNH participated in the meetings of the parties and agreed to provide a substantial amount of information to NUSCO that was previously unavailable to NUSCO. We particularly note that the agreement of the parties goes beyond the requirements of the Rule 1603.06(a)- Appendix I pertaining to test year data and pro forma adjustments, in that NUSCO has agreed to provide projected rate base/rate of return data and calculations for the next 10 years.

Finally, we note that PSNH and NUSCO have agreed to provide substantially all of the information required by Rule 1603 with the exception of some information pertaining to pro forma adjustments and other data that simply does not exist due to the recent circumstances of PSNH. We find, therefore, that good cause has been shown by the parties for granting by the commission of the relatively few waivers that are now being requested.

With regard to NUSCO's requested waiver of N.H. Admin. Rule 1603.02, we find that said Notice of Intent in this case is not essential to the commission's regulatory oversight of this proceeding, especially since RSA 362-C was enacted on December 18, 1989 and NUSCO made its filing on December 22, 1989.

Our order will issue accordingly.

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ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the "STIPULATION ON NUSCO'S REQUEST FOR WAIVERS OF CERTAIN FILING REQUIREMENTS" is hereby approved; and it is

FURTHER ORDERED, that the request for waiver of the filing requirements set forth in Puc 1603.03(b)-9 and 22 and the request for waiver of Schedules Attachment-Pro Forma Adjustment to Operating Income Statement and Schedule 3 Attachment-Adjustment to Rate Base is hereby granted; and it is

FURTHER ORDERED, that the request for waiver of the filing requirements set forth in Puc 1603.03(b)-1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23 and 24 is hereby denied; and it is

FURTHER ORDERED, that NUSCO and PSNH comply with all terms of the Stipulation; and it is

FURTHER ORDERED, that should the information waived in Puc 1603.03(b) become necessary to complete the investigation in this matter that the petitioner shall provide such information upon request; and it is

FURTHER ORDERED, that the information specified in the Stipulation be submitted no later than January 24, 1990; and it is

FURTHER ORDERED, that the request for waiver of the requirement of Puc Rule 1603.02 for a Notice of Intent to File Rate Schedules is hereby granted.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 1990.
January 19, 1990

Wynn E. Arnold
Executive Director and Secretary
New Hampshire Public Utilities
Commission
8 Old Suncook Road
Concord, NH 03301

Re: DR 89-244 — Stipulation on NUSCO's Request for Waivers of Certain Filing Requirements

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Dear Mr. Arnold:

Enclosed for filing with the commission are the original and nine copies of the above captioned stipulation.

Sincerely,

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James T. Rodier
Staff Attorney

JTR:bj
Attachment
cc: Parties of Record
Enclosure

STIPULATION ON NUSCO'S
REQUEST FOR WAIVERS OF
CERTAIN FILING REQUIREMENTS

Introduction

On December 22, 1989, Northeast Utilities Service Company (NUSCO) petitioned the New Hampshire Public Utilities Commission ("NHPUC" or "commission"), *inter alia,* for waivers of certain provisions of the requirements of N.H. Admin. Rule Puc 1603.03 pursuant to and under the authority of N.H. Admin. Rule 1603.07. NUSCO requested said waivers, according to NUSCO, because certain information and materials, although relevant for traditional tariff filings, were not available to NUSCO, or were not filed because of NUSCO's belief that they are not relevant due to the unique and special nature of this proceeding. NUSCO's request for waivers asked that certain information and materials be omitted from the commission's filing requirements as applied to NUSCO, or that NUSCO be permitted to provide substitute materials in lieu thereof. A detailed list of the specific waivers and relief requested by NUSCO was attached to its petition as Appendix A, and is hereby attached to this stipulation also as Appendix A.

Information in response to Rule 1603.03(b), Requests 4, 8, 19, 20 and 25, was submitted by NUSCO in its December 22, 1989 filing, Volume II.

On January 11, 1990 members of the staff of the commission met with representatives of Northeast Utilities ("NU"), Public Service Company of New Hampshire ("PSNH") and the Office of the Consumer Advocate, Paul Savage, and John Hillberg. The parties present agreed to the following stipulations regarding NU's Requests for Waiver of Certain Filing Requirements:

A. *Items Claimed to be Filed with the Commission:*

At the time of the preparation of its petition, the following information required by N.H. Admin. Rule 1603.03(b) was not readily available to NUSCO, but was believed by NUSCO to have been regularly provided to the commission by PSNH as part of PSNH's standard ongoing duty to provide information to the commission. At the aforementioned meeting, it was agreed by PSNH that said information would be provided to NUSCO by PSNH.

Although N.H. Admin. Rule 1603.03(b) normally requires 5 copies of the following information to be filed with the commission, Rule 1603.03(b) also permits responses to incorporate by reference information and documents already on file with the commission and additional copies need not be provided.

Nonetheless, due to the magnitude and importance of this proceeding, and the multiple parties and intervenors involved, the parties recommend and stipulate that NUSCO respond in

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the following manner:

Request 1 — PSNH will provide to NU and NU will produce financial reports for PSNH for the two year period ending September 30, 1989.

Request 2 — PSNH will provide to NU and NU will produce annual reports to stockholders and statistical supplements for the most recent 5 years.

Request 10 — PSNH will provide to NU and NU will produce Forms 10K and 10Q for the most recent 4 years.

Request 13 — PSNH will provide to NU and NU will produce proxy statements containing the information described in Request 13 statements for the most recent 2 years.

Request 16 — This information is contained in the documents requested in Request 2 and 10 are filed and need not be refiled in this response.

Request 17 — This information is contained in the documents requested in Requests 2 and 10 and need not be refiled in this response.

Request 21 — PSNH will provide to NU and NU will produce the information described in Request 21 with respect to PSNH's senior capital.

Request 22 — This information is not applicable because PSNH has no short-term debt outstanding.

Request 24 — PSNH will provide to NU and NU will produce the information sought in Request 24 for the two year period ending December 31, 1988.

With respect to each of the above requests, except Requests 13 and 21, NUSCO will, on or before January 24, 1990, produce 1 copy of each document to be kept on file at the PUC. With respect to Requests 13 and 21, NUSCO will, on or before January 24, 1990, produce 13 copies for the PUC and one copy each for the intervenors.

B. *Items Claimed to be Unavailable or Not Relevant to the Proceeding*.

In it petition, NUSCO also requested that the commission waive, under the authority of N.H. Admin. Rule Puc 1603.07, certain other requirements for filing information under N.H. Admin. Rule Puc 1603.03(a) (5) (see Rule Puc 1603.06) and N.H. Admin. Rule Puc 1603.03(b). NUSCO believed that the information required by these provisions is not relevant or necessary to the determination before the commission under RSA 362-C:3. In addition, the information required in most of these requests was not available to NUSCO during the period that its filing was being prepared. Under the circumstances of the bankruptcy, NUSCO did not have access to PSNH detail accounting nor other internal records such that it could provide the requested information.

As discussed above in Section A, at the meeting on January 11, PSNH has agreed to provide the necessary information to NUSCO. Moreover, certain of the parties believe that the following items of information may be relevant or necessary to the determination before the commission under RSA 362-C:3.

Consequently, the parties stipulate and recommend that NUSCO respond in the following manner:

1. *Schedules pursuant to Rules 1603.03(a)(5) and 1603.06(a) — Appendix I.*

PSNH will provide to NU and NU will produce each of the required schedules, except Schedule 1 Attachment — Pro Forma Adjustment to Operating Income Statement and Schedule 3 Attachment — Adjustment to Rate Base, for the twelve month period ending September 30, 1989.

Information provided by PSNH will be per books and not pro formed except for changes for debt issues approved by the commission during 1989.

The parties recommend that NUSCO be granted waivers to reflect the above agreements as to Appendix I.

In addition, NU will provide, on a projected basis, a set of schedules containing information substantially similar to the format set out in Appendix B (Illustrative Tables I, II, III, IV and IV A) hereto for each year for ten years beginning January 1, 1990, (provided that, for the first year, the tables shall include information only for July 1, 1990 to December 31, 1990) including annual changes, based on assumptions underlying the Rate Agreement and further assuming that Seabrook achieves commercial operation by July 1, 1990. A similar set of schedules will be produced based on the assumptions underlying the Rate Agreement, but assuming Seabrook never achieves commercial operation.

For each year of the six years beginning January 1, 1991, NU will also produce reports of proposed rate changes ("Bingo Sheets") based on the assumptions that rate increases will be 5.5% per year and that there will be no change to rate design, and based

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on the forecasts underlying the Rate Agreement.

2. *Rule 1603.03(b) Filing Requirements*:

Requests 3, 5, 6, 7, 11, 12, 15, 18 and 23 — PSNH will provide to NU and NU will produce the required information for the year ending September 30, 1989.

Request 9 — This requirement is not applicable because PSNH uses the FERC-approved chart of accounts.

Request 14 — In lieu of the required information, PSNH will provide to NU and NU will provide: (1) a list of service contractors who received payments totalling in excess of $10,000 per year, and the amount of total payments made to each service contractor, for the twelve month period ending September 30, 1989; and (2) a list containing the same information for the twelve month period ending December 31, 1989.

3. *Rule 1603.04 Attestation*:

PSNH will attest, in accordance with Rule 1603.04, as to all documents it provides to NU for production. NU will provide the required attestation for the schedules described

in Paragraph B.1., above.

Thirteen copies of the documents produced in response to Paragraph B, above, except Request 7, will be filed with the PUC, and copies sent to each of the intervenors, on or before January 24, 1990. The latest fully allocated cost of service study described in Request 7 is already on file at the PUC; therefore NU will, on or before January 24, 1990, produce 1 additional copy of the same to be kept on file at the PUC.

Conclusion

NUSCO, PSNH, staff of the Commission, Office of Consumer Advocate and the Bio Mass Small Power Producers respectfully request that the commission adopt the stipulated recommendations of the parties.

The aforementioned parties have authorized the staff to represent to the commission that they concur in these recommendations.

Respectfully submitted,
STATE OF NEW HAMPSHIRE PUBLIC
UTILITIES COMMISSION STAFF
By and Through its Attorney

James T. Rodier
Staff Attorney

APPENDIX A

Northeast Utilities Petition Re: Public Service Company of New Hampshire Reorganization

REQUESTS FOR WAIVER OF CERTAIN
FILING REQUIREMENTS

NUSCO respectfully requests that the Commission grant, under the authority of N.H. Admin. Rule Puc 1603.07, either full or partial waiver of the filing requirements described in this Appendix A. The first set of requests relate to those filings which NUSCO believes duplicate information filed with the Commission. The second set of requests relate to those filings which NUSCO either (i) could not file because it did not have access to the relevant information at the time this Petition was prepared or (ii) has not filed because it believes that, due to the special nature of this proceeding, the filings are not relevant to the matters raised in this proceeding. By requesting the waivers specified below, NUSCO specifically does not admit that these filing requirements are applicable to this proceeding.

A. *Items Believed to be Filed with the Commission*.

NUSCO believes that the following information required by N.H. Admin. Rule Puc 1603.03(b) has been, provided by PSNH to the Commission regularly as part of PSNH's standard ongoing distribution of required information. Because this information was not readily available to NUSCO during the preparation of this filing, NUSCO respectfully requests that

the Commission waive the need for responses to these items beyond the information

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indicated below:

Request 1: The Company's internal financial reports for the first and last month of the test period, and one complete set for the test year, and the prior twelve months to be kept in the docket for review by all participants and the public.

Response: NUSCO believes that PSNH provides these to the Commission monthly.

Request 2: Annual reports to stockholders and statistical supplements, if any, for the most recent five years.

Response: NUSCO believes that PSNH provides these to the Commission annually.

Request 10: Provide Forms 10-K and 10-Q for most recent two years.

Response: NUSCO believes that PSNH provides these to the PUC. The 10-K is sent annually and the 10-Q is sent quarterly. Please note that the 10-K for NU for 1988 has been included in this filing as Ellis Attachment 1.

Request 13: List of officers and directors of utility, their compensation for the last two years, and amount of voting stock owned individually, by the spouse, or minor children or stock controlled by the officer or director directly or indirectly.

Response: NUSCO, believes that reference should be made to PSNH's proxy statement for use in conjunction with the Annual Meeting of Stockholders; PSNH's Annual Reports on Form 10-K; and PSNH's Annual Reports on FERC Form NO. 1 for the calendar years ended 1987 and 1988. NUSCO understands that these documents have been provided to the Commission.

Request 16: Balance sheet and income statement for the previous ten years.

Response: NUSCO believes, that this information is contained in PSNH's annual reports which would have been provided by PSNH to the Commission each year.

Request 17: Quarterly income statements for the previous five years.

Response: The first three quarters of the year are contained in PSNH's Form 10-Q and the fourth quarter is in their Form 10-K. NUSCO believes that PSNH has been providing these Forms to the Commission regularly.

Request 21: Specify the provisions of any working funds associated with senior capital and indicate the rate that any respective issues of senior capital will be retired, consistent with such sinking fund(s).

Response: NUSCO believes that this information is contained in PSNH mortgage indentures filed with the SEC and in prior PSNH rate applications. Please see the direct testimony of R.E. Busch for more information regarding the financings associated with the NU plan of reorganization for PSNH.

Request 22: If the short-term debt component of total invested capital is volatile, disclose the amount outstanding, on a monthly basis during the test period, for each short-term indebtedness.

Response: This information is shown, on the Comparative Balance Sheet of PSNH's monthly internal financial statements which NUSCO believes are provided monthly to

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the Commission as indicated in NUSCO's response to Item 1603.03(b)(1) above.

Request 24: Uniform Statistical Report to the American Gas Association-Edison Electric Institute for the last two years, where applicable.

Response: NUSCO understands that this information has been provided to the Commission annually.

B. *Items Unavailable or Not Relevant to Proceeding.*

NUSCO respectfully requests that Commission waive, under the authority of N.H. Admin. Rule Puc 1603.07, the requirements for filing information under N.H. Admin. Rule Puc 1603.03(a)(5) and N.H. Admin. Rule Puc 1603.13(b) be waived. NUSCO believes that the information required by these provisions is not relevant or necessary to the determination before the Commission under RSA 362-C:3. RSA 362-C:3 authorizes the Commission to determine whether the Rate Agreement is

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consistent with the public good. NUSCO believes that the information requests detailed below would not produce information relevant to evaluating the merits of the Rate Agreement. In addition, the information required in most of these requests was not available to NUSCO during the period that this filing was being prepared. Under the circumstances of the bankruptcy, NUSCO did not have access to PSNH detail accounting nor other internal records such that it could provide the following requested information.

1. *Filing Requirement Schedules.*

Summary Schedule Computation of Revenue Deficiency

Waiver is requested — Because of the nature of the Rate Agreement, which sets forth a series of rate increases based upon negotiations with the State of New Hampshire, no traditional revenue deficiency calculations have been made in this filing.

Schedule 1B Payroll

Waiver is requested — NUSCO did not have access to detailed payroll information regarding PSNH at the time this filing was prepared.

Schedule 2 Attachment

Waiver is requested — NUSCO did not have access to detailed information regarding PSNH at the time this filing was prepared.

Schedule 3 Rate Base
Schedule 3A Working Capital
Schedule 3B Average Plant in Service
Schedule 3 Attachment Adjustment to
Rate Base

Waiver is requested — Because of the nature of the Rate Agreement, which sets forth a series of rate increases based upon negotiations with the State of New Hampshire, no traditional rate base calculations have been made in this filing.

Schedule III Item III Historical Capital Structure
Schedule IV Item IV Capitalization ratios at 12/31

Waiver is requested — Because of the nature of the Rate Agreement, the return on common equity during the fixed rate period was negotiated as set forth in the Rate Agreement.

Report of Proposed Rate Changes
Tariff Sheets

Waiver is requested — The Rate Agreement provides for a 5.5 percent increase to all rate schedules. For detailed information on the impacts on the tariff sheets, please see the material filed by the Attorney General on December 15, 1989 in Docket No. DR 89-219. When an effective date for new tariffs is agreed upon, compliance tariff sheets will be filed.

2. *N.H. Admin. Rule Puc 1603.03(b) Filing Requirements*.

Request 3: Federal income tax reconciliation for the test year.

Waiver is requested — This information is not available to NUSCO and the Rate Agreement is not based on a test year calculation.

Request 5: Detailed list of charitable contributions charged in the test year showing donee and the amount.

Waiver is requested — This information is not available to NUSCO and the Rate Agreement is not based on a test year calculation.

Request 6: List advertising charged in the test year above the line showing expenditures by media and by subject matter.

Waiver is requested — This information is not available to NUSCO and the Rate Agreement is not based on a test year calculation.

Request 7: Supply the latest fully allocated cost of service study.

Waiver is requested — NUSCO believes that this information is unnecessary because this proceeding is not addressing rate design.

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Request 9: Copy of recent chart of accounts, if different, than approved chart of accounts.

Waiver is requested — NUSCO has not reviewed in detail the current chart of accounts for PSNH. NUSCO has no reason to believe that any accounting measures used by PSNH do not comport with Commission approved accounting treatments.

Request 11: Detailed list of all Company membership fees, dues, donations, and trade, technical, and professional associations for the test year charged above the line showing organization and amount.

Waiver is requested — Information is not available to NUSCO and the Rate

Agreement is not based on a test year calculation.

Request 12: Supply a list of any management audit and depreciation studies performed within the last five years, specifying whether same are on file with this Commission. Copies of audits or studies not on file with the Commission shall be submitted.

Waiver is requested — NUSCO believes that PSNH may have provided such materials to the Commission in the past. For example, a management audit of PSNH by Cresap, McCormick and Paget, Inc, and a depreciation analysis for all depreciable plant through December 31, 1984 by Stone & Webster Management Consultants, Inc. were conducted in 1986 (as indicated in the PSNH 1986 Rate Application). Information is not available to NUSCO about more recent such studies or audits.

Request 14: List of all payments in excess of $10,000 to individuals or corporations of contractual services in test year and purpose of such.

Waiver is requested — Information is not available to NUSCO and the Rate Agreement is not based on a test year calculation.

Request 15: For non-utility operations, the amount of assets and costs allocated thereto and justification for such allocations.

Waiver is requested — Information is not available to NUSCO. However, according to the 1986 rate application, the only non-utility assets or costs are interest charges. Those had been allocated to operating portions of the business for tax purposes. The method of allocation is described in the response to 1603.03(b) Request 15 in the 1986 rate application.

Request 18: Quarterly sales volumes for the previous five years, itemized for residential and other.

Waiver is requested — PSNH provided sales volumes for the years 1976 to 1985 in their 1986 rate application. NUSCO did not have access to this information for the years 1986 to 1989 during the preparation of this filing.

Request 23: If a parent-subsidiary relationship exists, duplicate all filing requirements of PUC 1603.03(b) for the parent company; except that in lieu of duplication of 1603.03 (b)(5), (6), (11), (14), and (15), the subsidiary's rate filing request shall contain a certificate of an appropriate company official detailing any expense of the parent company which was included in the subsidiary's cost of service.

Waiver is requested — While a parent-subsidiary relationship will exist between new PSNH and NU, NUSCO does not believe a duplication of filing requirements of PUC 1603.03(b) for the parent is necessary due to the nature of this filing. However, NUSCO is providing the 1988 Form 10-K filed by NU as an attachment to the direct testimony of W.B. Ellis.

3. *N.H. Admin. Rule Puc 1603.04 Attestation.*

Waiver is requested — Because NUSCO has not been able to review in detail the books and records of PSNH during the period this filing was being prepared, it is unable to attest that the

materials in this filing set reflect the books of PSNH as required in this regulation.

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NH.PUC*01/19/90*[50865]*75 NH PUC 30*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50865]

75 NH PUC 30

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,674

New Hampshire Public Utilities Commission

January 19, 1990

ORDER granting motions for intervention, adopting hearing procedures and schedules, and setting forth the scope of a proceeding to determine whether the acquisition of Public Service Company of New Hampshire (PSNH) by Northeast Utilities would be in the public good and whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of PSNH should be approved as just and reasonable.

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1. RATES, § 641 — Procedure and practice — Parties — Electric rates — Chapter 11 reorganization.

[N.H.] All parties to a temporary rate proceeding involving a retail electric utility operating

as a debtor-in-possession under the protection of a federal bankruptcy court were granted full party status in a docket to determine whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of the utility should be approved as just and reasonable. p. 32.

2. RATES, § 641 — Procedure and practice — Parties — Electric rates — Chapter 11 reorganization.

[N.H.] In establishing hearing procedures for a proceeding to determine whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of an electric utility should be approved as just and reasonable, the commission found that efficiency in the hearing process would be promoted by permitting witnesses to testify in panels in areas in which a number of individuals are responsible for supporting the testimony or exhibits under consideration. p. 32.

3. RATES, § 641 — Procedure and practice — Scope of proceeding — Legislative mandate — Electric rates — Chapter 11 reorganization.

[N.H.] The scope of a rate proceeding involving a retail electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code was defined by state statute RSA 362-C, which authorized the commission to determine generally (1) whether the acquisition of the debtor utility, Public Service Company of New Hampshire, by Northeast Utilities Company would be consistent with the public good, and (2) whether rates for electric service to be established in conjunction with the bankruptcy reorganization should be approved as just and reasonable; the statute also authorized the commission to approve any alternative reorganization plan that would result in the same or lower costs and risks to ratepayers while providing the same or greater benefits to ratepayers. p. 32.

4. BANKRUPTCY — Chapter 11 reorganization — Electric utility — Rate proceeding — Scope.

[N.H.] The scope of a rate proceeding involving a retail electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code was defined by state statute RSA 362-C. p. 32.

5. CONSOLIDATION, MERGER, AND SALE, § 6 — Duties of state commission — Acquisition of bankrupt utility — Statutory requirements.

[N.H.] State statute RSA 362-C authorized the commission to determine generally whether the acquisition of Public Service Company of New Hampshire — an electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code — by Northeast Utilities Company would be consistent with the public good. p. 32.

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6. EXPENSES, § 122 — Electricity — Purchased power — Purchased transmission capacity — Cost disallowances.

[N.H.] The commission is authorized to disallow, in whole or part, any amounts paid by an electric utility under agreements with terms of more than one year for the purchase of energy,

generating capacity, or transmission capacity, if the decision to enter the agreement is found unreasonable or not in the public interest. p. 32.

7. RATES, § 641 — Procedure and practice — Scope of proceeding — Electric rate design — Chapter 11 reorganization.

[N.H.] Reallocation of base rate revenue responsibility among classes of service (rate design) was excluded from consideration in a proceeding to determine (1) whether the acquisition of Public Service Company of New Hampshire — an electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code — by Northeast Utilities Company would be consistent with the public good, and (2) whether rates for electric service to be established in conjunction with the bankruptcy reorganization should be approved as just and reasonable. p. 34.

8. BANKRUPTCY — Chapter 11 reorganization — Rate plan — State commission approvals.

[N.H.] Implementation of a proposed rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) would require state commission to approve: (1) the merger or acquisition of PSNH by Northeast Utilities; (2) an acquisition premium; (3) an investment adder to rate base; (4) asset transfers; (5) annual rate step increases; (6) decommissioning cost arrangements; (7) security issues; and (8) applications for authorization to commence business as a public utility. p. 35.

APPEARANCES: Northeast Utilities by Eve H. Oyer, Esquire and Thomas D. Rath, Esquire; New Hampshire Attorney General's Office by Harold T. Judd, Esquire; Business and Industry Association by John T. Lahey, Esquire; Official Committee of Unsecured Creditors by J. Michael Deasy, Esquire; Granite State Hydro Power Associates, *et. als.* by Howard M. Moffett, Esquire; Public Service Company of New Hampshire by Martin L. Gross, Esquire and Gerald M. Eaton, Esquire; Bio Mass Small Power Producers by Paul A. Savage, Esquire and Robert O. Olson, Esquire; Legislative Joint Committee to Monitor PSNH by John R. Michels, Esquire; Residential Ratepayers by Michael W. Holmes, Esquire and Joseph Rogers, Esquire; John V. Hilberg, *Pro Se*; and New Hampshire Public Utilities Commission by Wynn E. Arnold, Acting General Counsel, Dr. Sarah P. Voll, Chief Economist and Staff Coordinator and James T. Rodier, Staff Attorney.

By the COMMISSION:

REPORT

This docket was opened by order of notice dated December 22, 1989. Pursuant to that order, a prehearing conference was held on January 10, 1990 to address the following issues:

1. Simplification of the issues, including scope of the proceedings.

2. Stipulations or admissions as to issues of fact or proof, by consent of the parties.

3. Changes to standard procedures desired during the hearing, by consent of the parties.

4. Consolidation of examination of witnesses by the parties.

5. Whether motions to intervene should be granted.

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6. Establishment of a procedural schedule for the duration of the proceedings consistent with the limited time frames mandated by RSA 362-C.

7. Any other matters which aid in the disposition of the proceeding.

The order of notice also granted full party status in the instant docket to all parties to docket DR 89-219.

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Prior to the hearing, the commission received petitions for limited intervention from John R. Michel on behalf of the Joint Committee to Monitor the Public Service Company of New Hampshire Reorganization Proceedings, J. Michael Deasy on behalf of the Official Committee of Unsecured Creditors and Howard J. Berman on behalf of the Official Committee of Equity Security Holders.

At the procedural hearing the Attorney General's Office presented Stipulated Recommendations of the Parties regarding Scope, Procedure and Schedule. (January 10, 1990 Stipulation). Subsequently the parties presented more detailed recommendations regarding scope.

INTERVENTION

[1] As stated in the order of notice, all parties to docket DR 89-219 have been granted full party status in this docket. This will confirm that Howard Moffett representing the Granite State Hydro Power Association was a party to DR 89-219 and therefore has been granted intervention in the instant docket. The commission granted the requested limited intervenor status from the bench to the Joint Committee and the Unsecured Creditor and Equity Holder Committees.

PROCEDURE

[2] The parties recommended that it would be appropriate that witnesses testify in panels in areas where a number of individuals are responsible for supporting the testimony or exhibits under consideration. Questions could be directed to individuals, however, and those persons would be responsible for responding. Specific recommendations regarding proposed panels will be made at the conclusion of the discovery period.

The commission finds that having witnesses testify in panels promotes efficiency in the hearing process, and we will therefore adopt the recommendation of the parties.

SCOPE

Legislative Mandate

[3-6] The instant docket was opened pursuant to the mandate of the N.H. Legislature embodied in RSA 362-C, and therefore any determination of scope for this docket must be grounded in that legislation. The legislation authorizes the commission (RSA 362-C:3)

> after hearing in one or more proceedings to be initiated and completed during the pendency of the Public Service Company of New Hampshire bankruptcy, to determine whether the implementation of the agreement[1(1)] would be consistent with the public good. RSA 362-C:3.

The legislation provided that the commission should be authorized to determine generally whether the acquisition of Public Service Company of New Hampshire (PSNH) by Northeast Utilities (NU) would be consistent with the public good, and specifically, whether the proposed agreement relating to the reorganization of PSNH would be consistent with the public good and "whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved." RSA 362-C:1 IV. If the commission finds that the acquisition, agreement and rates are in the public good, it is then authorized

> notwithstanding any other provision of law, [to] establish and place into effect the levels of rates, fares, or charges and the fuel and purchased power adjustment clause to be maintained for Public Service Company of New Hampshire, or its successor, in accordance with, and during the time periods set forth in, the agreement then the commission shall initiate such other proceedings, hold such other hearings and take such other actions as may be necessary to implement the provisions of the agreement. RSA 362-C:3.

Further, under RSA 362-C:5 the commission is authorized to determine whether the implementation of

> any alternative reorganization plan which the commission affirmatively finds will resolve the Public Service Company of

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> New Hampshire bankruptcy case and will result in the same or lower costs and risks to ratepayers and the same or greater benefits to the state as those resulting from the NU plan and the agreement both during the time periods in which rates increases are prescribed in the agreement and thereafter

would be consistent with the public good. Having made such an affirmative finding, the commission would then be authorized to place the rates resulting from an alternative reorganization plan into effect and, after hearing, take such other actions required for implementation.

The legislation limits commission authority regarding rate design modifications during the fixed rate period (RSA 362-C:8) by requiring that re-allocations of base rate revenue responsibility among residential, commercial, industrial and municipal customers serviced by PSNH be subject to legislative approval.

Finally, all electric utilities that enter into agreements with a term of more than one year for the purchase of generating or transmission capacity or for energy shall file a copy of the agreement with the commission. The commission is authorized "to disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest. RSA 374:57.

Findings Of Public Good

Under the legislation, the commission must consider whether the acquisition of PSNH by NU, the agreement and the proposed rates, are in the public interest and represent a reasonable

resolution of the PSNH bankruptcy. Broadly, the commission must therefore examine the reasonableness of:

1. the level of rates resulting from the acquisition and agreement,

2. the framework proposed in the agreement to structure viable successor companies, translate the costs of the survivor companies into rates and charges, and provide adequate and reliable sources of energy and capacity; and

3. the assumptions that determine the likelihood that the rates and charges proposed by the agreement will actually occur.

In considering the reasonableness of the level of rates, the parties have proposed that the commission may include within the scope of this proceeding the introduction of alternatives to part or all of the rate agreement as a comparison, even though such alternatives do not qualify as Alternative Plans pursuant to RSA 362-C:5.

We find the scope to be potentially more narrowly defined than that defined by the parties. In judging the reasonableness of the level of rates, we will examine the following standards and comparisons:

a. the standard ratemaking formulae, calculations of anticipated revenue, computation of operating expenses and rate of return applied to net rate base, the proposed amortization and depreciation schedules, and financial ratios that have traditionally determined the justness and reasonableness of rates, over the fixed rate periods (seven years followed by three years), and in each of the ten years.

b. whether the rates equitably balance the investor and consumer interests so that the rates will produce a reasonable return to investors without imposing an undue burden on ratepayers and the economy of the State of New Hampshire.

c. long term retail rate forecasts of comparable utilities, possibly including but not limited to the retail rates of NU's other subsidiaries and the average of the NEPOOL companies as a whole for purposes of comparison.

d. pursuant to RSA 362-C:5, alternative reorganization plans filed in the Public Service Company of New Hampshire bankruptcy case, which the commission affirmatively finds will resolve the Public Service Company of New Hampshire bankruptcy case and will result in the same or lower costs and risks to ratepayers and the same or greater benefits to the state as those resulting from the NU plan and the

agreement both during the time periods in which rates increases are prescribed in the agreement and thereafter.

We note that no Alternative Reorganization Plan as defined by RSA 362-C:2, II has been presented to the commission.

In assessing the reasonableness of the agreement the commission will examine the following elements and standards.

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Regarding the framework proposed to structure viable successor companies, the commission will consider:

a. the reasonableness of rates required to support the anticipated capitalization and financial viability of New PSNH, Stand-Alone PSNH and North Atlantic Energy Company (NAEC).

b. reasonableness of the proposed capital structure, investments and regulatory assets of re-organized PSNH, including the reasonableness of the amount and treatment of the acquisition premium.

c. the reasonableness of the estimated $300 million value assigned to the investment adder representing capitalized synergies, and whether at the time returns on equity are examined for purposes of the Equity Collar, the commission will review claimed synergies to assess whether the estimated proposed synergies were realized.

d. the reasonableness of the provisions of the rate agreement and NU plan to provide PSNH customers with a sufficient supply of electricity to meet anticipated demand.

In assessing the translation of the costs of the successor companies into rates and charges, the commission will examine the reasonableness of:

a. the Fuel and Purchased Power Adjustment Clause.

b. Decommissioning charges.

c. the reservations of NU regarding additional charges resulting from expenditures for regulatory or legislative changes, changes mandated by the Nuclear Decommissioning Financing Committee programs mandated by legislators and regulators, or conservation and load management.

d. the Return on Equity Collar.

[7] The parties have noted that the rate agreement does not require redesign of rates while RSA 362-C:8 requires legislative approval for reallocation of base rate revenue responsibility among classes of service. The parties stipulated that "reallocation of revenue requirements among or within classes of service [be] excluded from this proceeding but may be considered by the commission in a separate docket which would be opened after the completion of this proceeding". We find this a reasonable narrowing of the scope of this docket, especially in light of the explanation that the recommendation is not intended to preclude general consideration of the effect of intraclass rate design principles on the affordability and feasibility of the resulting rates.

The parties have also filed separate recommendations on the need for commission findings regarding the renegotiation of the rate orders for certain small power producers, as specified in Paragraph 12 and Paragraph B(D) of Exhibit C of the NU Agreement. No party disputes, and the commission agrees, that the issues of deferrals and amortization of payments to the eight small power producers and the allocation of savings in the FPPAC between ratepayers and NU should the rate orders be amended either through renegotiation or commission order, is within the scope of this proceeding. However, the Agreement assumes that the rate orders are unchanged and does not at this time require commission action regarding the specifics of modifications to individual

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rate orders or determinations on the general issues of commission authority to amend its rate orders or whether modifications to rate orders to the possible detriment to certain small power producers to benefit ratepayers is in the public interest. We will defer those considerations to a subsequent docket to be opened when and if NU proceeds with its renegotiation under paragraph 12 and commission action is required.

In determining the reasonableness of the provisions of the Agreement that are intended to provide adequate and reliable sources of energy

and capacity, the commission will examine

a. the load forecast and its assumptions.

b. the NU resource plan and its assumptions.

c. the Seabrook Power Contract, the Slice-of-System capacity contracts and the Sharing Agreement, both for their adequacy in terms of supply and, pursuant to RSA 374:57 to the extent their term exceeds one year, for the reasonableness of their conditions and charges.

Finally, in considering the reasonableness of the assumptions that determine the likelihood that the rates and charges proposed in the agreement will actually occur, we will analyze *inter alia*

a. the financial assumptions including interest rate levels, bond ratings, rates of return

b. the economic assumptions, including price elasticities, population and economic growth projections, sales forecasts, end use saturation, changing technologies

c. the operational assumptions including fuel and purchased power costs, maintenance expenses, impact of changes in operational procedures and resulting synergies.

Approvals

[8] The parties have delineated the following list of specific approvals that are required under the statutes to implement the proposed NU Reorganization Plan.

Rate Agreement Approvals

1. *Temporary Rate Made Permanent*. The temporary rate approved by the commission by order dated December 28, 1989 will require the approval of the commission as a permanent rate as of the First Effective Date (expected to be no later than July 1, 1990) pursuant to paragraph 5(i) of the Rate Agreement.

2. *Approval of Annual Rate Steps*. The six 5.5 percent increases to be effective pursuant to Section 5 of the Rate Agreement over the six-year period beginning on the later of the First Effective Date or January 1, 1991 will require the approval of the Commission pursuant to RSA 378:7.

3. *Approval of Investment Adder*. The investment adder of $300 million to be in effect after the Second Effective Date will require approval of the commission pursuant to Section 15(a)(vi)

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and Exhibit B of the Rate Agreement.

4. *Approval of Decommissioning Cost Arrangement*. The provisions relating to decommissioning charges and pass-through of such charges to customers will require approval of the Commission pursuant to Section 8 of the Rate Agreement.

5. *Approval of Acquisition Premium*. Determine whether the acquisition premium of $789 million is just and reasonable and should be considered a regulatory asset of PSNH, and determine whether the amortization and recovery of $425 million of the $789 million during the first 10 years and recovery of the balance in 20 years is reasonable.

Financing Approvals

6. *Issuance of Securities, Notes and Other Debt*. The following securities will require the approval of the Commission pursuant to the RSA sections noted:

- common stock by PSNH (including issuance: of stock dividends) RSA 369:1 and 4
- preferred stock by PSNH RSA 369:1 and 4
- first mortgage bonds by PSNH — RSA 369:1, 2 and 4
- long term bank financing by PSNH — RSA 369:1, 2 and 4
- warrant certificates by PSNH — RSA 369:1 and 4
- common stock by NAEC — RSA 369:1 and 4
- first mortgage bonds by NAEC — RSA 369:1, 2 and 4
- common stock by NUOP — RSA 369:1 and 4
- contingent notes by PSNH or NAEC — RSA 369:1 and 4

- short-term financing if required — RSA 369:7

7. *Substitution of Security*. Under the NU Plan, new security may be substituted in connection with the 10 1/2 percent Pollution Control Revenue Bonds. This substitution will require the approval of the commission pursuant to RSA 369:2.

Structural Approvals

8. *Commencing Business as Public Utility*. The following entities will require the permission of the Commission pursuant to RSA 374:22 I and RSA 374:26 to commence business as public utilities:

- NAEC
- NUOP

9. *Transfer of Assets*. The transfer by PSNH to NAEC of its ownership interest in the Seabrook plant, the land currently owned by PSNH surrounding the Seabrook site, and Seabrook's nuclear fuel will require the approval of the Commission pursuant to RSA 374:30. Such transfer without a 2/3 vote of the interested corporations will require the approval of the commission pursuant to RSA 374:32.

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10. *Merger or Acquisition of PSNH*. The merger or acquisition of PSNH to become a subsidiary of NU will require the approval of the commission pursuant to the ruling of the commission in *Re Gas Service, Inc.* 67 NH PUC 730 (1982).

Affiliate Approvals

11. *Affiliate Contracts*. NUSCO will request that the commission investigate, pursuant to RSA 366:5, and approve the following contracts between affiliates:

- service contract between NUSCO and PSNH
- service contract between NUSCO and NAEC
- service contract between NUSCO and NUOP
- service contract between NUOP and NAEC as a joint owner
- Seabrook Power Contract between PSNH and NAEC
- Slice-of-System capacity contracts between PSNH and the NU System
- Sharing Agreement between PSNH and the NU System
- Management Services Agreement between NUSCO and Stand-Alone PSNH.

We have reviewed the proposed list of approvals, the Agreement and the statutes and find the list to be complete and accurate. We will therefore adopt it as representing the specific approvals required in order to implement the agreement should the commission find it to be consistent with the public good.

OUTSTANDING MOTIONS AND REQUESTS

The motion of the Attorney General regarding scope of the proceeding relating to small producers, the Small Power Producers' joint proposal with the Attorney General's office, Northeast Utilities and SES Concord Company L.P. for resolution of small power producer issues within the scope of this proceeding are granted in so far as the report is consonant with these motions or requests; otherwise, they are denied.

The Hydro Intervenors' Request for Findings is denied.

The Business and Industry Association of New Hampshire's (BIA) concurrence in Northeast Utilities Service Company's (NUSCO) Preliminary Request for Findings and Approvals, and recommended test of the "public good" to be applied by the NHPUC only to the totality of the Rate Agreement and not to its parts as broken-out for purposes of organization, examination and discussion has been noted.

The commission recognizes that the ultimate question to be determined by the commission is whether under the totality of substantial evidence and the circumstances, including the legislative intent to facilitate resolution of the PSNH bankruptcy and the negotiated settlement of that bankruptcy between the State of New Hampshire and NU, the rates required under the

Rate Agreement are just and reasonable, and the NUSCO Plan of Reorganization will serve the public good.

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NUSCO's requests for Findings and Approvals are granted in so far as they are consonant with the scope of this proceeding as defined herein; otherwise, they are denied.

The motion of the Consumer Advocate to Determine Scope is granted in so far as the specified issues required to be investigated by the commission are consonant with the scope of the proceeding as defined herein; otherwise, they are denied.

SCHEDULE

The parties recommended the following procedural schedule for the remainder of the case but noted their understanding that the commission "will conduct a thorough investigation which may require a different and possibly longer schedule". (January 10, 1990 Stipulation, p. 5):

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Petitioner's late filed data.	January 24, 1990
Rolling Data requests until	February 2, 1990
Data responses due two weeks after requests are received until	February 16, 1990
Staff/Intervenor Testimony.	March 5, 1990
Data requests to Staff/Intervenors	March 12, 1990
Hearings (3 weeks)	March 26-April 13, 1990*
**Rebuttal (all parties)	April 20, 1990
Hearings on rebuttal	April 23-25, 1990
Briefs	May 4, 1990
Decision	May 31, 1990

*The parties agree that the hearings should be suspended to accommodate the confirmation hearings in the bankruptcy proceeding. Presently, those hearings are scheduled to be held on April 4, 1990 through April 6, 1990.

**If necessary; if not, remainder of the schedule would be advanced accordingly.

The commission appreciates the interest of the parties in concluding the proceeding by May 31, 1990 and we will accept the proposed schedule in that light. We recognize that it is ambitious, and its attainment will require the best efforts of all parties. As the case progresses, it may become necessary to amend the schedule. In particular, we encourage all parties to file a complete case-in-chief as we may find it necessary to eliminate the opportunity for rebuttal testimony if we are to render a decision by May 31, 1990.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof; it is hereby

ORDERED, that all motions for intervention and for limited intervention which have not been previously granted are hereby granted; and it is

FURTHER ORDERED, that the request of the parties to present certain witnesses in panels where a number of individuals are responsible for supporting the testimony or exhibits under consideration is granted as provided in the foregoing report; and it is

FURTHER ORDERED, that the scope of this docket shall be as set forth in the foregoing report; and it is

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FURTHER ORDERED, that the motions and recommendations of the parties regarding scope are granted insofar as they are consonant with the foregoing report and are otherwise denied; and it is

FURTHER ORDERED, that the motion of Northeast Utilities Service Company for

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admission *pro hac vice* of Robert P. Knickerbocker, Jr., Esquire of the law firm of Day, Berry & Howard, Hartford, Connecticut to represent it in this proceeding is granted; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties and set forth in the report accompanying this order is reasonable and is accepted by the commission.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 1990.

FOOTNOTES

[1] "Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the State of New Hampshire, acting on behalf of the State of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities. RSA 362-C:2 II.

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NH.PUC*01/22/90*[50867]*75 NH PUC 41*Nuclear Emergency Planning

[Go to End of 50867]

75 NH PUC 41

Re Nuclear Emergency Planning

DE 89-200
Order No. 19,676

New Hampshire Public Utilities Commission

January 22, 1990

ORDER assessing costs of nuclear emergency planning against the nuclear operations division of an electric utility.

ATOMIC ENERGY — Nuclear emergency planning — Seabrook Station — Cost assessment — Electric utility.

[N.H.] Budget costs submitted by the New Hampshire Office of Emergency Management in association with the maintenance of radiological emergency response plans for the Seabrook

Station Nuclear Power Plant were assessed against the nuclear operations division of the electric utility that owned the plant.

By the COMMISSION:

REPORT

On December 15, 1989, the New Hampshire Office of Emergency Management submitted a request for an assessment against

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New Hampshire Yankee Division of Public Service Company of New Hampshire for the estimated cost to maintain the State of New Hampshire local community Radiological Emergency Response Plans (RERP) for the Seabrook Station Nuclear Power Plant. The request addresses the estimated annual costs associated with training and current expenses of local Emergency Planning Zone municipalities and host municipalities associated with the Seabrook Station RERP. This request is intended to address local needs during the calendar year 1990, a year most closely related to local fiscal calendars. The total requested assessment consists of three parts: (1) $319,526 for local RERP plan administration, training and exercises; (2) $118,785 for the direct provision of current expenses services; and (3) the direct procurement of equipment pursuant to the request of the New Hampshire Red Cross and Emergency Broadcast Radio Station WERZ for equipment to support their respective responsibilities under the RERP. The breakdown of items 1 and 2 is as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Administration & Exercises	*Training Costs*	*Estimate of Local Current Expenses*
Brentwood	$ 9,920		$ 5,707
Dover (Host)	36,732		9,898
East Kingston	17,911		3,691
Exeter	22,400		4,677
Greenland	11,640		3,355
Hampton	23,125		6,020
Hampton Falls	14,520		5,660
Kensington	12,635		6,762
Kingston	9,763		3,543
Manchester (Host)	52,276		4,586
New Castle	16,210		2,919
Newfields	10,965		4,246
Newton	11,400		6,049
North Hampton	17,553		2,850
Portsmouth	22,630		12,042
Rochester (Host)	12,803		9,187
Rye	15,000		5,000
Salem (Host)	19,160		4,078
Seabrook	12,758		9,815
South Hampton	11,700		5,089
Stratham	13,425		3,611

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TOTAL	$374,526	$118,785

The equipment assessment is as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

New Hampshire Red Cross

498 cots at $17.71 per cot		$ 8,819.58
500 blankets at $3.50 per blanket		1,750.00
Sub-Total	$10,569.58	

Electronic Equipment

2 — base stations, one for Manchester and one for Dover Miltrek Superconsolette, Low Band, 2 channels, carrier squelch, 110 watts, local control @ $2,664.00 each		$ 5,328.00
2 — ground gain antenna omnidirectional 1 for Manchester, 1 for Dover @ $264 each		528.00
2 — 100 ft of 1/2" heliax line 100 ft for Manchester, 100 ft for Dover		730.00
5 — Mitrek Mobile stations 3 for Manchester, 1 each for Dover, Rochester, Salem low band, 110 watts, 2 channel, carrier squelch antenna and mounting hardware, system's 90 housing @ $1,253 each		7,518.00
6 — portable radios 3 for Manchester, 1 each for Dover, Rochester, Salem 2 channels, low band 6 watts, carrier squelch, ni-cad battery desktop charger, carry case w/ T strap @ $635 each		3,750.00
5 — installation of mobile stations @ $160 each		800.00
2 — installation of base stations @ $450 each		900.00
5 — Pagers 2 for Manchester, 3 for Concord @ $192 each		962.00
Sub-total		$19,263.00
TOTAL		$29,832.58

WERZ

Auxiliary Generator — 50 KW
FAX Machine — S/E
Panafax — UF-250

RSA 107-B sets forth the Commission's jurisdiction over the assessment of these costs. It provides in pertinent part as follows:

107-B:1 Nuclear Emergency Response Plan.

I. The director of emergency management shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in

the licensing regulations of each nuclear electrical generating plant. The chairman of the public utilities commission shall assess a fee from the utility, as necessary, to pay for

the cost of preparing the plan and providing the equipment and materials to implement it.

107-B:3 Assessment.

I. The cost of preparing, maintaining, and operating the nuclear planning and response program shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility which affects municipalities under RSA 107-B:1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

The chairman's function under this chapter is a limited one. In *Appeal of Hollingsworth,* 122 N.H. 1028 (1982), the New Hampshire Supreme Court upheld the chairman's finding that the statute did not provide the chairman with the authority to conduct an independent evaluation of civil defense's (now office of emergency management) cost data or to challenge its scope or amount. The Court stated:

> We agree with the chairman's interpretation of his limited role under RSA 107-B (Supp. 1981). The delegation of legislative authority to the chairman in that statute is extremely narrow and almost ministerial in nature. Under RSA 107-B:1 (Supp. 1981), the only independent evaluation of requested assessments that the PUC chairman is authorized to make is whether the cost is one of "preparing the plan and providing equipment and material necessary to implement it". The chairman made this evaluation and disallowed those charges relating to the CDA's personnel expenses for overseeing the formulation of the evacuation plan. Once the chairman authorized the assessment, his only remaining function was to assess the cost proportionately among all utilities that have applied for an operating license for the Seabrook plant. *See* RSA 107-B:3 (Supp. 1981). 122 N.H. at 1033

The New Hampshire Office of Emergency Management submits, and the supporting schedules support, that the above stated costs will provide the resources and personnel required by the affected municipalities, the New Hampshire Red Cross, and Emergency Broadcast Radio Station WERZ.

Pursuant to RSA 107-B:1, I have reviewed the New Hampshire Office of Emergency Management's request and supporting data. I find that the budget costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. I also find that the direct assessment of equipment for the New Hampshire Red Cross and Emergency Radio Station WERZ, which equipment should be delivered and installed in the configuration directed by the Office of Emergency Management provides those organizations with the resources to fulfill their responsibilities under the New Hampshire RERP and, accordingly, is related to preparing the plan and providing equipment and materials necessary to implement it. I therefore approve the assessment of $319,526 for local RERP plan administration, training and exercises; the direct provision of current expenses services of $118,785; and the direct procurement of equipment as specified to the New Hampshire Red Cross and Emergency Radio Station WERZ.

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My order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby

ORDERED, that I hereby certify that $319,526 for local RERP plant administration, training and exercises; $118,785 for the direct provision of current expenses services; and the direct provision of equipment as specified in the foregoing Report be assessed against the New Hampshire Yankee Division of Public Service Company of New Hampshire pursuant to RSA 107 B.

By order of the Chairman of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1990.

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NH.PUC*01/22/90*[50870]*75 NH PUC 47*Manchester Water Works

[Go to End of 50870]

75 NH PUC 47

Re Manchester Water Works

DR 89-196
Order No. 19,680

New Hampshire Public Utilities Commission

January 22, 1990

ORDER suspending, pending further investigation, a water tariff revision that would expand the area in which the Merrimack Source Development Charge may be applied to new customers.

RATES, § 597 — Water — New customers — Source development charge.

[N.H.] A water tariff revision that would expand the area in which the Merrimack Source Development Charge (MSDC) may be applied to new customers was suspended pending a thorough reexamination of the circumstances which formed the basis for the initial imposition of the MSDC and the legality of the charge.

By the COMMISSION:

ORDER

On January 9, 1990, Manchester Water Works (Manchester) filed 4th Revised Page 31 to NHPUC and No. 3 which concerns an expansion of the area in which the Merrimack Source Development Charge (MSDC) may be applied to new customers; and

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WHEREAS, prior to rendering a decision on whether or not to expand the application of a Source Development Charge, the Commission will thoroughly reexamine the circumstances which formed the basis for the initial imposition of such a charge and the legality of said charge; it is therefore

ORDERED, that fourth revised page 31 is hereby suspended; and it is

FURTHER ORDERED, that a prehearing conference to address procedural matters regarding the proposed extension of the MSDC be held before the New Hampshire Public Utilities Commission Offices at 8 Old Suncook Road, Building #1, Concord, new Hampshire in said State at ten o'clock in the forenoon on the twenty-ninth day of March 1990; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard to appear at said hearing, when and where they may be heard on the question of whether the proposed tariff revision is in the public good, by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted; such publication to be no later than March 12, 1990 said publication to be documented by affidavit filed with this office on or before March 29, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc §203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene at least three (3) days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1990.

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NH.PUC*01/23/90*[50866]*75 NH PUC 38*Granite State Electric Company

[Go to End of 50866]

75 NH PUC 38

Re Granite State Electric Company

DR 89-178
Order No. 19,675

New Hampshire Public Utilities Commission

January 23, 1990

ORDER adopting an agreement resolving disputed issues associated with the Cooperative Interruptible Service (CIS) program of an electric utility.

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1. RATES, § 322 — Electric rate design — Load management — Cooperative interruptible service program.

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[N.H.] The commission adopted the $100 per kilowatt credit level and the up-front customer charge level agreed to by the parties to a proceeding to revise the Cooperative Interruptible Service (CIS) program of an electric utility; it was found that the agreed upon credit level appeared to be the result of an appropriate balancing of the three competing criteria of setting the credit level (1) based on full avoided costs, (2) at a level high enough to encourage customer participation, and (3) at a level low enough to create net savings for non-participating ratepayers: nevertheless, the commission said that it would in future consider increasing the credit and reducing customer charges, if such action is required to increase participation in the CIS program. p. 40.

2. RATES, § 322 — Electric rate design — Load management — Cooperative interruptible service program — Derivation of avoided costs.

[N.H.] An electric utility was directed to provide more information concerning its methodology for deriving the avoided cost figures used in determining an appropriate credit level for its Cooperative Interruptible Service Program. p. 40.

3. RATES, § 32 — Jurisdiction and powers — State commissions — Standby generation program — Electric utility.

[N.H.] An electric utility was directed to submit to the commission a legal memorandum explaining the basis for its belief that its Standby Generation program was not subject to the jurisdiction of the commission. p. 40.

APPEARANCES: Cynthia A. Arcate, Esquire for Granite State Electric Company; Eugene F. Sullivan, III, Esquire for the commission staff.

By the COMMISSION:

REPORT

I. *Procedural History*

On September 29, 1989, Granite State

Electric Company (Granite State) filed with this Commission proposed revisions to its currently effective Cooperative Interruptible Service (CIS) agreements. The purpose of the revisions was to simplify and consolidate the CIS rates and update the CIS credit levels to reflect better the avoided capacity cost upon which the credits are based. By Order of Notice dated October 13, 1989, the Commission established an investigation of Granite State's filing and ordered a prehearing conference for October 30, 1989. Pursuant to that order, Granite State notified approximately 80 customers who qualify for CIS service of the prehearing conference.

Staff and Granite State met on October 30, 1989 to discuss the filing. No other parties intervened or attended the prehearing conference. During the prehearing conference staff and Granite State reported to the commission that a negotiated resolution of the proceeding appeared likely and requested that establishment of a procedural schedule be delayed pending further

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discussions. After several subsequent discussions and provision of additional information to staff by Granite State, the parties resolved all issues related to the filing. The parties have agreed to defer resolution of whether Granite State's Standby Generation program is subject to the commission's jurisdiction. On December 15, 1989, the commission held a hearing on the merits of the "Recommendation of the Parties for Resolution of this Proceeding" (Exhibit 1).

II. *Positions of the Parties*

Staff has developed a framework and methodology for evaluating the recent interruptible rate filings by three New Hampshire electric utilities (DR 89-171, Exhibit 4). Staff uses this framework and methodology to ensure that it consistently applies certain standards and principles in its review and evaluation of the utilities' interruptible rate filings. In reviewing Granite State's filing and supporting exhibits (Exhibits R-1 through R-18 for identification), staff identified three areas of concern.

A. *Credit Level*

Staff and the company agreed that Granite State's avoided costs were $157.18/KW-Yr. Granite State proposed a series of adjustments to the avoided costs to arrive at a credit level for participants in the CIS program. Staff did not agree with all of the adjustments the company proposed, particularly reductions based on a probability of peak analysis which, in staff's view, were particularly inappropriate for an interruptible program meeting the New England Power Pool's (NEPOOL) requirements. If an interruptible program meets NEPOOL requirements, the utility is assured of a full reduction to its capability responsibility regardless of the extent to which its own peak is curtailed. Staff outlined the principles and methodology it used with the other New Hampshire companies, interruptible programs to move from avoided costs to credit payment levels. Moreover, staff believed that the additional interruptions available to Granite State in its CIS program, over those required to qualify for the NEPOOL program, further add to the value of the program.

The Company does not agree with staff's methodology and disagrees that the additional interruptions over NEPOOL requirements add sufficient value to justify a greater credit than the initially proposed $85 per KW credit.

B. *Customer Charges*

The staff has also expressed concern over the amount of Additional Customer Charges for CIS-1. (Exhibit R-6 for identification) The staff is concerned that the significant up-front customer charges will dissuade customers from participating in the program and that they are not necessary for acceptance of the program by NEPOOL. Granite State explained that no potential customer has indicated that these charges were the reason it did not wish to participate in the CIS program. In addition, Granite State believes that the metering arrangements for the program, the cost of which is borne by the customer, work efficiently on a system-wide basis and are beneficial for both the customer and the Company.

C. *Standby Generation*

At the request of staff, Granite State included in its filing, for informational purposes, a copy

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of New England Electric System's Standby Generation program. Granite State did not include this program for filing purposes because it does not believe that it is subject to the Commission's jurisdiction. Granite State contends that payments for standby generation are not sales of electricity, and further, if they are deemed sales of electricity they would constitute sales for resale and, therefore, would be subject to federal regulation.

III. *Recommendations of the Parties*

A. *Credit Level*

Staff proposed a credit of $120 per KW based on the framework and methodology that it developed to provide for consistency between several other New Hampshire utilities' interruptible programs. Granite State countered with a proposal of $95 arguing that payments at the $120 level are not necessary in order to entice customers to participate in the program. Without accepting the logic or methodology of either party, staff and Granite State have agreed to a $100 per KW credit as a strictly negotiated level which establishes no principles or precedent with regard to the appropriate credit level or its calculation.

B. *Customer Charges*

The staff is willing to accept Granite State's contention regarding customer charges, provided that a market analysis which supports its contention is submitted by Granite State in its next CIS filing. Staff believes that such costs do hamper participation but is willing to allow Granite State an opportunity to substantiate next year that, for the potential customers in its service territory, these charges do not hamper participation.

C. *Standby Generation*

Staff does not agree at this time with Granite State on this jurisdictional matter but has agreed to defer litigation of the issue until a subsequent proceeding. Staff does not take issue with the pricing arrangements and technical aspects of Granite State's Standby Generation program. Staff expressly reserves the right to advocate a position different from Granite State in subsequent proceedings and shall not be prejudiced by its willingness to defer the issue in this docket.

Accordingly, the parties recommend that the commission defer ruling on this issue until a subsequent proceeding, if and when it is raised, and it has been fully aired and briefed for consideration.

D. *Effective Date and Filing of Revised Agreements*

The parties agree that the proposed changes should be allowed to become effective retroactive to November 1, 1989, as requested by Granite State. Currently, there is only one customer on the CIS program. Upon approval of this settlement, Granite State will file a revised contract for this customer consistent with Granite State's filing and the recommendations contained herein.

The Company agrees to file appropriate revisions or updates to its CIS program by August 1, 1990.

IV. *Commission Analysis*

[1-3] Pursuant to RSA 378:18, which controls this docket, the commission finds that the

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agreement among the parties embodied in the "Recommendation of the Parties for Resolution of this Proceeding" is well supported by the evidence, is just and reasonable and is in the public interest as required by RS 378:18. We therefore accept it for resolution of this case, subject to the following analysis and conditions.

With regard to the $100 per KW credit level agreed to by the parties in their recommendations, we find that at this time this credit level appears to be an appropriate balancing of the three competing criteria of setting the credit based on full avoided costs, setting the credit at a level reasonably sufficient to encourage customer participation, and setting the credit at a reasonably low enough level to create net

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savings for the non-participating ratepayers.

Nevertheless, we are concerned that Granite State has, at this time, enlisted only one customer to participate in its CIS interruptible program. Thus, based upon the evidence presented at the hearing regarding the CIS program for 1990-91 to be held in the fall of this year, we will consider increasing the Granite State's credit level and reducing its customer charges in order to improve the attractiveness and, hopefully, participation in the program.

With regard to staff's contention that Granite State should not reduce its avoided cost based on probability of peak analysis in arriving at an appropriate credit level, we note that we understood Granite State Witness Pastuszek at the hearing in Docket No. DR 89-154 on January 8, 1990 to testify that a similar reduction to avoided cost is not made by Granite State in calculating the benefit attributable to Credited Interrupted Load under the CIS program as part of its C&LM cost/benefit analysis. This apparently explains why Granite State's reported benefits are over twice its costs. Accordingly, we will require Granite State to provide further information in writing to the commission in order to enable us to understand fully the consistency of Granite State's position with respect to probability of peak reduction for CIS purposes.

Finally, with regard to the jurisdictional issue, we will require Granite State to submit to us within 45 days a legal memorandum pertaining to its belief that its Standby Generation program is not subject to the jurisdiction of the commission. After consideration and review of the memorandum, we will determine what further action by the commission may be appropriate.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the "Recommendations of the Parties for Resolution of this Proceeding" be, and hereby is, approved retroactively effective as of November 1, 1989; and it is

FURTHER ORDERED, that the company will file a revised contract with its one customer consistent with the "Recommendations of the Parties for Resolution of this Proceeding"; and it is

FURTHER ORDERED, that the company will file a legal memorandum stating and supporting its position on standby generation no later than 45 days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of

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January, 1990,

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NH.PUC*01/23/90*[50868]*75 NH PUC 45*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50868]

75 NH PUC 45

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,677

New Hampshire Public Utilities Commission

January 23, 1990

ORDER waiving administrative rules requiring transmittal of proposed rate schedules to customers within 30 days after the filing of an application for a general rate increase.

RATES, § 649 — Hearing and notice — Transmittal of proposed schedules — Administrative rules — Waiver.

[N.H.] In a proceeding to investigate a rate agreement and plan for resolving the Chapter 11 bankruptcy of Public Service Company of New Hampshire, the commission granted a petition for waiver of administrative rules requiring transmittal of proposed rate schedules to customers within 30 days after the filing of an application for a general rate increase; good cause was found to exist for waiver of the 30 days transmittal requirement, including the fact that a bill insert concerning a temporary surcharge was then currently being sent to customers with their January bills; the rate applicant was directed to prepare a bill insert describing the rate agreement and plan for reorganization for inclusion in March electric bills.

By the COMMISSION:

ORDER

Northeast Utilities Service Company ("NUSCO") having filed on January 15, 1990 a motion, under the authority of N.H. Admin. Rule Puc 301.01(b), a petition for a waiver of N.H. Admin. Rule Puc 303.03(d) relating to transmitting to each customer a statement of proposed rate schedules within 30 days after application for a general rate increase; and

WHEREAS, under Rule Puc 303.01(b) the commission, upon its own motion, or upon application, and for good cause shown, may modify, suspend or repeal the provisions of any rule under Chapter Puc 300; and

WHEREAS, in accordance with report and order no. 19,658 (74 NH PUC 554) in Docket No. DR 89-219, a bill insert describing the temporary 5.5 percent surcharge is currently being

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sent to all customers during the January billing cycle which was contemplated by the commission to fulfill at least partially the requirement of Puc 303.03(d); and

WHEREAS, said bill insert only covers the temporary 5.5 percent surcharge and does not address the application in Docket No. DR 89-244 by NUSCO for approval and implementation of the Rate Agreement between the State of New Hampshire and NUSCO and NUSCO's Plan for Reorganization for PSNH hearings which are scheduled to begin in late March 1990; and

WHEREAS, the commission finds that good cause exists to grant the requested relief at this time; it is

ORDERED, that NUSCO's petition for waiver of Rule Puc 303.03(d) is hereby granted; and it is

FURTHER ORDERED, that NUSCO consult with the parties to this proceeding and submit to the commission for approval no later than February 15, 1990 a bill insert describing and explaining to customers in readily comprehensible terms the above mentioned Rate Agreement and Plan for Reorganization of PSNH; said bill insert intended by the commission for inclusion in bills during the March billing cycle.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of January, 1990.

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NH.PUC*01/25/90*[50871]*75 NH PUC 47*Pennichuck Water Works, Inc.

[Go to End of 50871]

75 NH PUC 47

Re Pennichuck Water Works, Inc.

DR 89-120
Order No. 19,681

New Hampshire Public Utilities Commission

January 25, 1990

ORDER granting a request by a water utility for the continuation of interim rates.

RATES, § 640 — Procedure — Consolidated rate filing — Economic efficiency — Extension of interim rates — Water systems.

Page 47

[N.H.] A water utility was authorized to continue interim rates for certain of its franchised community water systems until June 1, 1990, at which time it would commence a rate case for permanent consolidated rates for all its systems; it was found that the continuation of interim

rates would be economically efficient in that it would allow all of the utility's water systems to be addressed in one rate proceeding.

By the COMMISSION:

ORDER

On December 7, 1989, Pennichuck Water Works, Inc. (Pennichuck) requested an extension of existing interim rates for all franchised East Derry community water systems and for permission to file for consolidated rates for these systems on or before June 1, 1990; and

WHEREAS, on July 19, 1989, Pennichuck was granted interim rates for several community water systems located in East Derry, in Order No. 19,474 (74 NH PUC 246); and

WHEREAS, Pennichuck was ordered to file permanent rates fifteen (15) months after the date operations began for these systems; and

WHEREAS, Pennichuck is requesting an extension of all interim rates until June 1, 1990, at which time it is its intention to file for consolidated permanent rates for all franchise systems in East Derry; and

WHEREAS, it would be economically efficient for all these systems in East Derry with interim rates to be addressed in one proceeding; it is hereby

ORDERED, that the request of Pennichuck Water Works, Inc. to continue interim rates for all systems until June 1, 1990, at which time it will commence a rate case for permanent rates on all systems in East Derry currently under interim rates, is granted; and it is

FURTHER ORDERED, that this order shall not be construed in any way as granting consolidated rates for non-interconnected systems in East Derry as that issue will be addressed in the filing to be made on or before June 1, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 1990.

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NH.PUC*01/25/90*[50872]*75 NH PUC 48*Integretel, Inc.

[Go to End of 50872]

75 NH PUC 48

Re Integretel, Inc.

DE 89-158
Order No. 19,682

New Hampshire Public Utilities Commission

January 25, 1990

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ORDER adopting a stipulation resolving a complaint against a company that had provided billing services to companies engaged in the unauthorized provision of intrastate, intraLATA telecommunications services.

SERVICE, § 433 — Telecommunications — Intrastate, IntraLATA service — Unauthorized provision.

[N.H.] The commission adopted a stipulation resolving a complaint against a company that had provided billing services to companies engaged in the unauthorized provision of intrastate, interLATA service; the billing company agreed to block all billing for all intrastate, intraLATA service and to supply the commission with information that would lead it to the unauthorized providers; in return, the commission agreed to seek no fine or penalty from the billing company.

APPEARANCES: D. James Hudson, Vice President, Regulatory Affairs for Integretel, Inc.; Eugene F. Sullivan, III for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

Page 48

I. *Procedural History*

On August 4, I989, the Consumer Assistance Office of the Public Utilities Commission (commission) was contacted by Richard Morgan of Pike Industries with a complaint concerning a bill for certain intrastate, intra-LATA telephone calls billed to Pike Industries by Integretel, Inc. (Integretel). On September 20, 1989, the commission issued an order of notice setting a hearing for the company to show cause why it should not be fined for operating as a public utility within the state of New Hampshire without submitting itself to the jurisdiction of the commission. On September 28, 1989 the commission received a letter and an affidavit from D. James Hudson, Vice President, Regulatory Affairs for Integretel stating that Integretel was not a "corporation or company owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telephone messages for the public . ...". RSA 362:2. Furthermore, Integretel indicated that it was not a reseller of intra-LATA telecommunication services but was instead a billing agency for certain companies providing such service. On October 17, 1989 the commission issued order no. 19,573 (74 NH PUC 409) rescinding its original order of notice in light of the fact that Integretel was not a public utility but was rather an agent of certain unknown, unnamed public utilities. Said order set a hearing for November 29, 1989, for the company to show cause why it should not be fined for facilitating the provision of intrastate, intra-LATA service within the State of New Hampshire. On November 29, 1989, staff and Integretel met and discussed the possible resolution of the case. The parties entered into a stipulation which they presented to the commission.

II. *Stipulation of the Parties*

Integretel agreed to provide the commission with a current list of companies it provides billing and collection for and the names of those companies within its possession who are providing or have provided intrastate, intra-LATA service within the State of New Hampshire during the course of the last eleven months from the date of the agreement (January 1, 1989 through the present). Specifically, Integretel will provide the company names, addresses, originating telephone numbers, minutes of intra-LATA use, the date the call was made and the contact name and telephone numbers of the companies which have provided such service. Integretel further agreed to provide any additional information it believes may facilitate the commission in bringing those companies that are providing or have provided intrastate, intra-LATA service within the State of New Hampshire before the commission. The company agreed to provide the complete report no later than February 15, 1990. Staff agreed to request no fine from the company in light of its agreement to work with staff in bringing those jurisdictional companies before the commission.

III. *Commission Analysis*

In light of the fact that Integretel is merely a billing company and has blocked all billing for all intrastate, intra-LATA service within the State of New Hampshire and due to the fact that Integretel will supply the commission with information which will lead to those public utilities which are providing intrastate, intra-LATA service in the State of New Hampshire, the commission will accept the stipulation of the parties.

The commission finds that eliminating billing and collection does not solve the problem of lost revenues to New England Telephone Company or other independent telephone companies within the State of New Hampshire. It is in their interest that the commission has adopted the stipulation. The information to be provided the commission should allow the commission to address the unauthorized provision of intrastate, intra-LATA service within the State of New Hampshire and the subsequent loss of revenues to those aforementioned companies which must be recovered from the State's ratepayers.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report

which is made a part hereof; it is hereby

ORDERED, that the stipulation of the parties as set forth in the foregoing report is adopted; and it is

FURTHER ORDERED, that Integretel, Inc. shall provide the commission with the stipulated information within six weeks of the date of this order, or the commission will reopen this case in order to assess what further actions it should take against Integretel, Inc.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of January, 1990.

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NH.PUC*01/29/90*[50873]*75 NH PUC 50*Public Service Company of New Hampshire

[Go to End of 50873]

75 NH PUC 50

Re Public Service Company of New Hampshire

Additional applicant: Appalachian Mountain Club

DR 90-001
Order No. 19,683

New Hampshire Public Utilities Commission

January 29, 1990

ORDER approving a special contract rate for electric service.

---

1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 50.

2. RATES, § 321 — Electric — Special contract rate.

[N.H.] The commission approved a special contract rate for electric service where special circumstances existed that rendered departure from the general schedules of the utility just and consistent with the public interest. p. 50.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued report and order no. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service Company of New Hampshire (PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1, 2] WHEREAS, the commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent

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with the public interest; and

WHEREAS, the proposed Contract with Appalachian Mountain Club (AMC) which was filed with the commission on January 2, 1990, waives the requirement under the DEFINITIONS section which provides, in part, that service under Rate WI is permitted only to customers able to designate a minimum of 100 KW as interruptible load; and

WHEREAS, the proposed Contract provides for PSNH to install the necessary metering required for service under Rate WI, and for AMC to pay for such metering since PSNH would not have otherwise incurred this cost in absence of this Contract; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and AMC are reasonably consistent with the terms

Page 50

of Rate WI, and PSNH has demonstrated that AMC has evidenced special circumstances which render departure from the terms of WI to be just and consistent with the public interest; it is hereby

ORDERED *NISI*, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the commission hereby waives that portion of Puc 1601.02(c), in that the Special Contract will be retroactively effective as of December 15, 1989 unless otherwise provided by commission order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this order; and it is

FURTHER ORDERED, that this Order *NISI* will become effective 20 days after the date of publication of this order unless the commission provides otherwise in a supplemental order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this Twenty-ninth day of January, 1990.

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NH.PUC*01/29/90*[50874]*75 NH PUC 51*Public Service Company of New Hampshire

[Go to End of 50874]

75 NH PUC 51

Re Public Service Company of New Hampshire

Additional applicant: Shaw's Supermarket, Inc.

DR 90-003

Order No. 19,684

New Hampshire Public Utilities Commission

January 29, 1990

ORDER approving a special contract rate for electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 51.

2. RATES, § 321 — Electric — Special contract rate.

[N.H.] The commission approved a special contract rate for electric service where special circumstances existed that rendered departure from the general schedules of the utility just and consistent with the public interest. p. 51.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued report and order no. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service Company of New Hampshire (PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1, 2] WHEREAS, the commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed Contract with Shaw's Supermarket, Inc. (Shaw's) which was

filed with the commission on January 9, 1990, waives the requirement under the DEFINITIONS section which provides, in part, that service under Rate WI is permitted only to customers able to designate a minimum of 100 KW as interruptible load; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and Shaw's are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that

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Shaw's has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED *NISI*, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the commission hereby waives that portion of Puc 1601.02(c), in that the Special Contract will be retroactively effective as of December 14, 1989 unless otherwise provided by commission order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this order; and it is

FURTHER ORDERED, that this Order *NISI* will become effective 20 days after the date of publication of this order unless the commission provides otherwise in a supplemental order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1990.

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NH.PUC*01/29/90*[50875]*75 NH PUC 52*Continental Telephone Company of New Hampshire

[Go to End of 50875]

75 NH PUC 52

Re Continental Telephone Company of New Hampshire

DR 89-150
Order No. 19,685

New Hampshire Public Utilities Commission

January 29, 1990

ORDER authorizing a telephone local exchange carrier to increase rates on a temporary basis and establishing a procedural schedule for its request for a permanent rate increase.

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1. RATES, § 630 — Temporary rates — Telephone LEC — Rate design — Recoupment — Refunds.

[N.H.] A telephone local exchange carrier was authorized to increase its rates by 2.9% on a temporary basis, with the increase applied equally to all classes and types of service, except pay phones, touch-tone service, and directory assistance; collections under temporary rates are subject to refund or recoupment if they differ from the level of rates ultimately established in a permanent rate proceeding. p. 53.

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2. RATES, § 532 — Telecommunications rate design — Temporary rate — Local exchange carrier.

[N.H.] A telephone local exchange carrier was authorized to implement a refundable, temporary 2.9% increase its rates, with the increase applied equally to all classes and types of service, except pay phones, touch-tone service, and directory assistance, which would remain at current levels until the permanent rate case. p. 53.

APPEARANCES: For Continental Telephone Company of New Hampshire, Thomas C. Platt III, Esquire; Wynn Arnold, Esquire;

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Kenneth Traum,Consumer Advocate; Eugene F. Sullivan, Finance Director; Leszek Stachow, Economist ChristiAne Mason, Examiner; Kate Bailey, Engineer for Commission Staff.

By the COMMISSION:

REPORT

[1, 2] On September 28, 1989 Continental Telephone Company of New Hampshire ("Continental"), a public utility engaged in the business of supplying telephone service in the State of New Hampshire, filed revised tariff pages providing for an increase in rates of $344,467 effective October 30, 1989.

Continental further filed on September 28, 1989 a petition for temporary intrastate rates pursuant to RSA 378:27 to be effective on October 30, 1989. The temporary rate filing was designed to be applied to basic rates to produce additional gross intrastate revenue of $344,467 annually.

Order No. 19,581 dated October 24, 1989, suspended the proposed rates and established a hearing on January 10, 1990, on the merits of the temporary rate petition and on procedural matters regarding the proposed permanent rate increase. The parties met on January 10, 1990 to narrow issues, negotiate a settlement and to discuss a procedural schedule. As a result of the meeting the parties were able to reach agreement on the level of temporary rates, the rate structure and a procedural schedule relative to permanent rates.

On January 10, 1990 the duly noticed public hearing was held by the Commission to consider the proposed temporary rates and establish a procedural schedule. Wynn Arnold, Esquire summarized the agreement reached by the parties. The parties agreed to the temporary rate level of $108,827 as recommended by staff in prefiled testimony.

The parties agreed that this rate increase would be applied equally to all classes and types of service, except for the following three items. Pay phone rates would not be raised from 10 cents to 25 cents; the rates for touch tone telephones would remain under the current rates and directory assistance rates would not be addressed until the permanent rate case.

The parties also agreed that the effective date would be the date of the order issued, for service rendered prospectively from the date of the order.

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As a result of discussion, the parties proposed the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Data requests of petitioner	Feb. 09, 1990
Data responses of petitioner	Mar. 02, 1990
Follow up requests of petitioner	Mar. 23, 1990
Follow up responses of petitioner	Apr. 13, 1990
Intervenor testimony due	Apr. 27, 1990
Staff testimony due	May 04, 1990
Data requests of intervenors	May 18, 1990
Data requests of staff	May 25, 1990
Data responses of intervenors	June 01, 1990
Data responses of staff	June 08, 1990
Rebuttal testimony by all parties	July 13, 1990
Prehearing conference	Aug. 01-03, 1990
Hearings	Aug. 15-17, 1990
Submission of briefs	Aug. 31, 1990

This schedule will give the commission adequate time to investigate the petition. It is, therefore, in the public interest and approved.

David W. Tuthill presented testimony in support of the Company's requested increase in rates of $344,467 which included known and measurable changes. ChristiAne Mason testified to the staff's recommended increase in rates of $108,827, excluding all proforma adjustments and utilizing a 13 month average rate base, based on the actual company results for the period ending June 30, 1989.

The commission has reviewed the analysis filed by the staff which is based upon information on file at the Commission. Based on the analysis, we find it just and reasonable to set temporary rates as stipulated by the parties. Setting rates at the level recommended by the parties will afford the Company the opportunity to earn a fair and equitable return. By allowing the temporary rates to become effective the Company will be allowed to either recoup or refund the final rate level from the effective date of the temporary rates. The commission finds that the

proposed level of temporary rates meets the statutory requirements of R.S.A. 378:27 and 29.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the company be and hereby is authorized to increase its existing rates on a temporary basis, at an annual level of $108,827, for service rendered on or after the date of this order, pursuant to the provisions of RSA 378:27 and 29; and it is

FURTHER ORDERED, that a bill insert describing the temporary 2.9 percent temporary rate increase be sent to all customers during the next billing cycle which fulfills at least partially the requirement of Puc 403.03(c); and it is

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FURTHER ORDERED, that the proposed agreement between Staff and the Company on rate design be and hereby is approved; and it is

FURTHER ORDERED, that the proposed procedural schedule be and hereby is adopted for the balance of this proceeding.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1990.

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NH.PUC*01/29/90*[50876]*75 NH PUC 54*Hampton Water Works Company

[Go to End of 50876]

75 NH PUC 54

Re Hampton Water Works Company

DR 87-255
Order No. 19,686

New Hampshire Public Utilities Commission

January 29, 1990

ORDER authorizing a step increase in rates for water utility service.

RATES, § 595 — Water — Step increase — Addition to plant in service.

[N.H.] A water utility was authorized to implement a step increase to rates to reflect the inclusion in rate base of a newly-completed and operational well.

By the COMMISSION:

ORDER

On October 3, 1989 Hampton Water Works submitted revisions to its tariff which would implement a second step increase provided for in commission report and supplemental Order No. 19,201 (73 NH PUC 418); and

WHEREAS, certified proof of the completion and operation of Water Works Company Well #14, pursuant to Order No. 19,588 (74 NH PUC 424), has been received per letter dated December 21, 1989; and

WHEREAS, Staff has audited the filing and found the annual increase in revenues of $205,361 to be justified; it is hereby

ORDERED, that Hampton Water Works Company tariff pages suspended on Order No.

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19,588 are hereby rejected; and it is

FURTHER ORDERED, that Hampton Water Works Company file revised tariff pages bearing this order number and reflecting the above annual increase in revenues for service rendered on or after January 1, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1990.

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NH.PUC*01/29/90*[50879]*75 NH PUC 63*Southern New Hampshire Water Company, Inc.

[Go to End of 50879]

75 NH PUC 63

Re Southern New Hampshire Water Company, Inc.

DF 89-216
Order No. 19,692

New Hampshire Public Utilities Commission

January 29, 1990

ORDER authorizing a water utility to increase its short-term debt limit.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Plans and purpose — Public good.

[N.H.] A water utility was authorized to increase its short-term debt limit, with the additional debt to be used to complete its 1989 construction and expansion program, to provide service to customers, and to provide general working capital; the commission found that the increased debt limit was consistent with the public good.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. is authorized to operate as a public utility with a principal place of business in Londonderry, Rockingham County, New Hampshire; and

WHEREAS, Southern New Hampshire Water Company, Inc. pursuant to RSA 369:7 filed with this Commission on November 27, 1989 a Petition for Authority to Increase Short-Term Debt Limit; and

WHEREAS, Southern New Hampshire Water Company, Inc. states that the additional short term debt will be used, *inter alia*, to complete its 1989 construction and expansion program; to

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provide service to customers as required; and to provide general working capital; and

WHEREAS, Southern New Hampshire Water Company, Inc.'s currently authorized short-term debt limit is $4,900,000 authorized by Commission Order No. 19,565 (74 NH PUC 402) in Docket DF 89-180; and

WHEREAS, Southern New Hampshire Water Company, Inc. requests that this short-term debt limit be increased to $5,500,000 until June 30, 1990 in order for it to have sufficient time to pursue additional long-term debt financing; it is hereby

ORDERED, that the New Hampshire Public Utilities Commission, pursuant to RSA 369:7, finds that the increase in short-term debt limit as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that the petition of Southern New Hampshire Water Company for authority to increase its short term debt limit be, and hereby is, approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall, on January first and July first of each year, file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of such notes; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1990.

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NH.PUC*01/29/90*[50882]*75 NH PUC 65*Plymouth State College

[Go to End of 50882]

75 NH PUC 65

Re Plymouth State College

DE 89-206
Order No. 19,695

New Hampshire Public Utilities Commission

January 29, 1990

ORDER determining that the practice by a state college of charging students a fee for access through its private branch exchange to long distance telephone service did not constitute unauthorized operation of a public utility.

PUBLIC UTILITIES, § 117 — Telephone — Regulatory status — Private branch exchange — Access fee.

[N.H.] The practice by a state college of charging a fee for access through its private branch exchange to long distance telephone

service did not constitute unauthorized operation of a public utility.

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i. PUBLIC UTILITIES, § 14 — Tests of public utility character — Service to general public.

[N.H.] Statement, by the commission, that the continued vitality of cases standing for the proposition that a holding out of a utility service to the general public is a prerequisite to commission jurisdiction over the service provider is questionable, given the development of regulatory principles since the cases were decided. p. 67.

APPEARANCES: Frederick J. Coolbroth, Esquire on behalf of Plymouth State College; Eugene F. Sullivan, III on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On April 13, 1989, the Consumer Assistance Department of the New Hampshire Public Utilities Commission (commission) received a complaint from a student at Plymouth State College (College) regarding a $15 access fee for the use of toll free 800 numbers and intrastate New England Telephone long distance telephone service. Staff also became aware of the fact that the College was charging not only the $15 access fee for toll free 800 numbers and intrastate New England Telephone long distance service, but was also charging a certain adder to the long distance rate of New England Telephone for intrastate New England Telephone long distance telephone service. Thereafter, the staff of the commission contacted the College and advised it that it is a public utility pursuant to RSA 362:2.

The University system general counsel responded that "the college system in Plymouth is not a public utility as defined in RSA 362:2 and RSA 374:2 but rather is a private utility". In light of this response the commission issued order no. 19,607 scheduling a hearing for December 14, 1989 in order for the commission to determine whether the College is operating as a public utility and charging rates without authority.

On December 14, 1989, the commission issued order no. 19,638 in response to a motion from counsel for the College requesting a prehearing conference and continuance of the hearing on the merits. At said prehearing conference Staff and the College stipulated to a procedural schedule. No other parties intervened.

Upon further consideration and research the commission issues the following report and order which negates the need for the establishment of a procedural schedule. It should be noted that on December 12, 1989 Plymouth State College submitted testimony in accordance with the unadopted stipulated procedural schedule upon which the commission relies in this report and order.

II. *Findings of Fact*

The College is a constituent college within the university system of New Hampshire created pursuant to RSA 187-A. In order to serve the needs of students, faculty and administration of the College, the College has installed an advanced AT&T System 85 Private Branch Exchange Switch. (PSC-PBX) All on-campus housing units have been interconnected with the PSC-PBX. Access to the PSC-PBX is limited to students, faculty, administrators and employees of the College and is no available to the general public. Although students living off campus have requested service, said requests have been denied. All locations served by the PSC-PBX can send and receive calls with the PSC-PBX. They also have access to the local Plymouth exchange and can originate long distance calls with the purchase of an access code. Each student is charged $15 for the purchase of an access code. The College further charges an adder to students for long distance calls to cover

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the college's administrative costs. Incoming calls from outside of the PBX are received by a switchboard operator who connects the incoming call to the desired extension. New England Telephone coin operated telephones are available throughout the campus. The College does not provide coin operated telephone service through the PSC-PBX. The various college departments are billed for their usage and the amounts billed are charged against the respective departmental budgets.

The PSC-PBX does not offer off-campus locations with the above referenced services; furthermore, the College makes no profit for the provision of the service. The College has indicated that any student requesting service from New England Telephone Company will be provided with such service outside of the PSC-PBX.

III. *Commission Analysis*

[i] In *Dover, Somersworth and Rochester Street Railway Co. vs. Wentworth et al*, 84 N.H. 258 (1930) the New Hampshire Supreme Court held that the Dover, Somersworth and Rochester Street Railway Company was not a public utility pursuant to the predecessor statute of RSA 362:2 as it only offered service to employees of its company and did not offer service to the general public. In 1943 in *Claremont Gas Light Company vs. Monadnock Mills, Inc.*, 92 N.H. 468 (1943) the New Hampshire Supreme Court held that service to the public without discrimination is one of the distinguishing characteristics of a public utility. *Claremont*, 92 N.H. at 469 (citing *Dover, Somersworth and Rochester Street Railway Company vs. Wentworth, et. al*). The court further held that, as modified by statute, it is a general rule that unless a person has publicly professed his readiness to perform a particular service he is under no duty to render that service to all who request it. *Id.* at 469-470. The court found in the *Claremont* case that the defendant had not dedicated its property to public use as the dedication of property to public service is "never presumed without evidence of unequivocal intentions." *Claremont*, 92 N.H. at 470 (citing 43 Am. Jur. 572) These findings were reiterated as the state of the law in 1965 in an opinion issued by the New Hampshire Attorney General's Office. *See Opinion of the Attorney General*, 1 N.H. AG 15 (1965).

The commission finds that the College's PBX system and its use are within the holdings of these cases excluding them from commission jurisdiction. The continued vitality of these cases

and the Attorney General's opinion is questionable given their age and the development of certain regulatory principles since they were decided. However, these particular cases have not been overturned to date. *But see Allied New Hampshire Gas Co. v. Tri-State Gas and Supply Co., et. al*, 107 N.H. 306 (1966) (wherein the Court addressing a similar issue did not cite the principles upon which the two former cases rely). In view of the facts of this case, indicating, *inter alia*, the availability of a competitive alternative to the students, we will not in this case undertake an analysis here of whether *Dover, Somersworth* and *Claremont* continue to be good law. That analysis will be deferred until we are presented with facts that frame a more appropriate presentation of the issue.

Therefore, the commission finds that the College is not a public utility pursuant to RSA 362:2.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Plymouth State College is not subject to this commission's jurisdiction pursuant to RSA 362:2, and it is

FURTHER ORDERED, that Docket DE 89-206 be and hereby is closed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1990.

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NH.PUC*01/31/90*[50877]*75 NH PUC 55*Granite State Electric Company

[Go to End of 50877]

75 NH PUC 55

Re Granite State Electric Company

DR 89-154
Order No. 19,689

New Hampshire Public Utilities Commission

January 31, 1990

ORDER approving a conservation and load management cost recovery mechanism filed by a retail electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 34 — C&LM adjustment factor — Retail electric utility.

[N.H.] A retail electric utility was authorized to implement a conservation and load

management (C&LM) cost recovery mechanism designed to reflect in rates the costs, as they are incurred, of C&LM activities undertaken by the utility; changes in the cents per kilowatt-hour adjustment factor would be triggered by variance of 10% or more between projected end-of-period conservation funds expended and projected end-of-period actual revenues. p. 58.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 34 — C&LM adjustment factor — Retail electric utility.

[N.H.] The conservation and load management (C&LM) cost recovery mechanism proposed by a retail electric utility, which would permit recovery of costs as they are incurred through a rate adjustment clause, was accepted as an appropriate mechanism for the recovery of C&LM costs in the early stages of C&LM program implementation; however, the commission said it would revisit the method of cost recovery in the future as full scale programs are implemented. p. 59.

3. RATES, § 262 — Cost elements — C&LM adjustment factor — Retail electric utility.

[N.H.] In approving a conservation and load management (C&LM) cost recovery mechanism proposed by a retail electric utility, the commission found that cost recovery on a cents per kilowatt-hour basis would not unreasonably allocate capacity costs to energy charges. p. 59.

4. RATES, § 321 — Electric rate design — Cost allocation — C&LM program costs — Retail electric utility.

[N.H.] In approving a conservation and load management (C&LM) cost recovery mechanism proposed by a retail electric utility, the commission notified the utility that it would be expected to provide in its next rate design or C&LM cost recovery filing testimony on whether the cents per kilowatt-hour charge properly allocates C&LM program costs among customer classes. p. 59.

5. EXPENSES, § 19 — Conservation and load management — Adjustment factor — Prudence — Retail electric utility.

[N.H.] A retail electric utility was authorized to recover through a conservation and load management (C&LM) adjustment factor the costs of planned 1990 C&LM activities; however, the commission made no finding as to the prudence of the planned expenditures and reserved the right to investigate, at any time, the prudence of expenditures actually made. p. 59.

6. MONOPOLY AND COMPETITION, § 50.1 — Interutility competition — C&LM programs — Promotion of electricity over other fuels — Retail electric utility.

[N.H.] In reviewing the 1990 conservation and load management (C&LM) programs of a retail electric utility, the commission accepted the utility's argument that its water heating programs do not promote the use of electricity over other fuels; however, the commission notified the utility that it would be expected to address the issue of the promotion of electricity use through C&LM programs in future cost recovery proceedings and in least cost integrated planning filings. p. 60.

7. EXPENSES, § 19 — C&LM programs — Timing of recovery — Retail electric utility.

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[N.H.] The commission accepted the proposed recovery by a retail electric utility of projected 1990 conservation and load management (C&LM) expenditures as they are incurred through a C&LM adjustment factor notwithstanding the argument that the adjustment factor was heavily front-end loaded vis-a-vis the future stream of avoided costs used to assign value to the C&LM programs; nevertheless, the commission said that its acceptance should not be considered precedent and noted that as annual C&LM expenditures increase some amortizing of costs may become appropriate. p. 60.

8. AUTOMATIC ADJUSTMENT CLAUSES, § 49 — Billing — C&LM adjustment factor charges — Retail electric utility.

[N.H.] A retail electric utility was not required to state conservation and load management (C&LM) adjustment factor charges as a separate surcharge on customer bills; it was found that stating the charges separately would give customers an incorrect perception that rates were increasing as a result of C&LM programs; nevertheless, the utility was required to indicate on the bill itself, or a bill stuffer, that rates now include a component to recover C&LM program costs. p. 60.

9. CONSERVATION, § 1 — Cost recovery — Adjustment clause mechanism — Retail electric utility.

[N.H.] The use of a conservation and load management adjustment provision was found to be an appropriate mechanism for recovery by a retail electric utility of C&LM expenditures. p. 61.

APPEARANCES: Cynthia A. Arcate, Esquire for Granite State Electric Company; Joseph W. Rogers, Esquire for the Consumer Advocate; Eugene F. Sullivan III, Esquire for the Commission Staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On September 1, 1989 Granite State Electric Company (Granite State or company) filed with this commission a conservation and load management (C&LM) adjustment provision. The provision is designed to reflect in rates the costs, as they are incurred, of C&LM activities to be undertaken by Granite State. Granite State thus would begin recovery of its 1990 C&LM program costs through the provision beginning January 1, 1990. Granite State's C&LM cost recovery mechanism proposal also included an incentive component for payments to the company over and above the cost of the program.

On September 29, 1989 the commission issued an order of notice setting October 13, 1989 for a prehearing conference on procedural matters and other issues regarding Granite State's proposed C&LM adjustment provision, and waiving 8 days of the notice requirement of N.H. Admin. Code Puc §203.01(a).

On October 13, 1989 a prehearing conference was held attended by staff, the Consumer

Advocate and the company. No other parties attended or intervened. At the prehearing conference, staff moved without objection to bifurcate Granite State's C&LM cost recovery and incentive proposals and to initiate a separate proceeding for a generic investigation of incentives for conservation and load management. The parties proposed a procedural schedule setting a hearing for December 15, 1989. On October 18, 1989 the commission issued Order No. 19,576 (74 NH PUC 411), which approved the bifurcation of the proceeding, established docket no. DE 89-187 for a generic investigation of incentives, and approved the proposed procedural schedule.

Staff, the Consumer Advocate and the company met in technical sessions on October 17, November 1 and November 11, 1989 and the company provided additional information on November 3, 1989. The hearing on the merits was continued to January 8, 1990 because of scheduling conflicts.

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II. POSITIONS OF THE PARTIES

A. *Granite State*

Granite State is proposing to recover the costs of the seven C&LM programs it plans to implement in 1990. For the commercial & industrial sectors these programs include:

1) Energy Initiative (technical assistance and incentives to commercial and industrial customers to make their existing facilities more energy efficient);

2) Design 2000 (technical & design assistance and incentives to commercial & industrial customers to encourage them to build more energy efficient new facilities); and

3) the Small Commercial & Industrial program (no-cost lighting analysis and installation of specific efficient lighting systems to encourage energy efficient lighting for small commercial & industrial customers).

In the residential sector, Granite State plans to offer four programs:

1) Residential Water Heater Programs (rebates for installation of efficient electric water heaters; provision of only high efficiency water heaters for water heater rental customers; and continuation on an as requested basis of lowflow showerheads, faucet aerators and pipe insulation);

2) Blue Ribbon Appliance Program (labeling and information at point of sale on the most energy efficient electric appliances to promote their purchase);

3) Dispatchable Load Control (DLC) (installation of switches to enable the utility to turn off customer water heaters and other end-uses, such as central air conditioning and pool pumps at peak times, with credits on customer bills); and

4) Residential Space Heat (comprehensive audit and payment of a portion of weatherization and other efficiency measure costs).

In its C&LM adjustment provision, Granite State proposes to collect its 1990 C&LM costs through a separate cents per kilowatthour (kWh) charge levied on all kilowatthours sold. This adjustment will provide an opportunity for annual review by the commission independent of

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general rate case activity, give Granite State the flexibility to adjust rates to program activity and to accelerate or slow programs as warranted, and allow recovery of C&LM costs not currently reflected in Granite State's base rates.

The company indicated that while a cents per kWh charge may not allocate energy and capacity costs perfectly, it was not far off and was a simple and the most administratively feasible mechanism for recovering them. Granite State has estimated its 1990 C&LM costs to be $1.4 million. Dividing this figure by Granite State's projected kWh sales of 577,207,000 results in a charge of $.00243 per kWh. Exhibit 9.

Revenues received from this charge will be listed in Account 451, Miscellaneous Service Revenues. In its original submission Granite State had applied the New Hampshire franchise tax to the factor. Exhibit 8, S-8.

Granite State also proposed that the revenues received through the C&LM adjustment provision be reconciled on an annual basis to actual C&LM expenditures made. The calculation will compare monthly revenues and monthly expenditures.

B. *Staff*

Staff generally supported the company's filing for a C&LM adjustment provision to collect 1990 program costs but raised several points and issues for the commission's consideration.

First, while staff believes that the mechanism proposed by Granite State is appropriate for recovery of its C&LM costs at the current time, it should not necessarily remain in effect for the long term. Staff also raised the issue of whether recovery of C&LM costs through a separate provision is necessary, particularly over the long term, when C&LM programs are generally thought to be more cost-effective and environmentally benign, and less risky than traditional supply-side resource options. Staff foresees a time when C&LM expenditures could be treated in a manner similar to other utility expenditures for resources, whatever that may be.

Second, staff views commission approval of Granite State's C&LM adjustment factor and

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level of proposed C&LM activity as not precluding its later investigation of the prudence of expenditures actually made.

Third, staff expressed a concern over the scope of Granite State's C&LM program, arguing that all customers should have the opportunity to participate in C&LM programs and that the company should work to make its programs more accessible to the low-income. In addition, the process of program selection and evaluation at the New England Electric System level should recognize the diversity that Granite State provides to the system. Staff was also concerned that Granite State's water heating programs not promote electric water heating over other forms of water heating.

In the area of accounting, Staff testified that the New Hampshire franchise tax should not apply to revenues from the C&LM adjustment provision as the revenues are not due to sale of electricity. These revenues should be included in Account 451, Miscellaneous Service Revenues and the interest rate to be applied to over or under collections of C&LM expenditures should be

based upon the average prime rate for each month, as in N.H. Code Admin. Rules Puc 303.04 (b) (2).

Staff clarified that Granite State's proposed trigger mechanism for considering an interim decrease or increase in the C&LM adjustment factor is the variance between projected end-of-period conservation funds expended and projected end-of-period actual revenues. It agreed that the trigger was appropriately set at ten percent.

Staff also testified that Granite State should bill its C&LM costs as a separate surcharge on customer bills. The separate surcharge would allow revenues to be segregated for accounting purposes and would make customers aware of what was being billed to them.

Lastly, staff raised two issues which were largely issues for future consideration and need not be resolved in the present proceeding. Staff's concerns on the first issue, the appropriateness of recovering C&LM costs on a cents per kWh basis, were 1) whether it was appropriate to recover costs on kilowatthours when C&LM benefits were stylized as being related to kilowatt demand; and 2) whether it was appropriate to assess a uniform cents per kWh charge for all customer classes when program expenditures were projected to differ by class. As a result of recovery based on a uniform cents per kWh charge, the residential class, for example, pays about 37 percent of the C&LM costs even though only about 25 percent of the funds proposed to be expended in 1990 are for residential programs.

Second, Staff observed that there is a potential mismatch in time between the burden of cost recovery and the benefit of future value or avoided cost. Cost recovery as proposed for Granite State's C&LM programs is heavily front-end loaded vis-a-vis the future stream of avoided costs. In future proceedings the commission may wish to consider deferring some portion of cost recovery to reduce this effect.

C. *Consumer Advocate*

The Consumer Advocate filed no direct testimony, but through cross-examination shared staff's concerns about the use of the adjustment mechanism in the long term and proposed that the issue be revisited in Granite State's next rate case. The Consumer Advocate also touched on the proportion of proposed C&LM expenditures for residential programs versus commercial and industrial programs and argued that the C&LM adjustment should be shown separately on customers' bills.

III. STIPULATION OF THE PARTIES

[1] At the hearing on January 8, 1990 the parties filed a stipulation (Exhibit 1) on four issues to which they had agreed. The parties adopted staff's position on the applicability of the franchise tax and the interest rate to be applied to the differential between actual funds expended and revenues collected.

They also agreed that staff's clarification of the trigger mechanism was correct and stipulated to language in the tariff pages to reflect that the trigger mechanism variance was between the projected end-of-period funds expended and projected end-of-period actual revenues.

The stipulation also modified the tariff

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pages to reflect removal of the incentive component from Granite State's original September 1, 1989 filing and the change in the company's PPCA from W-10 to W-10M(S)(2) which was approved by the commission subsequent to the filing in this docket.

IV. COMMISSION ANALYSIS

The commission has reviewed and analyzed the testimony on Granite State's proposed C&LM adjustment provision and the stipulation of the parties filed on January 8, 1990.

A. *Nature of The Mechanism*

[2-4] Granite State has proposed to recover its 1990 C&LM program costs through a provision which provides for a cents per kilowatthour charge on all kilowatthours sold. Through this provision Granite State will recover its C&LM program costs largely as it incurs these costs. While staff and the consumer advocate raised concerns about the proposed mechanism in the long term, no party objected to implementation of the adjustment provision as proposed for 1990.

The commission finds that Granite State's proposed C&LM adjustment provision for 1990 is an appropriate mechanism for the company to recover its C&LM costs. We recognize that utilities are just beginning to implement full scale C&LM programs, and that in the process of moving to full scale implementation, flexibility is desirable. The C&LM adjustment provision as proposed by Granite State offers this flexibility as well as the opportunity for at least annual commission review.

The commission notes, however, that the adjustment provision offers the company flexibility in part because it provides for recovery of costs as they are incurred, thereby avoiding delay in cost recovery and potentially reducing some risk to Granite State. While we find that this is appropriate as Granite State begins to implement a full scale C&LM program, we believe that the method of cost recovery should be revisited in the future. We will not accept at this time the Consumer Advocate's proposal that the method should be reviewed in the company's next rate case, but will entertain in that case arguments that the issue is ripe for review.

There are two issues that have been raised relating to cost recovery on a cents per kWh basis. The first issue is whether the company is recovering through energy charges costs that are primarily related to capacity. The company's testimony illustrating the projected impacts of Granite State's 1990 C&LM programs clearly indicates that the company analyzes and takes into account the energy as well as the capacity benefits of its C&LM programs. The company argues for a cents per kWh charge because of the simplicity of the charge (kWh are the one common factor in all customers' bills) and because the resulting allocation of costs is reasonably in line with the benefits. We accept the company's arguments on this point and find that C&LM cost recovery on a cents per kWh basis does not unreasonably allocate capacity costs to energy charges.

The second issue with respect to cost recovery on a cents per kWh basis relates to the share of the costs borne by each customer class. The commission believes that this issue deserves further study and directs that the company meet with the parties to discuss whether it can address this issue in the rate design case it will be filing by July 1, 1990. If this is not possible, we will

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expect the company to provide testimony on this issue in its next C&LM cost recovery filing scheduled for August 1, 1990.

B. *Level of C&LM Activity*

[5] Granite State has asked the commission to approve the factor for 1990 in its C&LM adjustment provision, and in so doing, approve the level of C&LM activity it plans to undertake in 1990. Granite State has requested approval of a C&LM adjustment factor of $.00243 cents per kWh which represents a level of C&LM activity of approximately $1.4 million dollars in 1990 This activity is projected to result in 1990 summer peak reductions of 1,737.5 kw; 1990/91 winter peak reductions of 1,542.3 kw; and lifetime energy savings of 99,970,452 kWh. Granite State acknowledges that it is not seeking a finding at this time that the expenditures to be

made are prudent, or what has been characterized as "pre-approval" in other jurisdictions.

The commission approves the proposed level of activity for 1990 subject to our investigation, at any time, of the prudence of expenditures actually made.

C. *Promotion of Electricity Use*

[6] The commission shares staff's concern that electricity use not be promoted through the offering of C&LM programs and in particular that Granite State's water heating programs not promote the use of electricity over other fuels. The company argues that its programs do not promote electric water heating for the following reasons:

1) the amount of the rebate in its water heater rebate program is insufficient to encourage fuel switching;

2) the company pays the rebate directly to wholesalers and plumbers and therefore the customer has no incentive to switch fuels;

3) the nature of water heater replacement is such that customers stay with their existing fuel source; and

4) Granite State has paid only twenty rebates under this program in 1989.

We accept the company's arguments as reasonable in relation to this year's water heating program. However, we expect the company to address the issue of the promotion of electricity use through C&LM programs in future C&LM cost recovery proceedings and least cost integrated planning filings.

D. *Timing of Cost Recovery and C&LM Value*

[7] The company has responded to staff's observation that cost recovery under Granite State's proposed C&LM adjustment provision is heavily front-end loaded vis-a-vis the future stream of avoided costs used to assign value to the C&LM programs by advancing the following arguments:

1) the expenses associated with C&LM programs are expected to be ongoing so that amortizing this year's expense would mean adding it to next year's expense;

2) the cost of financing and paying for C&LM programs over time adds to the total cost of

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the program to customers;

3) as a distribution company, Granite State would have to finance the programs with equity because it would not be able to bond the property and has no large rate base with which to leverage debt; and

4) Granite State's rate levels are low compared to other companies and the impact of increasing rates once to cover all program costs is small.

The commission accepts the company's arguments for the purposes of this proceeding given the level of projected 1990 expenditures and the no precedent, no prejudice basis for approval of the adjustment provision. However, as annual C&LM expenditures increase some amortizing of costs may become appropriate.

E. *Inclusion of the Charge as A Separate Item On Customer's Bills*

[8] The proposal that the C&LM charge should appear as a separate surcharge on customer's bills was made by staff to segregate the revenue for accounting purposes and to inform customers about the costs their rates include. The company responded that separately showing the factor would give customers an incorrect perception that their rates are increasing as a result of C&LM programs even though the company's long run analysis shows customer's costs will be lower. It strongly urged the commission to allow it to undertake market research before deciding whether to show this factor separately on bills.

The commission shares staff's view that customers should be informed about what costs are included in their rates and bills. However, we also have an interest in seeing that customers understand the information that they are given. In this case, separately showing this surcharge on each customer bill without providing an explanation of what the costs will be over the long run and how they relate to other costs included in the bill may be misleading to customers. While a detailed explanation of the charge could accompany the customers' first

bills as bill stuffers, it does not seem feasible or economic to include such an explanation with every bill. Therefore, customers would have some information but an insufficient understanding and this could serve to undermine the company's C&LM efforts.

The commission does, however, have an interest in informing customers that their utility is engaging in significant C&LM programs and that their bills now include a charge related to this. Therefore, we will require Granite State to indicate on the bill itself, or in a bill stuffer whichever is more feasible, that the rates now include a component to recover C&LM program costs, without showing exactly what this component is.

F. *Conclusion*

[9] The commission approves Granite State's proposed C&LM adjustment provision subject to the conditions discussed herein. We note that this is the first time that a New Hampshire electric utility has proposed a mechanism specifically for cost recovery of C&LM expenditures. The commission finds that such a mechanism is consistent with its policy on C&LM as expressed in the recent least cost planning orders. We welcome the opportunity to address both

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the issues that have been raised by the company and staff specifically, and concerns about possible disincentives to C&LM in the existing regulatory framework that have been expressed in the utility industry generally.

The commission further notes that due to a scheduling conflict, hearings in the docket were not concluded and an order was not issued prior to January 1, 1990. We recognize, however, that Granite State is entitled to recover its costs as of January 1, 1990. The company has provided two calculations of its C&LM adjustment factor: one based on a twelve month recovery period (Exhibit 1, Last Page) and one based on an eleven month recovery period. Exhibit 9. In order to allow the company to recover all of its 1990 C&LM costs the commission approves recovery over an eleven month period beginning February 1, 1990 and therefore approves as adjustment factor of $.00243 per kWh. Exhibit 9.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the conservation and load management adjustment provision proposed by Granite State Electric Company be, and hereby is, approved effective January 1, 1990; and it is

FURTHER ORDERED, that the conservation and load management adjustment factor of $.00243 per kWh be, and hereby is, approved for billing effective February 1, 1990; and it is

FURTHER ORDERED, that the following tariff pages filed be rejected:

Tenth Revised Page 32
Eighth Revised Page 34
Eighth Revised Page 38
Eighth Revised Page 39
Ninth Revised Page 41
Ninth Revised Page 45
Tenth Revised Page 47
Eighth Revised Page 52
Eighth Revised Page 54
First Revised Page 64
First Revised Page 64-A
First Revised Page 65;

and it is

FURTHER ORDERED, that Granite State file compliance tariff pages in accordance with the foregoing report in place of the above rejected tariff pages designated in accordance with N.H. Code Admin. Rules Puc 1601.05 (h) and annotated in accordance with N.H. Code Admin. Rules Puc 1601.04 (b).

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1990.

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[Go to End of 50878]

75 NH PUC 62

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,690

New Hampshire Public Utilities Commission

January 31, 1990

ORDER temporarily granting, pending further consideration, a motion for a protective order.

PROCEDURE, § 16 — Discovery and inspection — Confidential material — Protective order.

[N.H.] The commission granted, temporarily, a motion by a telephone local exchange carrier for a protective order notwithstanding the fact that the motion did not conform with the requirements for confidentiality set forth in a prior report and order; the commission said it would consider the matter further in a future hearing in which the LEC would be expected to substantiate the basis for confidentiality.

By the COMMISSION:

In this report and order we consider New England Telephone Company's (NET) January 15, 1990 motion for protective order. This order temporarily approves the motion with respect to all requests and applies the standards set forth in our report and order no. 19,536 (74 NH PUC 307) (Sept. 19, 1989).

I. *The Motion*

On January 15, 1990, NET filed, pursuant to NH Admin. Code PUC 203.04 and report and order No. 19,536, a motion for protective order.
This motion requests a protective order for the following items.

Data Responses

1. OCA Set 2, Item 5

II. *Commission Analysis*

The motion does not conform with the requirements for confidentiality set forth in our report and order no. 19,536. NET has not fully developed their case for confidentiality of this item. However, we will allow the data response to be temporarily protected under the procedures set forth in that order, in order that parties who have signed the confidentiality agreement may obtain this response expeditiously. We will consider this request further in the hearings to be held on February 5, 1990 and expect NET to provide further substantiation of the basis for

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confidentiality at that time. All other parties are placed on notice of this opportunity to provide information to the commission on the issue of whether the confidentiality request should be granted permanently.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's January 15, 1990 motion for protective order is granted temporarily, pending further consideration by the Commission following the February 5, 1990 hearing.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1990.

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NH.PUC*02/01/90*[50880]*75 NH PUC 64*Pennichuck Water Works, Inc.

[Go to End of 50880]

75 NH PUC 64

Re Pennichuck Water Works, Inc.

DE 89-137
Order No. 19,693

New Hampshire Public Utilities Commission

February 1, 1990

ORDER requiring defendants in a condemnation proceeding to submit to a water utility clarifying questions relevant to the issue of necessity, or foreclose any rights to further discovery.

PROCEDURE, § 16 — Discovery — Clarity — Relevance — Condemnation proceeding.

[N.H.] Where the data requests made to a water utility by defendants in a condemnation proceeding were unclear and appeared to be irrelevant, the defendants were directed to submit clarifying questions relevant to the issue of necessity, or foreclose any rights to further discovery.

By the COMMISSION:

ORDER

On October 30, 1989 the commission issued order no 19,589 setting a procedural schedule establishing the dates which parties should submit testimony and data requests; and

WHEREAS, on December 4, 1989 the commission received a motion from Walter Merrill, Peter Schuler and John Tedder, (three respondents) requesting an extension of the procedural schedule as they had alleged that Pennichuck had not answered, ignored or answered incompletely their data requests; and

WHEREAS, on December 11, 1989 the commission received a response to said motion from Pennichuck Water Works, Inc. in which it stated that it had responded to each of the data requests which was relevant to the issue of necessity and within the scope of condemnation proceeding, and, further, that it would have no objection to providing clarification of information contained in its responses if additional data requests seeking such clarification are presented by the respondents in a timely manner, i.e., within the procedural schedule; and

WHEREAS, the commission issued order no. 19,651 on December 22, 1989 denying the motion of the three respondents and permitting them the opportunity to supply clarifying data requests to Pennichuck; and

WHEREAS, on January 5, 1990 the three respondents re-submitted their data requests; and

WHEREAS, Pennichuck Water Works, Inc. by letter dated January 10, 1990 requested that the commission (1) reiterate its order that the defendants comply with the procedural schedule by supplying further data requests to Pennichuck which seek clarification of the information contained in Pennichuck responses and (2) clarify that such additional data requests must seek to obtain *specific* information which could clarify, amplify or supplement the information already presented by Pennichuck in its responses to the defendants original data requests; and

WHEREAS, the three respondents' data requests merely reiterate their original data requests and do not seek clarification in any way by further explaining their questions or indicating the areas which need clarification; and

WHEREAS, Pennichuck has alleged that Questions 4A, 4B, 7E, 7F, 13B, 14A through D are irrelevant; and

WHEREAS, the commission agrees with Pennichuck that these questions are irrelevant to the issue of necessity; it is hereby

ORDERED, that the three defendants submit clarifying questions to Pennichuck Water Works, Inc. relevant to the issue of necessity within one week of this order or foreclose any rights they may have under the procedural schedule to engage in further discovery; and it is

FURTHER ORDERED, that the three respondents must submit pre-filed written testimony within seven days after the receipt of said

clarifying answers to the extent that they intend to present technical evidence to the commission; and it is

By order of the Public Utilities Commission of New Hampshire this first day of February, 1990.

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NH.PUC*02/01/90*[50881]*75 NH PUC 65*Pennichuck Water Works, Inc.

[Go to End of 50881]

75 NH PUC 65

Re Pennichuck Water Works, Inc.

DE 89-137
Order No. 19,694

New Hampshire Public Utilities Commission

February 1, 1990

ORDER determining that certain defendants in a commission proceeding appeared solely on their own behalf and did not represent codefendants.

PARTIES, § 13 — Defendants — Representation of codefendants — Authorization.

[N.H.] Defendants in commission proceedings appear solely on their own behalf and do not represent codefendants, unless and until written authorization from the codefendants is filed with the commission.

By the COMMISSION:

ORDER

On January 16, 1990 the commission received a letter from Pennichuck Water Works, Inc. seeking a determination by the commission as to the accuracy of a certain statement contained in a letter of Messrs. Merrill, Schuler and Tedder to the commission dated January 5, 1990 with regard to the above captioned docket; and

WHEREAS, in the above referenced letter Messrs. Merrill, Schuler and Tedder purport to be filing data requests on behalf of the other codefendants; and

WHEREAS, Pennichuck has sought clarification of the status of Merrill, Schuler and Tedder; and

WHEREAS, N.H. Code Admin. Rules Puc 201.03 provides that "[a]ny person may appear before the commission in his own behalf ... or by agent thereunto authorized in writing ..."; and

WHEREAS, the record contains no writing authorizing Merrill, Schuler, or Tedder to represent other codefendants; it is hereby

ORDERED, that Messrs. Merrill, Schuler and Tedder do not represent the other codefendants in this case upon the filing of the appropriate written authorization; and it is

FURTHER ORDERED, that unless and until such time as the appropriate written

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authorization is filed, Messrs. Merrill, Schuler and Tedder are appearing solely on their behalf.

By order of the Public Utilities Commission of New Hampshire this first day of February, 1990.

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NH.PUC*02/01/90*[50883]*75 NH PUC 68*New England Telephone and Telegraph Company, Inc.

[Go to End of 50883]

75 NH PUC 68

Re New England Telephone and Telegraph Company, Inc.

DC 88-153
Order No. 19,696

Raymond Historical Society
v.
New England Telephone and
Telegraph Company, Inc.

DC 88-153
Order No. 19,696

New Hampshire Public Utilities Commission

February 1, 1990

ORDER authorizing a telephone local exchange carrier to implement tariff changes that clarify the definition of residence service and establish a cost based rate for alarm systems.

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1. RATES, § 544 — Telephone — Classes of users — Business versus residence.

[N.H.] In authorizing a telephone local exchange carrier to implement tariff changes that clarify the definition of residence service, the commission rejected as res judicata the claim that the tariff did not contain any cost based justification for treating a nonprofit organization as a business customer. p. 69.

2. SERVICE, § 433 — Telephone — Residence service — Definition — Local exchange carrier.

[N.H.] In authorizing a telephone local exchange carrier to implement tariff changes that clarify the definition of residence service, the commission rejected as res judicata a claim that the commission's classification of a nonprofit organization as a business customer was arbitrary. p. 69.

3. RATES, § 553 — Telephone rate design — Alarm service — Cost basis — Telephone LEC.

[N.H.] In authorizing a telephone local exchange carrier to implement tariff changes that establish a cost based rate for originating only service, the commission rejected the claim that the tariff did not comply with commission directives concerning the establishment of a cost based

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rate for alarm systems; the commission found that the cost basis for originating only service was applicable to alarm systems, however, it noted that the cost analysis provided in establishing the rate would be open to scrutiny in future proceedings. p. 69.

APPEARANCES: John Reilly, Esq. on behalf of New England Telephone & Telegraph Company; John Hoar, Jr. on behalf of the Raymond Historical Society; and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On October 10, 1988, the Raymond Historical Society filed a consumer complaint against New England Telephone & Telegraph Company (NET) concerning the rates it was being charged for its alarm system. On August 23, 1988, the Raymond Historical Society requested a hearing pursuant to RSA 365:1 *et seq* on the question of rates charged by NET for said alarm system. The complaint alleged that NET should charge the society a residential rate instead of a business rate. The commission opened the above captioned docket to investigate said complaint.

On October 11, 1988, the commission's Executive Director and Secretary notified the Society that a hearing would be held on November 3, 1988. The hearing was subsequently rescheduled for November 28, 1988. On February 7, 1989 the commission issued report and order no. 19,317 (74 NH PUC 63) dismissing the complaint of the Raymond Historical Society and ordering NET to file a

proposed tariff for a cost base rate for alarm systems. The commission based this order on fact that the NET tariff merely provided the distinction between residence service and business service where residence service was service to a resident and business service was service to any other type of entity. On February 27, 1989 NET filed a motion for rehearing of the commission's order no. 19,317. On March 9, 1989 the commission issued report and order no. 19,338 (74 NH PUC 85) denying NET's motion for rehearing. On June 1, 1989 the commission, through its Executive Director and Secretary, wrote the company directing them to make their filing in accordance with the original order and to make the filing by June 16, 1989. The company made said filing and on July 10, 1989, thereafter the commission issued order no. 19,464 (74 NH PUC 233) accepting the tariff changes *NISI* with an effective date of July 25, 1989. Said tariff established a rate for all originating only service to which an alarm system and or other device could be attached.

On July 21, 1989 the commission received a motion for rehearing from the Raymond Historical Society requesting a hearing on the order *NISI* (order no. 19,464).

II. *Position of the Parties*

The Historical Society raised three issues in its motion for hearing. The Historical Society first claimed that the June 16, 1986 NET tariff filing did not contain any cost base justification for treating a non-profit organization as a business customer as opposed to a residential

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customer. The Historical Society next stated that the commission classification of a non-profit association as a business was arbitrary, and finally, the Historical Society claimed that in its report and order 19,317 (74 NH PUC 63) the commission directed NET to "file a proposed tariff for a cost base rate for an alarm system". NET failed to comply with this directive when it instead filed the proposed tariff covering all kinds of originating calls. The company opposed the motion for hearing as it felt the Historical Society's first two allegations were meritless and had been decided in the commission's report and order 19,317. In response to the Historical Society's third point NET claimed that its tariff for originating only service line provides the cost base rate which may be used for an alarm system. Staff supported the contentions of NET.

III. *Commission Analysis*

[1-3] The commission finds that the first two issues raised by the Historical Society are *res judicata* in that the Historical Society raised these issues in its original hearing which position was not accepted by the commission. Thus the remaining issue for consideration is whether or not the tariff filed by NET on June 16, 1989 and accepted by the commission in order no. 19,464 (74 NH PUC 233) was cost based. Based on the record, the commission finds at present that the company has established the cost basis for its originating service rate applicable to alarm systems However, the commission notes that the costs analysis provided for establishing this rate is an issue for contention in Docket DR 89-010 and will be open to scrutiny, analysis and re-examination as part of that proceeding.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the tariff filing by New England Telephone & Telegraph Company for Originating Only Service, be and hereby, is accepted and shall become effective upon the date of this order.

By order of the Public Utilities Commission of New Hampshire this first day of February, 1990.

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NH.PUC*02/02/90*[50884]*75 NH PUC 70*Donway Enterprises, Inc.

[Go to End of 50884]

75 NH PUC 70

Re Donway Enterprises, Inc.

DE 89-237
Order No. 19,697

New Hampshire Public Utilities Commission

February 2, 1990

ORDER nisi granting a license to construct, use, maintain, repair, and reconstruct a sewer

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connector across state-owned railroad right of way.

CERTIFICATES, § 125 — Sewer construction — License to cross state-owned property.

[N.H.] The commission conditionally granted a license to construct, use, maintain, repair, and reconstruct a sewer connector across state-owned railroad right of way where it was found the construction would be in the public good and would not substantially affect public rights on the state-owned property; grant of the license was conditioned on the public being afforded an opportunity to respond in support of, or in opposition to, the license.

By the COMMISSION:

ORDER

WHEREAS, on November 20, 1989, Donway Enterprises, Inc., Belmont, New Hampshire filed with this commission a petition seeking license pursuant to RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer connector across State-owned railroad right-of-way in the Town of Belmont, New Hampshire; and

WHEREAS, the proposed facility, consisting of a 3 inch Schedule 40 polyvinyl chloride (PVC) sewer pipe in a 4 inch ductile iron sleeve, is required to connect to the existing 60 inch Winnisquam interceptor which lies on the opposite (south) side of the State-owned Concord to Lincoln Railroad right-of-way and located at approximate valuation station 1186 + 97, Map V21/58 as shown on drawings filed with the Commission; and

WHEREAS, the proposed sewer connector is necessary to serve the Winnisquam Beach Campground; and

WHEREAS, the petitioner avers that no abutting private property owners will be affected by the issuance of the license; and

WHEREAS, the only affected property will be that of the New Hampshire Department of Transportation's Concord to Lincoln Railroad right-of-way; and

WHEREAS, the petitioner avers that a discharge permit is not required as this proposed facility will ultimately connect to and add 2700 gallons per day to the Winnipesaukee River Sewage Treatment Plant; and

WHEREAS, the commission finds this construction across State land is in the public good without affecting substantially public rights on State-owned property of the Concord to Lincoln Railroad; and

WHEREAS, the commission finds such evidence justifies waiver of public hearing according to RSA 371:20; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the

commission no later than February 26, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Belmont region. Such publication to be no later than February 16, 1990 and documented by affidavit to be filed with this office on or before March 05, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is, granted, pursuant to RSA 371:17 *et seq* to Donway Enterprises, Inc., Union Road, Belmont, New Hampshire 03220 for the construction, use, maintenance, repair and reconstruction of sewer connector across public railroad right-of-way in Belmont, New Hampshire identified at approximate Valuation Station 1186 + 97, Map V21/58; and it is

FURTHER ORDERED, that the Licensee pay to the State an initial preparation fee, and then an annual administrative fee as stated in the License for Sewer Connection; and

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (NHDOT), and as mandated by the Town of Belmont; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this February 02, 1990.

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NH.PUC*02/02/90*[50885]*75 NH PUC 71*Long Distance North of New Hampshire, Inc.

[Go to End of 50885]

75 NH PUC 71

Re Long Distance North of New Hampshire, Inc.

DE 87-249
Order No. 19,698

New Hampshire Public Utilities Commission

February 2, 1990

ORDER directing an applicant for a franchise to resell intrastate long distance telecommunications services to respond to data requests.

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1. CERTIFICATES, § 123 — Telecommunications — Resale of service — Intrastate long distance — Public utility status.

[N.H.] The starting point for an analysis of an application for a franchise to resell intrastate

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long distance telecommunications services is to determine whether the applicant would fall within the statutory definition of public utility if it were permitted to conduct its proposed operations. p. 76.

2. PUBLIC UTILITIES, § 117 — Telephone — Public service.

[N.H.] The term public utility includes every company that owns, operates, or manages any plant or equipment for the conveyance of telephone messages for the public. p. 76.

3. PUBLIC UTILITIES, § 117 — Telephone — Resale of service — Intrastate long distance.

[N.H.] An applicant for a franchise to resell intrastate long distance telecommunications services clearly intended to manage and operate plant and equipment for the conveyance of telephone services for the public; accordingly, the applicant would fall within the statutory definition of public utility if it were permitted to conduct its proposed operations. p. 76.

4. CERTIFICATES, § 76 — Grant or refusal — Factors considered — Ability of applicant — Need for service.

[N.H.] In determining whether the grant of an application for authorization to commence business as a public utility would be in the public interest, the commission must consider (1) the need for the proposed service, and (2) the ability of the applicant to provide the service. p. 77.

5. CERTIFICATES, § 123 — Telephone — Resale of service — Intrastate long distance — Ability of applicant — Need for service.

[N.H.] To gain approval of an application to operate as a public utility for the purpose of reselling intrastate long distance telecommunications services, the applicant must demonstrate that approval would be in the public good, that there is a need for the service it intends to provide, and that it is capable of providing said service. p. 77.

6. CERTIFICATES, § 76 — Grant or refusal — Factors considered — Adequacy of existing service.

[N.H.] The adequacy of existing service is one of several factors to be considered in determining whether there is a need for a proposed utility service; nevertheless, proof that existing services are inadequate is not a prerequisite to grant of a certificate to provide a proposed

service. p. 77.

7. MONOPOLY AND COMPETITION, § 94 — Telecommunications — Competing toll service — Resale of intrastate long distance service.

[N.H.] The desirability of additional competition may warrant the grant of an application for a certificate of public convenience and necessity to resell intrastate long distance telecommunications service, even if existing carriers can adequately fulfill present and future needs for the service. p. 77.

8. PROCEDURE, § 17 — Production of evidence — Power to compel production — State commission.

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[N.H.] The commission has the power to obtain data and documents necessary to the performance and discharge of its duties as they are prescribed by law; accordingly, the commission had authority to require an applicant for a certificate to provide utility service to respond to data requests submitted to it by commission staff. p. 77.

9. PROCEDURE, § 16 — Discovery and inspection — Confidentiality — Certificate proceeding.

[N.H.] The standards applied to requests for confidentiality adopted in *Re New England Teleph. & Teleg. Co., Inc.*, 74 NH PUC 307 (1989) were made applicable to a proceeding to determine whether to grant an application for authorization to resell intrastate long distance telecommunications services; the standards are intended to protect the right of the public to access public records while protecting the right of parties to exempt certain confidential, commercial, or financial information from public disclosure. p. 78.

10. CERTIFICATES, § 168 — Procedure — Evidence — Burden of proof.

[N.H.] The applicant for a certificate of public convenience and necessity to provide utility service bears the burden of proving that the grant of a certificate would be in the public good. p. 78.

11. CERTIFICATES, § 123 — Telephone — Resale of service — Intrastate long distance.

[N.H.] An applicant for a certificate to resell intrastate long distance telephone service was directed to submit a draft tariff showing its proposed rates. p. 79.

APPEARANCES: David W. Jordan, Esq. of Myers, Jordan and Gfroerer on behalf of Long Distance North; John E. Reilly, Esq. on behalf of New England Telephone and Telegraph Company; Frederick J. Coolbroth, Esq. of Devine Millimet, Stahl and Branch on behalf of Dunbarton Telephone Company, Granite State Telephone, Merrimack County Telephone Company, and Wilton Telephone Company; Eugene A. DiMariano of Shaheen, Cappiello, Stein and Gordon on behalf of Union Telephone Company; Thomas C. Platt, III, Esq. of Orr and Reno on behalf of Contel of New Hampshire, Inc. and Contel of Maine, Inc.; Michael Roddy of TDS on behalf of Kearsarge Telephone Company; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 4, 1987, Long Distance North of New Hampshire, Inc. (LDN) petitioned for authority to do business as a reseller of intrastate long distance telephone service in New Hampshire. On November 1, 1989, Dunbarton Telephone Company, Granite State Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company (Dunbarton, et al.) moved to compel responses to data requests. On November 2, 1989, the staff of the

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New Hampshire Public Utilities Commission (staff) filed a motion to dismiss or to compel and continue and supporting memorandum of law. On November 2, 1989, New England Telephone (NET) filed a motion to extend time. On November 6, 1989, LDN filed an objection to NET's motion for extension. On November 14, 1989, LDN filed objections to the staff's motion to dismiss and Dunbarton, et al.'s motion to compel. The New Hampshire Public Utilities Commission (commission) scheduled oral argument on the motions for November 17, 1989.

II. *Positions of the Parties*

A. Staff

The staff prayed that the Commission compel production of the data requests and continue the proceeding indefinitely until this information is produced. Staff asked for: 1) the responses to data requests numbers 21, 34, 38, 39, 47, 60, 68; and 70, 2) the response to Dunbarton, et al.'s data request number 14; and 3) the information required by N.H. Admin. Code Puc 1603.02,1603.03, and 1603.03(b)(a).

The staff alleged the following in support of its motion:

1. LDN's original filing violates the commission's filing requirements.

2. LDN's evidence fails to meet its burden of proof and its burden of going forward.

3. LDN violated the terms of the commission's procedural order.

4. LDN failed to respond to legitimate data requests propounded pursuant to RSA 365:19.

a. LDN, alleging that the requested information was confidential and would be provided only under protective order, did not respond to data requests numbers 21, 34, 38, and 60. These questions asked for income statements and balance sheets, switch locations, and supporting arrangements, the names of companies' providing transmission capacity, and the names of companies providing switch co-locations. LDN has not to date responded to a staff proposal for terms of a confidentiality agreement.

b. LDN did not produce the information requested in requests numbers 39, 47, 68, and 70. These questions asked for cost projections, access rate assumptions, MTS rate discounts, cost and revenue forecasts, and switch placement workpapers.

5. The tariff submitted by LDN with its prefiled testimony did not state rates for service and was not accompanied by tariff support requirements.

Staff Position on the Effect of Competition

The staff also argued that LDN has not presented a *prima facie* case. Data Request 14 from Dunbarton, et al. asked LDN for all studies performed by LDN showing the impact of reselling on New England Telephone (NET) and independent telephone companies. LDN responded that no such study had been performed to date. Staff asserts that such a study is essential to LDN's case.

The staff argued that the commission, assisted by the staff, has the duty to investigate this petition and that the commission has the authority to compel production of the evidence. It argued that commission precedent allows only monopoly telephone franchises and that where the

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commission desires to depart from prior precedent it must recognize that it is doing so and explain the rationale. *Shaw's Supermarket v. NLRB*, No. (1st Cir. 1989). Thus, according to the staff, the commission must fully investigate the petition to create a complete record.

It cited the following commission powers: to issue *subpoena duces tecum* under RSA 365:10, to petition the superior court for contempt proceedings under RSA 491:19 and 491:20, to compel the filing of sworn copies under RSA 365:14, to require specific answers to questions upon which the commission may need information under RSA 365:15, and to make independent investigation under RSA 365:19. Given these powers, among others, the staff argued that the commission has authority

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to compel production of this information.

According to the staff, LDN filed testimony arguing that the commission should not regulate LDN in the traditional manner, but rather should regulate only the terms and conditions of service. LDN attached a tariff to its testimony containing only the terms and conditions of service, but no rates. Thus, the staff argues that LDN has not only requested permission to do business as a public utility pursuant to RSA 374:22 but it has filed tariffs under RSA 378:1. RSA 378:1 requires all utilities to file tariffs showing the rates for any service rendered. According to the staff, since the tariffs do not contain rates, they are not in compliance and should be rejected.

Further, staff argues that LDN has not met the following filing requirements: 1) notice of intent to file rate schedules, N.H. Admin. Code Puc 1603.02; 2) the introductory letter and report of tariff changes, 1603.03 (a); and 3) internal financial reports, annual reports, federal income tax reconciliation, detailed computation of New Hampshire and federal income tax factors on the increment of revenue needed to produce a given increase in net operating expense, detailed lists of charitable contributions and advertising expenses, the latest fully allocated cost of service study, the most recent capital budget, a recent chart of accounts, forms 10k and 100s, detailed lists of membership fees, management audits, and a list of officers and directors.

LDN has not requested a waiver of the tariff filing requirements pursuant to N.H. Admin. Code Puc 1603.07. The staff argues that the proceeding should be dismissed because N.H. Admin. Code Puc 1603.09 requires that "[a]ny request for rate relief not filed in accordance with these rules shall be rejected for non compliance."

The staff also argued that under RSA 374:26 the commission may only grant a request for a franchise where to do so would be in the public good and not otherwise. The staff cited *O'Neil v. Public Utilities Commission*, 119 N.H. 930, 935, 410 A.2d 244 (1979) for the proposition that, in order to meet its burden of proof, LDN must prove that the competition will not be destructive. Since LDN has not studied the effect of resale on the existing market, the staff argues that, LDN cannot meet this burden of proof.

The staff also noted that LDN does not intend to maintain its books and records in accordance with the New Hampshire Uniform System of Accounts nor to file financial statements in the form and at the times prescribed by current commission rules. Data response 25. It pointed out LDN's argument that since the customers of resellers can opt for NET toll services and since these toll rates are cost based, that there is no need to examine the reseller's

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books and records and financial statements. The staff countered that the commission found in *New England Telephone and Telegraph*, DR 84-95, that NET's rates were not cost-based but were value of service based. The staff also countered that without providing this financial information, LDN could not prove that it would comply with the ratemaking statutes, specifically RSA 378:27 and RSA 378:28 which require that "rates shall be sufficient to yield not less than a reasonable return on the cost of property used and useful in the public service less accrued depreciation . ..."

B. Dunbarton Telephone Company, Granite State Telephone Inc., Merrimack County Telephone Company, and Wilton Telephone Company

Dunbarton, et al. moved that the commission compel LDN to respond to their data request number 43. In question 43, Dunbarton, et al. asked LDN to "describe the Nashua facility in detail identifying all of the equipment located there, the owner of the equipment, all lessees, licensees and users of the equipment and all uses which such persons make of the equipment." In response, LDN maintained that "[t]he current use constitutes proprietary information regarding LDN's interstate network. Further information will be released pursuant to a Protective Order."

Dunbarton, et al. countered that LDN's response does not identify the documents or facts which are exempt from disclosure and the facts which will allow the commission to weigh the benefits of disclosure against the benefits of

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nondisclosure. *Re New England Telephone and Telegraph Co., Inc.*, 74 NH PUC 307 (1989).

Dunbarton, et al. are trying to analyze what services LDN proposes to offer and how it proposes to provide them. They argue that the answer to these questions depends on what equipment LDN has and what access they can make of it. They were also seeking to determine if there was an inconsistency between LDN's September 13, 1989 response and its September 27, 1989 response to data request number 43.

Dunbarton, et al. noted that *Grafton County Electric Light and Power Company v. State*, 77 N.H. 539, 94 A. 193 (1915), the case cited in LDN's argument is a 1915 case. It recommended that the commission review the holding in *Appeal of Easton*, 125 N.H. 205, 480 A.2d 88 (1984) where the Supreme Court detailed the scope of the "public good" review.

Dunbarton, et al. argued that the commission cannot set rates without looking at costs. *Conservation Law Foundation of New Hampshire*, 127 N.H. 606, 507 A.2d 652 (1986). It also alleged that LDN could not conform with RSA 369 and seek the commission's approval for financing without disclosing the terms of its financial arrangements.

C. New England Telephone and Telegraph

NET requested additional time to file its testimony due to the difficulty in satisfying company-wide regulatory commitments during the NET strike. It asked that staff and intervenor testimony be due on December 4, 1989. NET asked for two different schedules in the alternative.

D. Union Telephone Company

Union Telephone Company concurred with the staff that to the extent LDN had not studied

the effect of resale, it could not provide proof that its resale would not be destructive competition. It argues that since LDN has not met its burden of proof the petition should be dismissed.

E. Kearsarge Telephone Company

Kearsarge noted that it filed its position before being notified that the procedural schedule had been suspended. It simply asked that it be allowed to refile and update its position should the procedural schedule be continued.

F. Contel

Contel asked that the commission consider the arguments in light of *Appeal of Omni Communications, Inc.*, 122 N.H. 860, 451 A.2d 1289 (1982) and *Parker-Young Co. v. State*, 83 N.H. 551, PUR1929E 160, 145 A. 786 (1929).

G. Long Distance North

1. Extension of Time

LDN objected to NET's request for an extension. First, LDN argues that NET's strike does not have any effect on the staff or the intervenors, therefore, these parties should not have an extension of time to file their testimony. Its main concern is that the hearing on the merits not be unduly delayed. LDN stated that it would agree to NET's continuance provided hearings were still held no later than February 12-14, 1990. In particular LDN asked that any procedural schedule still have two weeks between the filing of data responses and the filing of rebuttal testimony.

2. Motion to Compel (Dunbarton, et al.)

LDN argued that the commission should not compel production of the information requested by Dunbarton, et al. LDN alleges that it is different from other New Hampshire utilities because it must compete for all of its business. It contends that this information may be used by its competitors. Thus, it does not want to disclose this data unless it is protected from further disclosure and improper use. It proposed a protective order as Exhibit A to the objection.

3. Objection to Dismissal or Compulsion

LDN argued that the commission should not compel LDN to respond to the staff's data requests. LDN contended that the petition

should not be dismissed.

It avers that it is unlike other utilities because it must compete for all of its business. It argues that its profit and loss and sources of capital, and the intricacies of its network are data which its competitors can use to obtain an advantage over LDN. It states that it is willing to provide the responses to data requests numbers 21, 34, 38, and 60 under a protective order. It attached a proposed order as Exhibit D to its objection.

According to LDN, the data demanded in data requests 39, 47,68, and Dunbarton, et al.'s question number 14 does not exist. It contends that the commission cannot compel production of

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information which does not exist.

LDN avers that the response to question 70 is irrelevant because it concerns only the carriage of interstate traffic.

According to LDN, the staff seeks the dismissal of the petition because LDN has not provided data required of a public utility which files new or higher rates, and has failed to conduct studies and perform analyses of data desired by the staff. LDN argues that staff errs in seeking to treat LDN as a public utility holding a monopoly franchise.

It contends that it has not filed a tariff, rather it has filed an example of a tariff. It states that since it does not wish the commission to regulate its rates, that it did not file a new or higher rate. It states that the staff attempts to require rates before the commission makes a decision to allow the business. The extent of the regulation of LDN, it avers, can be resolved at the end of the proceeding, after the commission has heard from NET and the independent telephone companies about the effect of resale on them.

Further, LDN argues that the question of whether it has met its burden of proof is addressed at the end of the proceeding, after the record is complete, not in the middle of discovery. Moreover, it avers that the staff has placed the burden on the wrong party and that LDN need only show that it is able to provide the service offered. It contends that under the constitution it has the right to compete unless there is a good reason to prohibit that competition. N.H. Const., Pt. II, Art. 83. It alleges that the commission must allow the competition if LDN's doing business is in the public good. RSA 374:26. It argues that, since it desires to do business in New Hampshire, it is in the public good for it to do so, unless to do so would be contrary to law or unreasonable. *Grafton*, at 540 (1915). It says that the burden is on those who oppose the petition to show that LDN's service would be unlawful or unreasonable. It alleges that *O'Neil v. Public Utilities Commission*, does not deal with the public good standard of RSA 374:26, rather, it deals with the public convenience and necessity standard of 375-B, and that it does not suggest that the petitioner had any burden. It also alleges that RSA 378:27 and 28 do not impose any burden on the petitioner. LDN also informs the commission that it will more fully discuss the issue of burden in its brief.

III. *Commission Analysis*

A. Regulatory Authority and Approvals.

[1-3] LDN has requested the commission to issue it a franchise to resell intrastate long distance telecommunications services throughout the State of New Hampshire. LDN's Amended Petition, May 30, 1989.

The starting point of our analysis is to ascertain whether LDN will fall within the statutory definition of "public utility" if it is permitted to conduct its proposed operations. RSA 362:2 states:

> The term "public utility" shall include every corporation, company, association ... owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages ... for the public.

On page 18 of its prefiled testimony (Knisbacher) dated July 21, 1989, LDN stated that it would provide customized billing services, including intraLATA traffic summaries and call

detail on WATS services. On page 25 of the prefiled testimony, LDN stated that it operates a Digital Central Office Carrier Switch (DCOCS) located in Manchester, NH and a terminal in

Nashua.

Moreover, in its Amended Petition, LDN states that "[t]he facilities which LDN plans to use to offer such services are currently in place and are being used for the provision of interstate services". P.3.

LDN clearly intends to operate and manage plant and equipment for the conveyance of telephone services. Accordingly, then, LDN is a public utility as defined in RSA 362:2.

Having determined that LDN would be a public utility, it remains to determine the nature of the authority which should be granted by the commission.

According to RSA 374:22:

> [N]o person or business entity shall commence business as a public utility within this state, or shall engage in such business or begin the construction of plant . . . without first having obtained the permission and approval of the commission.

We find guidance in the implementation of that statute in RSA 374:26:

> The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest. Such permission may be granted without hearing when all interested parties are in agreement.

[4-7] In recent years, we have addressed the above standard when we considered whether to grant to New Hampshire Yankee and EUA Power Corporation the authority to commence business as a public utility. *Re EUA Power Corporation*, 71 N.H. PUC 73 (1986) and *Re New Hampshire Yankee Electric Corp.*, 69 N.H. PUC 590 (1984). There we provided:

> The Commission in determining whether the granting of permission to a public utility to engage in business is in the public interest must consider two main criteria (1) the need for service; and (2) the ability of the applicant to provide the service.

69 NH PUC at 593, and 71 NH PUC at 78 citing *New Hampshire Yankee*.

It is in the context of these two tests that we must evaluate LDN's request for a franchise to resell intrastate long distance telecommunication service. To reiterate, LDN must obtain commission approval to operate as a public utility, and as a part of demonstrating that the granting of such approval is in the public good, must also demonstrate to the commission by substantial evidence that there is a need for the service it intends to provide, and that LDN is capable of providing said service.

In determining whether there is a need for the services which LDN is proposing to render, the adequacy of existing services is one of several factors to be considered. *Cf. N.E. Household*

Moving & Storage v. Public Utility Commission, 117 N.H. 1038, 1040 (1977) (Proof that the services of existing carriers were inadequate is not required to find that the granting of a certificate is consistent with the public convenience and necessity). Other factors, including the desirability of additional competition, may warrant a finding that additional service is required by the public convenience and necessity, although existing carriers can adequately fulfill present and future needs. *Id.* at 1041. The PUC must consider all evidence before it and the PUC's decision must be fairly based upon consideration of all of the relevant factors. *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 693, 433 A.2d 1291 (1981).

We also note that assuming that we grant LDN's petition to operate as a public utility, we would then have to determine whether to order NET to delete from its tariff the existing prohibition of resale of MTS and WATS service. Thus, it is apparent that the commission may well have to confront difficult telecommunications issues of first impression.

It is in this context that we now address LDN's responsibilities as the petitioner in this proceeding and the concerns that have been raised in the motions and pleadings.

[8] Pursuant to RSA 365:10, 365:14, 365:15 and 365:19, the PUC has the power to obtain data and documents necessary to the

performance and discharge of its duties as they are prescribed by law.

According to the instructions accompanying the data requests propounded to LDN in this proceeding, "the response shall state with respect to each item, or category a cause for failure to produce." RSA 365:12 provides that willful failure to produce will subject the party failing to respond to contempt proceedings in Superior Court.

Thus, it is well established that LDN must respond to the data requests that have been provided in this proceeding, except where just cause can be shown for non-response, such as relevancy or need for confidentiality. We now turn to the concerns regarding confidentiality, burden of proof, and duty to file a tariff under RSA 378:1 that have been raised by LDN.

B. Confidentiality.

[9] In *New England Telephone and Telegraph: Rate Structure Investigation*, DR 85-182 and *New England Telephone and Telegraph: InfoAge NH 2000*, Report and Order No. 19,536 (74 NH PUC 307) (September 19, 1989) we adopted standards to be applied to requests for confidentiality. We determined that these standards will protect the right of the public to access public records under RSA 91-A:4, I while protecting a party's right to exempt certain confidential, commercial, or financial information from public disclosure pursuant to RSA 91 A:5, IV. The record here contains no compelling reason to depart from these standards and, accordingly, they will be applied to this case.

The following information must accompany each request for confidentiality: 1) which documents or facts are exempt from disclosure, 2) which statutory provisions exempt disclosure, and 3) the facts necessary to allow the commission to weigh the benefits of disclosure against the benefits of nondisclosure, and specifically to use the following three-pronged analysis.

> First, is the matter sought to be protected "a trade secret or other confidential research, development, or commercial information" which should be protected? Second, would disclosure of such information cause a cognizable harm sufficient to warrant a protective order? Third, has the party seeking protection shown "good cause" for invoking the protection?

Zenith Radio Corporation v. Matsushita Electric Industrial Co., 529 F.Supp. 866, 889-891 (E.D. Pa. 1981). Good cause exists where there is a clearly defined and serious injury and the petitioner has shown that the injury will occur. *Id.* The movant shall also discuss whether a revenue loss would result from disclosure and whether ratepayers would ultimately bear these losses. *South Central Bell Telephone Co. v. Mississippi Pub. Serv. Com.*, 61 PUR4th 310, 313 (Miss. Chancery Ct. 1984); and *Re Pacific Northwest Bell Telephone Co.*, 9 PUR4th 49 (Ore. P.U.C. 1975). Each request must be preceded by the interrogatory or request to which it is addressed and the request shall be limited to the portion of the material which is confidential.

C. Burden of Proof.

[10] LDN has the burden of proving that its petition is in the public good, not only concerning the needs of particularly affected individuals but also in terms of the general public at large and the general welfare of the utility. *Boston & Maine Railroad v. State*, 102 N.H. 9, 148 A.2d 652 (1959). The phrase burden of proof means the risk of non-persuasion upon the evidence in the case, but it is also used to designate the duty to go forward and produce evidence. *Spilene v. Salmon Falls Mfg. Co.*, 79 N.H. 326, 108 A. 808 (1920). The plaintiff must establish a *prima facie* case regardless of whether the issue involves an affirmative or a negative proposition. *Upton v. Conway Lumber Co.*, 81 N.H. 489, 128 A. 802 (1925). Orderly procedure requires plaintiff to make out a *prima facie* case before the defendant is obligated to produce any evidence. *Gaudette v. McLaughlin*, 83 N.H. 368, 189 A. 872 (1937).

Contel cited *Parker-Young Co. v. State*, 83 N.H. 551, PUR1929E 160, 145 A. 786 (1929). In *Parker-Young*, at 556 the Supreme Court stated that

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> The commission shall grant such permission whenever it shall, after due hearing, determine and find that such engaging in business, such construction or such exercise of right, privilege or franchise would be for the public good and not otherwise; and may prescribe such terms and conditions upon the exercise granted under such permission as it shall consider for the public interest.
>
> * * *
>
> This act clearly confers upon the commission the exclusive power, subject to appeal, to find whether the public good requires that a petitioning utility shall be permitted to engage in business and allowed to construct its lines in any city or town; and by consequence to determine to which of two or more competing utilities the grant of such rights will best subserve the public good.

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Accordingly, we find it well settled that the burden of proof rests upon the petitioner in proceedings before the commission.

D. Duty to File a Tariff under RSA 378:1.

[11] RSA 378:1 requires that:

> [E]very public utility shall file with the PUC, and shall print and keep open to public inspection, schedules showing the rates, fares, charges and prices for any service rendered or to be rendered in accordance with the rules adopted by the commission pursuant to RSA 541 A.

Attached to LDN's prefiled testimony is a draft tariff outlining the terms and conditions of the services which LDN would expect to offer if its petition were granted. The draft tariff does not include rates.

Related to this matter, RSA 374:2 provides as follows:

> 374:2 Charges. All charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission. Every charge that is unjust or unreasonable, or in excess of that allowed by law or by order of the commission, is prohibited.

In order for the commission to ascertain whether the rates and charges LDN intends to impose for its services as a public utility are just and reasonable, the record must include a tariff in accordance with RSA 378:1 showing the proposed rates, fares, charges and prices for each service.

IV. *Conclusion*

LDN shall file responses by February 21, 1990 to staff's data requests number 21, 34, 39, 47, 60, 67, 68 and 70; and Dunbarton et al's data request numbers 14 and 43. If LDN seeks confidentiality, it must file a motion setting forth how the requested confidentiality complies with our standards by February 12, 1990. We will respond to any such motion by February 16, 1990, keeping the February 21 response deadline intact.

In addition, the commission will schedule a hearing for March 12, 1990, at 1:30 pm to determine whether LDN has adequately responded to the above mentioned data requests, and to:

(a) Reestablish a procedural schedule in the event of adequate responses, or

(b) Dismiss the case if LDN is deemed to be unresponsive.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof, it is hereby

ORDERED, that Long Distance North respond to Dunbarton et al and Staff's data requests as outlined in the attached Report and Order which is made a part hereof, and it is

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FURTHER ORDERED, that a hearing be held on March 12, 1990 at 1:30 P.M. to determine compliance with the above mentioned report, and it is

FURTHER ORDERED, that New England Telephone's motion for an extension of time is now moot, and it is

FURTHER ORDERED, that Staff's

motion to dismiss be deferred, pending the outcome of the March 12, 1990 Hearing,

By order of the Public Utilities Commission of New Hampshire this second day of February, 1990.

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NH.PUC*02/02/90*[50886]*75 NH PUC 80*Energy North Natural Gas, Inc.

[Go to End of 50886]

75 NH PUC 80

Re Energy North Natural Gas, Inc.

DR 89-181
Order No. 19,699

New Hampshire Public Utilities Commission

February 2, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Rate revisions — Trigger mechanism — Projected undercollections.

[N.H.] A gas distribution utility was authorized to increase its cost of gas adjustment rate to recover a projected undercollection notwithstanding the fact the percentage undercollection was below the trigger level of 10% of total anticipated costs; the commission noted that the initial filing met the trigger criterion and said that no useful purpose would be served by denying the increase; however, the commission expressed concern about the magnitude of revisions to the initial filing and cautioned the utility that its performance would be monitored. p. 81.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Procedure — Scope — Cost of gas adjustment trigger hearing — Affiliate transactions.

[N.H.] Affiliate transactions are outside the scope of a cost of gas adjustment trigger hearing. p. 81.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Replacement

supplies — Compensation from supplier.

[N.H.] In a cost of gas adjustment clause proceeding, a gas distribution company agreed to examine and submit a report on whether it were entitled to compensation from an interstate pipeline that failed to make scheduled deliveries due to construction delays; the delay had forced the distribution utility to purchase high cost replacement supplies. p. 82.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustments — Interruptible sales margins — Interest on margins.

[N.H.] A gas distribution utility was directed to include in future winter cost of gas adjustment filings all interest earned on interruptible margins. p. 82.

5. SERVICE, § 339.4 — Gas — Allocation of supply — Emergency supplies.

[N.H.] In a cost of gas adjustment proceeding, the commission made note of the utility's willing participation in a state program that resulted in the provision of emergency gas supplies to propane distributors, preventing the curtailment of service to residential and other customers during record cold whether. p. 82.

APPEARANCES: For Energy North Natural Gas, Inc., Jacqueline Fitzpatrick, Esquire; Consumer Advocate, Michael Holmes, Esquire; Staff, James Rodier, Esquire.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On January 11, 1990, Energy North Natural Gas, Inc. (ENGI or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission Fifth Revised Page 1, Tariff, N.H.P.U.C. No. 1-Gas. Said tariff provided for a

1989/90 Mid Winter cost of Gas Adjustment (CGA) for effect February 1, 1990. That cost of gas adjustment to be a surcharge of $0.0835 per therm, before franchise tax. This would have translated into an approximate 7% increase in customer bills. The mid-course increase was deemed necessary to avoid an undercollection of $4,819,406 during the current winter period.

An order of notice was issued setting hearings for January 26, 1990. It was further ordered that a copy of the order of notice be published in a local newspaper.

COMPANY FILING

On January 26, 1990, ENGI submitted a revision to Revised Page 1, substantially reducing the proposed cost of gas adjustment to a rate of $0.0207 per therm, before franchise tax. The company stated that the reasons for the downward revision to its original filing were a.) changes to Tennessee Gas Pipeline demand and commodity rates; b.) actual instead of projected therm sales for December; and c.) the replacement in April of some Tennessee sales gas by third party gas.

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During the hearing the following issues were addressed: a.) the trigger mechanism; b.) propane sales to an affiliate company; c.) the Norex project; d.) the Distrigas LNG contract; e.) Tennessee Gas Pipeline demand and commodity rates; f.) interest on interruptible margins.

Trigger Mechanism

[1] In its January 11, 1990 filing the Company projected an undercollection of $4,819,406 on forecasted winter period gas costs totaling about $34 million. Since this undercollection represented 14% of total anticipated costs, it exceeded the 10% trigger and therefore qualified the Company to seek an increase in its CGA rate. However, on January 25, 1990 the Company reduced its projected undercollection by over $2 million and its total anticipated costs by over $3 million. These changes pushed the percentage undercollection below the trigger level and thus arguably disqualified the Company from pursuing a rate increase.

The commission continues to support the application of the 10% trigger for gas utilities but believes that no useful purpose would be served by denying ENGI's petition at this time. Leaving aside the fact that the initial filing met the trigger criterion, the currently projected $2.5 million undercollection will grow to $2.7 million due to the application of interest if recovery is delayed until the winter of 1990/91. Moreover, we believe that ratepayers will be more understanding of a rate change that immediately follows the events that initiated the change. We, therefore accept the filing.

Nevertheless, we are concerned about what appears to be a developing trend of revisions to ENGI's CGA filings. Not only were the revisions to the instant filing numerous and of some considerable magnitude the timing of these changes were such that the staff and the Consumer Advocate were left with little time for adequate review. We will monitor the company's performance in this area.

Affiliate Transactions

[2] The pre-filed direct testimony of Mr. Fleming included a discussion of an agreement between ENGI and Distrigas of Massachusetts for a firm supply of liquefied natural gas (LNG). According to Mr. Fleming this firm supply is intended 1.) as security in the event Tennessee Gas pipeline is forced to curtail supply sometime during the remainder of the winter period and 2.) to replenish supplemental gas inventories depleted during the abnormally cold temperatures of November and December.

The pricing arrangements for the Distrigas supply are contained in a three part rate consisting of two demand charges and a commodity rate. Although the total cost of this gas supply is $1,448,200 the instant filing reflects only about $1 million. It is the company's intention to recover the remainder through its summer 1990 CGA.

The record in this case also shows that ENGI has an agreement to provide propane storage and commodity service to its affiliate, Energy North Propane (Propane). Each gallon of product received by Propane through this

agreement is priced at ENGI's average inventory cost of propane. Staff and the Consumer

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Advocate attempted to elicit through lengthy cross-examination whether or not the Distrigas costs could have been avoided if ENGI had not been committed to supply its affiliate. Because, there is a difference in cost between product withdrawn from propane inventory and product received from Distrigas, staff and the Consumer Advocate contend that the issue that should be addressed is not least cost gas purchasing but cost allocation between affiliate companies. Since affiliate transactions are outside of the scope of a CGA trigger hearing we will set up a separate docket, upon notice by the staff, to examine this issue.

Norex Project

[3] Tennessee's Northeast Expansion Project was granted a Certificate of Public Convenience and Necessity by the Federal Regulatory Commission (FERC) on May 18, 1989. Upon its final completion Energy North Natural Gas would receive a substantial increase in capacity.

Company witness, Mr. Fleming, testified that Tennessee informed ENGI that the project would be completed by November 15, 1990. However, the State of N.H. Department of Transportation changed the pipeline route requiring Tennessee to bore under routes 101 and 93. Tennessee informed ENGI that it would take six weeks to complete the project and, as late as October 1989, still anticipated completion on schedule.

However, while boring under route 101 Tennessee hit 400 feet of ledge which delayed completion until December 18. The natural gas supplies lost because of this delay were replaced by higher than forecast propane sendout.

The staff questioned Mr. Fleming on whether the company could have foreseen the Norex delay and whether the company had examined the possibility of compensation from Tennessee for its failure to meet the scheduled in service date of November 15, 1989 and the additional gas cost resulting from that delay. ENGI, through its Counsel, undertook to review this possibility, and report back to staff.

Interruptible Margins

[4] Mrs. Huber, for the company, testified that interest earned on the interruptible sales margin starting November was included in the CGA but interest earned after April but prior to November was excluded. The commission will require all interest earned on interruptible margins to be included in future winter CGA filings.

COMMISSION ANALYSIS AND FINDINGS

The commission finds that, with the exception of certain costs associated with the Norex project and the Distrigas LNG agreement, the increase in ENGI's gas costs were a direct result of the abnormally cold weather in November and December of 1989. Since the Distrigas agreement will be the subject of a separate proceeding, we will allow the proposed rate to go into effect, subject to the previous findings.

GEO's Emergency Propane Program

[5] Finally, we note the Company's willing participation in a program coordinated by the Governor's Energy Office that resulted in the provision of emergency gas supplies to certain New Hampshire retail propane companies. These supplies prevented the curtailment of service to residential and other customers at a time when the state was experiencing the coldest November

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and December on record.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof: it is hereby

ORDERED, that Revised Page 1, superseding Fifth Revised Original Page 1, N.H.P.U.C. No. 1-Gas, providing for a 1989/90 Mid Winter Cost of Gas Adjustment of 0.0207, before the franchise tax, for effect February 1, 1990 is approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in a newspaper having general circulation in the territories served; and it is

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FURTHER ORDERED, that all interest earned on interruptible margins be included in future CGA filings.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1990.

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[Go to End of 50887]

75 NH PUC 83

Re Northern Utilities, Inc. — New Hampshire Division

DR 89-176
Supplemental Order No. 19,700

New Hampshire Public Utilities Commission

February 2, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Rate revision — Gas distribution utility.

[N.H.] A gas distribution utility was authorized to increase its cost of gas adjustment rate where projected undercollections exceeded 10% of total anticipated gas costs; the commission found that the increase in gas costs was a direct result of abnormally cold weather and that the utility had made efforts to minimize the increase. p. 84.

2. SERVICE, § 339.4 — Gas — Allocation of supply — Emergency supplies.

[N.H.] In a cost of gas adjustment proceeding, the commission made note of the utility's

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willing participation in a state program that resulted in the provision of emergency gas supplies to propane distributors, preventing the curtailment of service to residential and other customers during record cold weather. p. 84.

APPEARANCES: LeBoeuf, Lamb & Leihy & McRae by Elias G. Farrah, Esquire for Northern Utilities; Michael Holmes, Esquire for the Consumer Advocates' Office; George McCluskey and James Cunningham for the commission staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On October 2, 1989 Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission Sixteenth Revised page 24, superceding Fifteenth Revised page 24 to N.H.P.U.C. No. 7 providing a 1989-90 Winter Cost of Gas Adjustment (CGA) effective November 1, 1989. The proposed CGA included in this filing was a credit $(.1406) per therm.

On December 19, 1989 the Company filed a proposed revision to the 1989-1990 Winter CGA to become effective February 1, 1990. The sole purpose of that revision was to reflect the price increases from its pipeline supplier, Granite State Gas Transmission (Granite State), that were not previously forecast. On January 18, 1990 the above revision was superceded by a more extensive filing (Exhibit 1) which took into account not only updated Granite State rates but also increases in the costs of supplemental supplies. The proposed rate was set at ($0.0209)/therm.

The commission held a hearing on the merits of the company's filing on January 26, 1990.

COMPANY FILING

Requested Rate

At the hearing the Company filed a further revision (Exhibit 2) that corrected a computational error in the January 18, 1990 filing. This correction resulted in a proposed rate of ($0.0272)/therm.

Trigger Mechanism

Mr. Ferro for the Company testified to a projected undercollection of $1,413,143 of winter period gas costs. This is equivalent to 12.8%

of total currently anticipated gas costs and therefore exceeds the minimum 10% trigger.

Gas Supplies

To help meet its increased demand during the severely cold months of November and December, 1989, the Company procured spot propane supplies from Gas Supply, Inc. and Bay State Gas Company; emergency pipeline natural gas from Brooklyn Union; emergency underground storage withdrawals from Penn-York's storage fields, and additional supplemental

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gas purchases from Bay State. In addition, Granite State purchased Release-Gas from Tennessee Gas Pipeline and obtained additional natural gas supplies from four sources. These Granite State volumes were subsequently allocated to Bay State and Northern.

COMMISSION ANALYSIS

[1] In his pre-filed direct testimony, Mr. Ellis included the statement that Granite State Gas Transmission, the pipeline supplier to Bay State and Northern, had obtained an additional 320,965 MMBTU of natural gas from four sources. To the extent that each utility can physically utilize the additional pipeline gas, Bay State is allocated 80% and Northern 20%. According to Mr. Ellis, Northern received only 10% with the remainder going to Bay State. Compared to the cost of Bay State supplemental gas this windfall to Bay State resulted in a saving of about $100,000.

On the other hand, during the period November through December Northern received 82,552 MMBTU of Bay State supplemental gas more than its contract demand for the whole winter period. In addition Northern expects to receive 20,000 MMBTU during January and February, making a total over-supply of 102,552 MMBTU. Compared to the market rate for propane (which we take to be the unit cost of the Trammo Gas purchase) the above over supply results in a saving to Northern of about $260,000. Based on those facts it is apparent that during the current winter period Northern was well served through its corporate relationship with Bay State.

We also commend Northern and its affiliates for the ingenuity shown in securing transportation for the 40,000 MMBTU of emergency underground storage gas. The gas cost savings associated with these additional volumes played an important part in holding down the CGA increase.

The commission finds that the increase in Northern's gas costs were a direct result of the abnormally cold weather experienced during November and December. Moreover, we believe that the Company's efforts during this period were instrumental in minimizing the CGA increase. We therefore find the requested CGA rate of ($0.0272) per therm just and reasonable and in the public interest.

[2] Finally, we note the Company's willing participation in a program coordinated by the Governor's Energy Office that resulted in the provision of emergency gas supplies to certain New Hampshire non-regulated retail propane companies. These supplies prevented the curtailment of service to residential and other customers at a time when this State was experiencing the coldest December on record.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof, it is

ORDERED, that Seventeenth Revised Page 24 issue January 26, 1990, providing for a cost of gas adjustment of $(0.0272) per therm be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1%

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according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1990.

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NH.PUC*02/02/90*[50888]*75 NH PUC 85*Keene Gas Corporation

[Go to End of 50888]

75 NH PUC 85

Re Keene Gas Corporation

DR 89-177
Supplemental Order No. 19,701

New Hampshire Public Utilities Commission

February 2, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Rate revision — Gas distribution utility.

[N.H.] A gas distribution utility was authorized to increase its cost of gas adjustment rate where projected undercollections exceeded 10% of total anticipated gas costs; the commission found that the increase in gas costs was a direct result of abnormally cold weather.

APPEARANCES: For Keene Gas Corporation: Harry Sheldon, President, and Robert F. Egan, General Manager. For Consumer Advocate: Michael W. Holmes. For Staff: George McCluskey, Utility Analyst.

By the COMMISSION:

REPORT

On January 16, 1990, Keene Gas Corporation, (Company), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with this commission certain revisions to its tariff which provided for a mid-winter correction to its 1989-1990 Cost of Gas Adjustment (CGA), effective February 1, 1990. The filing requests a CGA rate of $0.2433 per therm, excluding the N. H. State Franchise Tax, which is an increase of approximately $0.30 per therm from the currently effective rate of $(0.053) per therm.

A duly noticed public hearing was held at the commission's office in Concord, N.H. on January 26, 1990.

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The Company filing indicated a projected undercollection of $115,948 of winter period gas costs. This translates into a 12.4% undercollection of currently anticipated winter period costs. Accordingly, the Company's filing meets the required 10% trigger.

The Company presented two witnesses who testified in support of the filing. Mr. Robert F. Egan, General Manager testified that the mid-winter adjustment is necessary because the severe winter weather which occurred starting in late November, 1989, and extended through December caused a marked increase in demand for propane, resulted in supply problems throughout the country, and a doubling of propane prices.

In response to questions from staff and the Consumer Advocate, Mr. Egan described the utility and the non-utility operations of the Company including the customer bases, storage arrangements, etc. Mr. Egan stated that throughout the period the Company complied with the commission's 7 day storage requirements either by obtaining additional deliveries of product or by curtailing deliveries to retail propane customers. These measures had a considerable financial impact on the Company. In Mr. Egan's opinion the existing 7 day storage requirement is adequate to ensure reliable service to Keene Gas' customers.

Mr. Harry Sheldon, President of Keene Gas Corporation, testified as to why the company obtains 50% of its anticipated winter demand through firm contracts and 50% through spot purchases. He stated that this allowed the Company to take advantage of attractive prices and thereby reduce the overall cost to customers. However, in light of experience this winter he undertook to review this policy and consider the benefits of 12 month contracts. Finally, Mr. Sheldon agreed to seek an opinion on the legality of the force majeure provision in the EIL and Gas Supply Inc. firm contracts.

The commission finds that the increase in Keene Gas Corporation's costs were largely out of the Company's control and a direct result of the abnormally cold weather experienced

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during this past November and December. We therefore, find the requested CGA rate of $0.2433 per therm just and reasonable and in the public interest. Finally, the commission recognizes the efforts of the Company during the past months in maintaining supplies to its customers.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the 12th Revised Page 26, Superseding 11th Revised Page 26 of Keene Gas Corporation Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $0.2433 per therm for the period February 1, 1990 thru April 30, 1990 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this order become effective with all billings issued on or after February 1, 1990; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by a one

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time publication in newspapers having a general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, order no. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1990.

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NH.PUC*02/05/90*[50889]*75 NH PUC 86*New England Telephone and Telegraph Company, Inc.

[Go to End of 50889]

75 NH PUC 86

Re New England Telephone and Telegraph Company, Inc.

DR 85-182, DR 89-010
Order No. 19,702

New Hampshire Public Utilities Commission

February 5, 1990

ORDER approving a motion for a protective order.

PROCEDURE, § 16 — Discovery and inspection — Protective order — Confidential information — Telephone LEC.

[N.H.] The commission granted a request by a telephone local exchange carrier for a protective order for certain data responses where the motion conformed with the requirements for confidentiality set forth in a prior report and order.

By the COMMISSION:

REPORT ON THE JANUARY 26, 1990
MOTION FOR PROTECTIVE ORDER

In this report and order we consider New England Telephone Company's (NET) January 26, 1990 motion for protective order. This order approves the motion with respect to all requests and applies the standards set forth in our report and order no. 19,536 (74 NH PUC 307) (Sept. 19, 1989).

I. *The Motion*

On January 26, 1990, NET filed, pursuant to NH Admin. Code PUC 203.04 and report and order no. 19,536, a motion for protective order. This motion requests a protective order for the following items.

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Data Responses

1. MCI Set 2, Item 4

II. *Commission Analysis*

The motion conforms with the requirements for confidentiality set forth in our report and order no. 19,536. Therefore, we will allow the data response to be protected under the procedures set forth in that order.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that NET's January 26, 1990 motion for protective order is granted.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1990.

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NH.PUC*02/05/90*[50890]*75 NH PUC 87*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50890]

75 NH PUC 87

Re Public Service Company of New Hampshire/Northeast Utilities

DR 89-244
Order No. 19,703

New Hampshire Public Utilities Commission

February 5, 1990

ORDER denying a motion for amendment/clarification of a prior report and order that established the scope of a proceeding to determine the justness and reasonableness of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. RATES, § 134 — Comparisons to test reasonableness — Rate-making process — Balancing of interests.

[N.H.] In determining whether rates are just and reasonable, the term "reasonable rate" must be understood to refer to the result of the rate-making process — i.e., the result of a balancing of the competing interests of ratepayers and investors; the use of a differential between the proposed rates of a utility and a set of alternative rates established independent of the balancing

process can not serve as an independent criterion of what is just and reasonable; nevertheless, rate differentials may be used as a critical tool in evaluating proposed rates. p. 88.

2. RATES, § 44.2 — Jurisdiction and powers — State commissions — Electric rates — Bankruptcy.

[N.H.] The commission was authorized by state statute to consider whether the acquisition of Public Service Company of New Hampshire by Northeast Utilities would be consistent with the public good and whether rates for electric service to be established in conjunction with the bankruptcy reorganization should be approved as just and reasonable; such authorization does not inappropriately entwine the commission with judgments of the bankruptcy court; the court will determine whether the proposed acquisition agreement and rates would resolve the bankruptcy in accordance with the bankruptcy code and the commission will determine whether that resolution is consistent with the public good as defined in Title 34 of the New Hampshire Revised Statutes Annotated. p. 88.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 25, 1990, John V. Hilberg (Hilberg) filed a motion requesting the commission to clarify and/or amend its report and order no. 19,674 (75 NH PUC 30) of January 19, 1990 regarding the scope of the instant proceeding. This order denies the motion.

Hilberg argues that absent consideration of alternatives, the commission would be

determining the justness and reasonableness of the rates resulting from the agreement in a vacuum. He asserts that the appropriate standard for such findings is the long term retail rates that would prevail in the absence of the agreement. He further contends that, while the bankruptcy of Public Service Company of New Hampshire (PSNH) is mentioned in RSA 362-C:1 (I) as the reason the commission was given the authority expressed in RSA 362-C:1 (IV), RSA 362-C does not authorize the commission to investigate whether the agreement and the rates are a reasonable resolution of the bankruptcy.

[1, 2] We disagree with Hilberg's assertions regarding the appropriate standards of justness and reasonableness. In determining whether the rates are just and reasonable, the "term `reasonable rate' must be understood as referring to the result of the ratemaking process. That process appropriately balances the competing interests of ratepayers who desire the lowest possible rates and investors who desire rates that are higher." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 633 (1986). The rate of return approved by the commission, one of the three elements of the traditional ratemaking formula, must fall within a zone of reasonableness, neither so low as to result in a confiscation of company property, nor so high as to result in extortionate charges to customers. *Id.* at 635. See also *Petition of Pub. Serv. Co. of N.H.*, 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988).

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The New Hampshire Supreme Court found that

> the reasonableness of a rate should not be determined either independently of the process by which expenses, rate base, and rate of return are set, or after that process has been completed. Although our cases have often referred to the standard of just and reasonable rates as the "ultimate test" of a commission's rate determination, the statutes provide neither a procedural nor a conceptual basis for judging reasonableness apart from the process that demands recognition of the customers', as well as the investors', interests when passing on expenses, rate base and rate of return.
>
> Indeed, any attempt to judge reasonableness apart from the process would entail redundancy and risk both illegality and unconstitutionality. Citation omitted. *Appeal of C.L.F.. Op. Cit.* 638-9 (1986).

Specifically the court rejected the use of the differential between the projected rates of the company and a set of alternative rates (the NEPOOL rates) as an independent criterion of what is just and reasonable. It expressed its concern that "this subjection of a proposed rate to a standard of reasonableness independent of the balancing process by which the commission sets allowable expense, rate base, and rate of return is open to the criticisms" expressed above. *Id.* at 646.

The court, however, acknowledged that the standard of a differential in rates has "value as a critical tool" (*Id.*) particularly in regard to the impact a rate differential might have on the electrical load of the reorganized PSNH, and thus the viability of NU's proposed plan. We will, therefore, consider whatever relevant substantial evidence the parties wish to file regarding the viability and the justness and reasonableness of the rates resulting from the plan proposed by Northeast Utilities. However, such consideration will not include the hypothetical rate scenarios of alternative plans that have not been filed in the U.S. Bankruptcy Court, as an independent standard of reasonableness.

Hilberg also errs when he contends that RSA 362-C does not authorize the commission to "consider whether the acquisition of PSNH by NU, the agreement and the proposed rates, are in the public interest and represent a reasonable resolution of the PSNH bankruptcy" (Report and Order No. 19,674), and that such consideration would inappropriately entwine "the commission with the judgments of the bankruptcy court." RSA-C:1 clearly intends to authorize the commission to make such determinations. It does not entwine the commission with the court. The court will determine whether the proposed acquisition, agreement and rates will resolve the bankruptcy in accordance with the Bankruptcy Code; the commission will determine whether that resolution is in the

public good as defined in Title 34 of the N.H. Revised Statutes Annotated. Approval of the plan by the creditors and equity holders and the court will inform the commission, at least from the point of view of the current investors, whether the resolution is non-confiscatory. The commission must still determine whether the resolution will result in extortionate charges to customers and whether the resolution results in the equitable balance between shareholders and ratepayer interests.

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We believe that the commission has fully defined the scope of this proceeding to enable all parties to have a fair hearing of the issues in this case. If after confirmation of the reorganization plan by the court, there is a material change in the circumstances under which the case was presented, we will further consider the scope at that time to assure a fair hearing throughout.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Motion of John V. Hilberg for the commission to clarify and/or amend its report and order no. 19,674 (75 NH PUC 30) regarding the scope of the instant proceeding be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1990.

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NH.PUC*02/05/90*[50891]*75 NH PUC 89*Lakes Region Water Company, Inc.

[Go to End of 50891]

75 NH PUC 89

Re Lakes Region Water Company, Inc.

DR 88-188
Order No. 19,704

New Hampshire Public Utilities Commission

February 5, 1990

ORDER granting an increase in rates for water utility service.

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1. RATES, § 595 — Water — Recoupment — Prorated surcharge.

[N.H.] A water utility was authorized to recover through a rate surcharge over a two-year period the difference between the revenue level finally approved in its permanent rate case and the revenue level provided for in previously approved temporary rates; the surcharge would be prorated for customers that took service after the effective date of temporary rates. p. 91.

2. RATES, § 595 — Water rate design — Step increase — Safe Drinking Water Act.

[N.H.] A water utility was authorized to recover, through a step increase effective on the anniversary date of the order on its permanent rate request, costs associated with plant additions, increased property taxes, and other costs resulting from implementation of the Safe Drinking Water Act. p. 91.

3. VALUATION, § 168 — Charges to capital — Legal costs — Protection of franchise rights —

Water utility.

[N.H.] Reasonable expenditures incurred by a water utility to protect certain franchise rights were included in rate base and amortized over a 20-year period. p. 91.

4. EXPENSES, § 89 — Rate case expense — Reasonableness — Grounds for disallowance.

[N.H.] Rate case expenses may be disallowed if unreasonably incurred, undue in amount, or chargeable to other accounts. p. 91.

5. EXPENSES, § 89 — Rate case expense — Reasonableness — Surcharge — Water utility.

[N.H.] A water utility was authorized to recover its reasonably incurred rate case expenses through a rate surcharge over a five year period; however, the commission disallowed as unreasonably incurred that portion of the claimed rate case expense that was found to be attributable to inadequate bookkeeping by the utility. p. 91.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Lakes Region Water Company, Inc.; Joseph Rogers, Esq. of the Consumer Advocate Office on behalf of the residential ratepayers; and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

1. *Procedural History*

On December 1, 1988 Lakes Region Water Company, Inc. (Lakes Region or the Company) filed a notice of intent to file rate schedules and a request for a waiver of certain filing requirements. On December 7, 1988 the commission by letter of its Executive Director and Secretary granted the waiver of certain filing requirements.

On January 3, 1989, the Company filed its petition for temporary and permanent rates along with proposed rate changes, a new proposed tariff, testimony and exhibits to support the temporary and permanent rate requests. On January 3, 1989, the Company also sent direct notice to its customers of the rate filing. On January 23, 1989, the commission issued report and order no. 19,301 suspending the rate filing and establishing a hearing for temporary rates and procedural matters. On March 31, 1989, the commission held a duly noticed hearing on temporary rates and procedural matters. On April 19, 1989, the commission issued report and order no. 19,376 (74 NH PUC 124) establishing the Company's existing rates as temporary rates for the duration of this proceeding, said temporary rates to be effective as of the date of the order. Order No. 19,376 also established a procedural schedule for the pendency of the proceeding. On June 19, 1989 staff filed a motion to adjust the procedural schedule. On June 27, 1989 the Company filed an objection to the staff motion to adjust procedural schedule and July 7, 1989 the commission issued order no. 19,457 granting the staff's motion to adjust procedural schedule.

On July 28, 1989 commission Staff Members Lenihan and Lessels filed their direct testimony. Assistant Finance Director Newell filed her testimony on August 3, 1989. Throughout the proceeding the parties engaged in three rounds of discovery and met in consultation on September 7 and 8, 1989, for the purposes of narrowing issues and reaching a stipulation settling all the issues in the case.

II. *Position of the Parties*

Initially the Company had requested average rates for all its divisions; however, on September 20, 1989, the Company and staff entered into a settlement agreement which prevented any subsidization of one division by another. The Consumer Advocate did not enter into said settlement and contested certain issues at hearing.

Specifically, the Consumer Advocate contested $3,500 spent by the Company to defend certain franchise rights in the City of Laconia, an agreement to a step increase included in the stipulation and rate case expenses. Staff also objected to the rate case expenses filed by the Company and rate case expenses were not part of the stipulation.

The parties' positions on these issues were as follows: On the issue of rate case expense the Consumer Advocate took the position that rate case expenses should be shared by the shareholders and the customers as the shareholders received the benefit of the rate case. Staff and the Company took the position that previous case law in New Hampshire prevented such treatment of rate case expenses. The Consumer Advocate objected to the step adjustment in that the expenses for the step adjustment were not known and measurable. Staff and the Company took the position that the expenses are known even if they are not yet measurable. The Consumer Advocate apparently did not believe the $3,500 expense to defend franchise rights was includable in rate base pursuant to the chart of accounts.

II. *Stipulation between Staff and the Company*

Staff and the Company agreed to the following components for rates:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base	
Lakes Region	$200,683
Wentworth Cove, Pendleton Cove	58,103
WVG-Thornton, WVG-Moultonboro	11,539
Hidden Valley	22,466
Total Rate Base	$292,791
Overall Rate of Return	12.32%
Overall Revenue Requirement	$178,702

The components of the revenue requirements are as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Lakes Region	$114,138

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Wentworth Cove, Pendleton Cove	30,216
WVG-Thornton, WVG-Moultonboro	16,362
Hidden Valley	17,261
Community Pool	725

As was stated above, the Consumer Advocate objected to the calculation of revenues and rate base in Wentworth Cove, Pendleton Cove in that a certain franchise expense was included. Staff and the Company believed that Account 2302 of the Water Chart of Accounts specifically provided for the inclusion of such expenses. The commission will deal with this issue in its analysis section.

Concerning the stipulation of the parties, the Company agreed to file a compliance tariff altering its rates to reflect the above listed rate structure.

[1, 2] In regard to temporary rate recoupment the staff and the Company agreed that the Company shall be allowed to recover the difference between the revenue level finally approved and the revenue level provided for in the Company's temporary rates as authorized in order no. 19,376 (74 NH PUC 124) by a surcharge over a two-year period in accordance with RSA 378:29. The methodology and supporting data for recoupment of the difference between temporary and permanent rates will be submitted with the revised tariff pages reflected in the permanent rate increase It was further agreed that in the case of customers taking service after the effective date of the temporary rates, the surcharge will be prorated for such customers actual usage during the recoupment period.

Staff and the Company further agreed that on the one-year anniversary of this commission order, the Company is entitled to a step adjustment which will include addition to its fixed plant up to and including the anniversary date of the commission's order, increases in property taxes and increases in costs resulting from implementation of the Safe Drinking Water Act.

Staff and the Company further agreed that rate case expenses shall be recovered by a rate surcharge over a two-year period commencing as soon as practical after the effective date of the commission order.

III. *Commission Analysis*

[3] In regard to the $3,500 expenditure to protect the franchise in Wentworth Cove and Pendleton Cove the commission disagrees with the Consumer Advocate in that the chart of accounts for water utilities specifically states that, "[t]his account shall include ... necessary, reasonable expenses incident to procuring ... franchises, consents or ... approval." (see Chart of Accounts, Water §2302) thus, as the $3,500 was expended to protect a franchise area, this is a reasonable expenditure and should be amortized over twenty years as agreed to by the parties.

In regard to the step adjustment the commission believes that there are known expenses; however, they are not measurable at this time. The commission finds that the stipulation of the parties is reasonable. The commission further notes that in light of the rate case expense in this proceeding, a step adjustment is a more economical way to address these issues for small water companies than a full rate case for large increases in plant when looked at relative to the existing investment in plant.

In regard to the stipulation of the parties regarding rate case expenses and their surcharge over two years, the commission rejects the stipulation and notes that in light of the high level of expenditures made in this case, they shall be surcharged over a five-year period.

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[4, 5] In regard to the Consumer Advocate's motion that the shareholders and the ratepayers split the costs of rate case

expense, the New Hampshire Supreme Court held in *State v. Hampton Water Works*, 91 N.H. 278 (1941) that rate case expenses may be disallowed "if unreasonably incurred, if undue an amount, if chargeable to other accounts"; however, it is a proper operating expense unless found excessive and improper. *Hampton*, 91 N.H. at 296. Accordingly, the commission will follow this directive of the Supreme Court as applied to this case in the following manner.

In regard to the reasonableness of rate case expense the commission notes from the following colloquy in the transcript between Attorney Sullivan and Mr Lanning that some of the rate case expense was due to the inadequacy of the bookkeeping by the company. Beginning at line 5, page 43 of the transcript of the hearing held on January 10, 1990 concerning rate case expenses:

> Q. [I]f the bookkeeping procedures that you suggest are now in place or will not be in place., (sic) were in place when you entered into this regulatory exercise what percent of this regulatory effort would have been needed?
>
> A. It is hard for me to put a percentage on that and the only reason — well I guess a lot of — some of the up front costs might, where I was travelling back and forth to the Company and going through their books and records, you know, going through their ledger page by page and entering them into the computer, maybe some of the time involved in that could be eliminated, because, you know, when you have a report that actually provides that in a neat little package, then you wouldn't have to develop on — from a ledger on a line by line basis.
>
> Q. Could you arrive at a sense of what proportion of the time that represents?
>
> A. I feel like you are asking me to cut my own throat.
>
> Q. Please understand this is not intended to suggest that the time you spent was not productive time, that is not the framing of my question.

This line of questioning indicates that Mr. Lanning has included in the expense of preparing the rate case time used to go through the ledger on a line-by-line basis because the books were in the state they were in. To further support this position, PUC Auditor Richard Deres testified on Page 81, lines 21 through 22

> I found the General Ledger to be incomplete at best, to be lacking things which should have been there. and at page 82, lines 1 through 7

Adjusting closing entries, in one particular case one account the Accounts Receivable account had no posting whatsoever for the month of December. So, it was an account that eleven months worth of activity. It did not have a starting balance, it did not have an ending balance. It had January through November entries and that is all.

Mr. Deres was then asked at line 8 of page 82;

> Q. Given the conditions of the books as you saw them when you went to do the audit, if you had to prepare a rate case from those books, what situation would you have been

put in?

A. I would have found it most difficult.

Q. Why is that?

A. The incompleteness of the data and when we asked Mrs. Mason who was the only one available to us while we were there, I found that I could not get the questions I needed answered from her. I could not get the answer that I felt I should have.

That I had to pursue her to try to explain this. And after getting an explanation from her I would have to question her again, because it wasn't quite what I expected. It didn't appear right.

Finally, the testimony of Assistant Finance Director Newell at pages 113 and 114, lines 22 through 23 and 1 through 4. Mrs. Newell testified that:

[B]ecause the test year was an off year, requiring extra work in closing the accounts to come up with the test year and also due to

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the fact that Mrs. Mason's knowledge of bookkeeping but the main reason was the off year.

In response to a question asking her if she thought that rate case expenses should be lowered to some degree. In her prefiled testimony Mrs. Newell testified that rate case expenses for Mr. Lanning should be lowered to $5,000 of the estimated expense of $7,000 or a $2,000 reduction in expenses. Based on the above testimony of Mr. Deres, Mrs. Newell and Mr. Lanning the commission will disallow $2,000 of Mr. Lanning's rate case expenses[1](2) . The commission accepts the testimony of Mary Jean Newell and adjusts the rate case expenses charged by Mr. Lanning to $10,495 of his final bill of $12,495.

This does not reflect imprudency on the part of Mr. Lanning, but on the bookkeeping of the Company. Therefore, the stockholders of the Company should bear the costs of Mr. Lanning's time. In regard to this disallowance the record is replete with the inability of Lakes Region to keep competent books. The commission recommends that the Company's present bookkeeper receive intensive training or in the alternative the Company hire competent help in order to maintain proper books not only in order to lower rate case expenses in the future, but, to maintain the records of the Company as required by the commission's rules and regulations.[2](3)

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the annual revenues of the four divisions of Lakes Region Water Company shall become effective for all service rendered on or after the date of this order; and it is

FURTHER ORDERED, that the Company shall submit revised tariff pages reflecting the increased revenues as outlined in the foregoing report bearing this order number and effective date; and it is

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FURTHER ORDERED, that the Company submit a tariff page with methodology and supporting documentation specifying recovery of the difference between temporary and permanent rates; and it is

FURTHER ORDERED, that the Company shall surcharge rate case expenses over a five-year period in accordance with the foregoing report; and it is

FURTHER ORDERED, that the Company shall file an accounting of the rate case expense surcharge on a yearly basis; and it is

FURTHER ORDERED, that the Company shall be allowed a step increase to reflect additions to its fixed plant up to and including the anniversary date of the commission's order, increases in property taxes and increases in costs resulting from the Safe Drinking Water Act; however, each of these additions shall be suspended pending review by the staff and the commission as to reasonableness, prudency and usefulness. Furthermore, the Company is placed on notice that expenditures required by the Department of Environmental Services implementing the Safe Drinking Water Act shall be subject to review to determine least cost alternatives for complying with said Act; and it is

FURTHER ORDERED, that the commission staff shall conduct an audit of the Company's books on or about the one year anniversary of this order to determine whether or not the Company is keeping its books in compliance with commission record keeping requirements and in a competent manner.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1990.

FOOTNOTES

[1]Although Mr. Lanning testified that he spent considerable time correcting the Company's books and that said expenditures were not included in rate case expenses, (T.p. 45) the testimony of Mr. Deres indicates the books were still in poor condition after Mr. Lanning's work.

[2]The commission further notes from Docket DR 81-203 that similar problems have occurred in previous rate cases regarding the books of the Company.

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75 NH PUC 94

Re Northern Utilities, Inc. — Salem Division

DR 89-179
Order No. 19,705

New Hampshire Public Utilities Commission

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February 5, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Rate revision — Gas distribution utility.

[N.H.] A gas distribution utility was authorized to increase its cost of gas adjustment rate where projected undercollections exceeded 10% of total anticipated gas costs; the commission found that the increase in gas costs was caused by higher than anticipated demand which resulted in the need to purchase high cost spot market gas to supplement firm contract deliveries.

APPEARANCES: For Northern Utilities, Inc. — Salem Division, Elias G. Farrah, Esquire; Michael W. Holmes, Esquire for the Consumer Advocate's Office; George R. McCluskey and James J. Cunningham for the staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On January 16, 1990, Northern Utilities, Inc. — Salem Division (Northern or the Company) a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission One Hundred Forty Fifth Revision Page 15 of N.H.P.U.C. No. 7-Gas providing a revision to the current 1989/90 approved Cost of Gas Adjustment (CGA) for effect February 1, 1990. The proposed CGA rate is $.2296 per therm, an increase of $.1016 per therm from the currently effective rate of $.1280 per therm.

COMPANY FILING

Gas Supplies

The above increase was caused by a higher than anticipated demand during late November and December which resulted in the need to purchase high cost spot market gas to supplement the firm contract deliveries. In addition to firm contract propane at $.3423 per gallon, one truckload of spot liquid propane was delivered in December, 1989 at $.8421 per gallon and three truckloads were delivered in early January, 1990 at $.8340 per gallon. The infusion of these higher cost supplies resulted in an increase to the forecasted average cost of propane for the December, 1989 through April, 1990 time period.

Trigger Mechanism

Because of this increased cost, the Company would undercollect by $17,202 if a mid-course correction were not approved. This undercollection is 11.5% of the total anticipated cost of $150,193 for the November through April time period. Therefore, the undercollection exceeds the 10% trigger.

Issues

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During the hearing the following issues were discussed: cost of liquid propane spot purchases, and effective storage tank capacity.

Spot Propane Purchases

Northern filed its tariff revisions for the Salem and New Hampshire divisions on January 16, 1990 and on January 18, 1990 respectively. Both proposed tariff revisions reflected the additional costs incurred as a result of liquid propane spot purchases. However, the cost of spot purchases for the Salem division was

Page 94

significantly higher than the New Hampshire division.

The Company explained that spot prices vary due to a number of factors: vendor selections, timing of order and quantity ordered. Regarding vendor selection, the Company placed orders with a number of vendors because of the general supply crisis. Gas Supply, Inc. was the source of all spot deliveries made to the Salem division. However, for the New Hampshire division, Gas Supply, Inc. as well as other vendors were selected.

Regarding the quantity and timing of orders, the Company explained that although the same purchasing department placed the orders for both divisions, the date of the orders were different because of the unique inventory levels of each division.

Effective Storage Tank Capacity

In a related matter, the Company explained that due to New Hampshire safety code requirements, the storage tanks can be filled to only 85 percent of total capacity. In addition, it stated that it is standard industry practice for carriers to deliver only full truckload shipments. This practice is followed to minimize transportation costs. Since a full truckload is roughly 8500 to 9500 gallons, the storage tanks, according to the Company, have to be sufficiently depleted before a delivery can be made. This results in delays in attaining full storage capability and, in a rising spot market, increased gas costs.

COMMISSION ANALYSIS

Based on the foregoing, we find that the proposed revision to the CGA is reasonable and we will accept the Company's proposed CGA.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that One Hundred Forty Fifth Revision page 15 of N.H.P.U.C. No. 7-Gas, issued January 16, 1990, providing for a cost of gas adjustment of $.2296 per therm be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1%

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according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1990.

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NH.PUC*02/05/90*[50893]*75 NH PUC 95*Claremont Gas Corporation

[Go to End of 50893]

75 NH PUC 95

Re Claremont Gas Corporation

DR 89-185
Order No. 19,706

New Hampshire Public Utilities Commission

February 5, 1990

ORDER rejecting the proposed cost of gas adjustment tariff of a gas distribution company and requiring the company to submit a revised tariff.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement practices — Purchases from affiliate — Competitive bidding — Propane distribution company.

[N.H.] A propane distribution company that failed to justify its practice of relying on a non-regulated affiliate and the spot market for all of its propane supplies was directed to institute a competitive bidding process for choosing its propane suppliers and to include the details of each bid in its next cost of gas adjustment filing. p. 96.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Cost of gas adjustment rate — Lost and unaccounted for gas — Propane distribution company.

[N.H.] A propane distribution company

Page 95

was directed to revise its cost of gas adjustment filing to reflect a correction to its computation of lost and unaccounted for gas. p. 97.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Cost elements — Plant heat — Propane distribution company.

[N.H.] Costs associated with gas used by a propane distribution company to heat plant buildings were excluded from recovery through the company's cost of gas adjustment rate. p. 97.

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APPEARANCES: For Claremont Gas, Joseph Broomell; Consumer Advocate, Michael Holmes, Esquire; Staff, George McCluskey and Stuart Hodgdon.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On January 11, 1990, Claremont Gas Corporation, (the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission 127 Revised, Page 12-2 Tariff, N.H.P.U.C. No. 9-Gas. (Exhibit 1-A). Said tariff provided for a 1989/90 Mid Winter Cost of Gas Adjustment (CGA) for effect February 1, 1990. The proposed cost of gas adjustment is a surcharge of $0.2607 per therm, before the franchise tax. This is an increase of $0.3372 per therm over the current effective rate of $(0.0765). The mid-course increase was deemed necessary to avoid an undercollection of $80,520 during the current winter period.

An order of notice was issued setting hearings for January 26, 1990. It was further ordered that a copy of the order of notice be published in a local newspaper.

Due to scheduling problems on January 26, 1990, Claremont's hearing was delayed to January 30, 1990.

Issues

During the hearing the following issues were addressed: a.) Claremont's propane purchasing policy; b.) the commission's seven day storage requirement rule; c.) computational errors in the Company's filing; d.) lost and unaccounted for gas study.

COMMISSION ANALYSIS

Propane Purchasing Policy

[1] Claremont is an affiliate of Synergy Corporation, a non-regulated propane retailer. All propane purchased by Claremont is obtained from Synergy who in turn obtains the product from the Texas Eastern terminal at Selkirk, New York.

The utility operation has about 820 customers whereas the N.H. retail operation has about 2,500 customers. Two interconnected 30,000 gallon storage tanks are used to store product destined for utility customers while one 30,000 gallon tank is rented from the utility to store product for the retail operation.

Mr. Broomell was questioned by staff and the Consumer Advocate on the Company's practice of relying only on Synergy and on the spot market for propane purchases. Mr. Broomell explained that although Claremont's requirements are relatively small it can obtain attractive pricing terms by using the large volume purchasing power of its parent. He also believes that through Synergy, Claremont obtains a higher degree of supply security than it would get elsewhere. However, during cross examination, Mr. Broomell admitted that the Company had experienced supply difficulties this past winter.

In support of the Company's reliance on spot purchases, Mr. Broomell stated that during tight supply periods firm supply contracts are often not honored because of the inclusion of force

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majeure provisions. Nevertheless, he did agree that the contract volumes would eventually be delivered at the contract price. The commission finds no evidence that the Company has complied with our previous decision on this issue (see Report and Order No. 19,076 [73 NH PUC 196]). Therefore, we will require the Company to institute a competitive bidding process

and to include the details of each bid in its next CGA filings.

The Consumer Advocate asked if Claremont had compared the spot prices from Synergy with prices from other suppliers. Mr. Broomell responded that the Company had performed no such study.

Staff asked Mr. Broomell if Synergy would be willing to enter into a six month fixed price, fixed volume contract with Claremont for the winter period. Mr. Broomell undertook to provide an answer to staff's question and file the response as Exhibit 2-a in this proceeding.

Seven Day Storage Requirement Rule

Because of difficulties in obtaining supplies from Synergy, Mr. Broomell stated that Claremont fell below the 7 day storage requirement on a number of days in December, 1989. The Consumer Advocate asked the witness whether he thought the 7 day requirement should be reinforced in order to improve supply security. Mr. Broomell responded that although the Company's storage capacity was far in excess of the 7 day requirement, if the product is not available customers will not feel more secure.

Computational Errors

[2, 3] An error in computing the CGA was detected by the commission's Finance Department. The Company had projected gas sales for February, March and April equal to 184,680 therms, which according to schedule A, included 8% lost and unaccounted for gas. The correct figure should have been 171,000 therms. We will require the Company to revise its filing to reflect this correction.

Errors were also found on the first additional page titled "Cost of Gas Adjustment: Actual Winter 89/90". In determining gas cost revenues a CGA rate of $(0.0773) was used instead of $(0.0765). The former rate is adjusted for franchise tax and therefore over estimates the revenues available to cover gas costs.

In addition, when computing total gas costs the Company omitted to include lost and unaccounted gas and hence underestimated costs. However, the Company did include the costs associated with gas used to operate plant. Specifically gas was used to heat plant buildings and for the Company's Calorimeters. We will require the Company to amend its filing to include lost and unaccounted for gas and calorimeter gas. However, we find that the gas cost expenses characterized by the Company as plant heat are rate case expenses and therefore should be excluded from recovery through the CGA.

October Commission Decision

During the October hearing Claremont was required to provide the Commission, per order no 19,611 (74 NH PUC 447), with two exhibits which have now been received. Exhibit #2 is an

analysis that details the propane inventory level for the utility only. Exhibit #3 is a study that purports to determine the correct level of lost and unaccounted for gas for Claremont.

It was also noted that a previous fine, for past defaults by Claremont, had not been paid to the PUC. Mr. Broomell testified that he had authorized payment and was later able to confirm that the check was mailed February 1, 1990.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that 127th Revised, Page 12-2, Superceding 126th Revised Page 12-2, N.H.P.U.C. No. 9-Gas tariff be, and hereby is, rejected; and it is

FURTHER ORDERED, that Claremont submit a revised tariff consistent with the commission's findings as detailed in the attached Report; and it is

FURTHER ORDERED, that Claremont file the revised tariff on or before February 16, 1990.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1990.

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NH.PUC*02/05/90*[50894]*75 NH PUC 98*Bretton Woods Telephone Company

[Go to End of 50894]

75 NH PUC 98

Re Bretton Woods Telephone Company

DR 89-182
Order No. 19,708

New Hampshire Public Utilities Commission

February 5, 1990

ORDER adopting a proposed procedural schedule for review of a petition by a telephone carrier for a permanent increase in rates.

RATES, § 640 — Procedural schedule — Rate petition — Telephone carrier.

[N.H.] The commission adopted a proposed procedural schedule for review of a petition by a telephone carrier for a permanent increase in rates; it was found that the proposed schedule would give the commission adequate time to investigate the petition and was, therefore, in the public interest.

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APPEARANCES: For Bretton Woods Telephone Company, Margaret H. Nelson, Esquire; Eugene Sullivan, III, Esquire; Leszek Stachow, Economist; ChristiAne Mason, Examiner; Kate Bailey, Engineer for Commission Staff.

By the COMMISSION:

REPORT

On November 21, 1989 Bretton Woods Telephone Company ("Bretton Woods"), a public utility engaged in the business of supplying telephone service in the State of New Hampshire, filed revised tariff pages providing for an increase in rates of $61,011.

Order No. 19,647 dated December 21, 1989, established a hearing on January 29, 1990, on procedural matters regarding the proposed permanent rate increase. The parties met on January 29, 1990 to discuss a procedural schedule. As a result of the meeting the parties were able to reach agreement on the procedural schedule relative to permanent rates. Bretton Woods also proposed to file for a temporary rate increase at it's existing current rates, Staff concurred that it would be appropriate to address those dates in this procedural schedule.

On January 29, 1990 the duly noticed public hearing was held by the Commission to consider the proposed procedural schedule. Margaret H. Nelson, Esquire for Bretton Woods summarized the schedule agreed to by the parties. As a result of discussion, the parties proposed the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Temporary Rate Filing	Feb. 01, 1990
Hearing on Temporary Rates	Feb. 22, 1990
Data Requests of petitioner	Feb. 23, 1990
Data responses of petitioner	Mar. 16, 1990
Follow up requests of petitioner	Apr. 20, 1990
Follow up responses of petitioner	May 04, 1990
Intervenor testimony due	May 18, 1990
Staff testimony due	June 01, 1990
Data requests of intervenors	June 01, 1990
Data requests of staff	June 15, 1990
Data responses of intervenors	June 15, 1990
Settlement Conference	June 28-29, 1990
Data responses of staff	July 06, 1990
Settlement Conference (alternate)	July 09-10, 1990
Rebuttal testimony by all parties	July 13, 1990
Hearing	July 13, 1990
Hearings	July 17-19, 1990

This schedule will give the commission adequate time to investigate the petition. It is, therefore, in the public interest and approved.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the proposed procedural schedule be and hereby is adopted for the balance of this proceeding.

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By order of the Public Utilities

Commission of New Hampshire this fifth day of February, 1990.

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NH.PUC*02/07/90*[51691]*74 NH PUC 63*Raymond Historical Society v. New England Telephone and Telegraph Company

[Go to End of 51691]

74 NH PUC 63

Raymond Historical Society
v.
New England Telephone and Telegraph Company

DC 88-153
Order No. 19,317

New Hampshire Public Utilities Commission

February 7, 1990

ORDER dismissing a complaint by a customer of a local exchange telephone carrier alleging improper rate classification.

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1. RATES, § 545 — Telephone — Classification of business or residence — Local exchange carrier.

[N.H.] To be eligible for a residence service rate, the service must be provided to a residence; accordingly, it was appropriate for a local exchange telephone carrier to bill a nonprofit social organization for alarm service provided to the building housing the society under the LEC's business, rather than its residence service tariff. p. 65.

2. RATES, § 545 — Telephone — Classification of business or residence — Local exchange carrier.

[N.H.] A local exchange telephone carrier was directed to add the following language to its residence service tariff: residence service is that service which is provided to a residence. p. 65.

3. RATES, § 553 — Telephone — Alarm service — Local exchange carrier.

[N.H.] Because alarm systems may impose less intensive use of the telephone network than do either businesses or residences, a local exchange telephone carrier was directed to file a proposed tariff for a cost based rate for alarm service. p. 65.

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APPEARANCES: James Connery, Tim Lewis, and John Hoar, Jr. *Pro se* on behalf of the Raymond Historical Society; Holly C. Laurent, Esq. on behalf of New England Telephone and Telegraph Company; and Mary Anne Lutz, Constance Colter, and Robert Duggan on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the Raymond Historical Society's (Society) complaint on rates charged by New England Telephone and Telegraph Company (NET). This report and order sets forth a procedural history, the positions of the parties, the findings of fact and the commission analysis.

I. *Procedural History*

On August 23, 1988, the Raymond Historical Society requested a hearing, pursuant to RSA 365:1 *et seq.*, on the question of rates charged by NET. The Society has a building located at 1 Depot Road, Raymond, New Hampshire. The complaint essentially alleges that NET should charge the Society a residential rate instead of a business rate. The commission opened the captioned docket to investigate the complaint. On October 11, 1988, the commission's Executive Director and Secretary notified the Society that a hearing would be held on November 3, 1988. The hearing was subsequently rescheduled for November 28, 1988.

At the hearing on the merits, the attorney for NET asked permission to file a brief one week after the receipt of the transcript. NET filed a brief on January 9, 1989.

II. *Positions of the Parties*

A. New England Telephone

NET takes the position that NET is required to charge the Society the business rates under its current tariff. It argues that since the

Page 63

service is provided to a business location the rate must be a business rate. NET contends that the Society is not a residential customer because no one resides at the historical society. It contends that the terms "for social or domestic purposes" in its tariff are intended to be applied as they relate to a residential household.

The service, NET contends, is furnished for the sole purpose of providing alarm service, a use that it argues is not a social or domestic use. In addition, it argues, since the listing is for the society and not for an individual, it is not a residential service.

NET argues that public policy supported the adoption of residential rates priced below business rates and below cost to promote universal service. It argues that if the commission were to determine that the Society qualified for residential service, all non-profit societies and small businesses would want a residential rate. Thus, it averred, NET would lose revenues, possibly causing it to be unable to meet its revenue requirement, and ultimately forcing it to increase its rates to all customers.

B. Raymond Historical Society

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The Society contends that they should not be charged the business rate because their organization meets the definition of a residential user under the tariff. Raymond contends that it is a "social organization" and, therefore, should not be charged a business rate.

C. Staff

The staff did not take a position. It presented the complaint and asked questions intended to make a more complete record.

III. *Findings of Fact*

The Raymond Historical Society is a non-profit corporation organized for social and educational purposes. The Society does not have any paid employees. It does not advertise; however, it does provide public notices of its meetings. It meets about eight times per year.

The Society raises about $1,500 to $2,000 total revenue per year through donations and fund-raisers to pay its utility bills and insurance premiums. The Society meets and stores artifacts in its building. No one lives there. The building is open to the public for two hours on Saturdays.

The Society has installed a telephone line that is used solely for the purpose of connecting an alarm system to the local police department. The purpose of the alarm is to protect the building and its contents.

The alarm is a motion detector that activates a digital communicator. When the alarm is activated, it seizes a line, dials up a receiver in the police station, and gives out a series of tones. These tones represent certain pieces of information which alert the police to possible break-ins, vandalism, etc. When the receiver obtains all the information, it shuts off through a series of tones.

The telephone dialer that is used in the system cannot be used to generate outgoing or incoming calls using a standard telephone. This type of alarm system is used for both businesses and residential applications.

New England Telephone has provided the same voice grade line that it provides to any basic service customer. The Society could use the line for a standard telephone if it were to take the telephone out of the control panel and replace the jack that is on it with a standard telephone jack.

The society does not have a telephone number listed in the yellow or white page directories. It does not have telephone lines for the purpose of allowing incoming telephone calls.

The tariff sections applicable to this complaint are as follows.

1. NHPUC 75 — Exchange and Network Services, Part A — Section 5, p.1, original (effective January 1, 1983).

2. NHPUC 75 — Supplement No. 22, p. 1, original (effective June 9, 1985).

Part A — Section 5, p. 1, original 5.1.1.A. provides that

> Service is provided on a monthly basis and is available at either residence or business rates: Residence service rates apply if the service is used primarily for social or

domestic purposes; business service rates apply if the service is used primarily or substantially for business purposes, or if the service is furnished at a business location.

Supplement No.22, P. 1, Original, 5.1.2.E. provides that

The use of residence exchange service is restricted to the customer and members of the household.

NET stated that its service representatives use an in-house document, known as its Tariff Administrative Practice, to help them determine whether business or residential rates apply. We have not approved the Tariff Administrative Practice. Therefore, it does not have the force of law and is not of any legal significance in this case.

If the commission finds that the business rate applies, the rate for service will be $36.43. If the commission finds that the residence rate applies, the rate will be $12.94. NET did not provide any evidence to support its projection that it might not meet its revenue requirement if the commission determines that non-profit social organizations qualify for the residence rate.

NET treats all historical societies and non-profit corporations as businesses. NET does not have a rate specifically for alarm service.

IV. *Commission Analysis*

[1] As a result of our analysis of the applicable tariff provisions, we find that, since an alarm tariff has not been established, the Society should be taking service at business service rates. We further find that it is appropriate for the company to file a proposed tariff for a cost-based rate for alarm systems.

At present NET's tariff describes two types of service: "residence service" and "business service." A residence is where a person lives. The mere title "residence service" implies that the service is provided to a residence. We will interpret the tariff to mean that one cannot have residence service unless the service is provided to the residence. Thus, we do not need to decide whether the society is a business. Since the service to the society is not provided to a residence, it is not residence service.

Sometimes although a customer may have service provided to his or her home, he or she may be using the telephone for a business purpose. Thus, NET has incorporated wording in its tariff to distinguish between service received at one's home that is used primarily for social or domestic purposes and service received at one's home that is intended primarily and substantially for business purposes. The intent of this provision was not to imply that, because one uses a telephone line outside of a residence for social purposes, a residence rate should apply.

[2] While we think the tariff language may be understood to require business rates in this case, the plain language is not clear on its face, creating different interpretations in this case. Therefore, we will require NET to include the following language in its tariff: "residence service is that service which is provided to a residence."

[3] However, we also question the fact that there is no separate tariff provision for service provided to alarm systems. While we do not have specific information about the usage of the

telephone network by alarm systems, it would appear that they may impose less intensive use of the network than do either businesses or residences. Therefore, we will require NET to analyze the relevant usage and cost data and file a proposed tariff for cost based rate for alarm systems.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof, it is hereby

ORDERED, that the complaint of the Raymond Historical Society against New England Telephone & Telegraph Company (NET) is dismissed; and it is

FURTHER ORDERED, that NET file a proposed tariff for a cost based rate for alarm systems.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1989.

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NH.PUC*02/09/90*[50895]*75 NH PUC 99*Nuclear Emergency Planning

[Go to End of 50895]

75 NH PUC 99

Re Nuclear Emergency Planning

DE 89-200
Order No. 19,709

New Hampshire Public Utilities Commission

February 9, 1990

ORDER correcting a prior order that assessed costs of nuclear emergency planning against the nuclear operations division of an electric utility. For prior order, see 75 NH PUC 41, supra.

ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Electric utility.

[N.H.] The commission corrected a prior order that assessed costs of nuclear emergency planning against the nuclear operations division of an electric utility to include inadvertently omitted costs of direct procurement of certain replacement equipment.

By the COMMISSION:

ORDER

WHEREAS, on January 22, 1990, I issued Order No. 19,676 (75 NH PUC 41) certifying for assessment against the New Hampshire Yankee Division of Public Service Company of New

Hampshire pursuant to RSA 107-B $319,526 for local Radiological Emergency Response Plans (RERP) plant administration, training and exercises; $118,785 for the direct provision of current expenses services; and the direct provision of equipment as specified in the report accompanying the order; and

WHEREAS, Order No. 19,676 inadvertently did not assess against the New Hampshire Yankee Division of Public Service Company of New Hampshire the direct procurement of certain replacement equipment specified in the worksheets of the New Hampshire Office of Emergency Management; and

WHEREAS, the worksheets of the New Hampshire Office of Emergency Management specify that the Director has approved the following for direct procurement:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]


CommunityQuantity ApprovedEquipment Approved

Manchester 35 Motorola Porta-Pocket Chargers
Newfields   1 Base Station Radio
Newton     15 Motorola Speaker/ Carphones
                for MT500N portable radios
Salem       1 Installation of emergency generator
                located at Emergency Operations Center
Seabrook    1 Six-unit Battery Tri-analyzer
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;and

WHEREAS, after review, I find that the direct assessment of the aforementioned equipment provides the subject municipalities with the replacement equipment to fulfill their responsibilities under the New Hampshire RERP and, accordingly, is related to preparing the plan and providing equipment and materials necessary to implement it; it is hereby

ORDERED, that I certify the direct procurement by the New Hampshire Yankee Division of Public Service Company of New Hampshire of the replacement equipment specified above pursuant to RSA 107-B.

By order of the Chairman of the Public Utilities Commission of New Hampshire this ninth day of February, 1990.

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NH.PUC*02/13/90*[50896]*75 NH PUC 100*Public Service Company of New Hampshire

[Go to End of 50896]

75 NH PUC 100

Re Public Service Company of New Hampshire

DR 89-212
Order No. 19,712

New Hampshire Public Utilities Commission

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February 13, 1990

ORDER denying a request by an electric utility for a separate docket to consider a proposed change to the methodology for calculating the short term avoided energy rate paid to small power producers.

COGENERATION, § 25 — Rates — Short-term avoided energy rate — Method of calculation.

[N.H.] The commission denied a request by an electric utility for a separate docket to consider a proposed change to the methodology for calculating the short term avoided energy rate paid to small power producers, instead electing to consider the matter in a separate proceeding within the utility's current energy cost recovery mechanism (ECRM) docket.

By the COMMISSION:

REPORT

I. *Procedural History*

The staff filed testimony in this docket requesting a change to the methodology for calculating the short term avoided energy cost rate paid to Small Power Producers (SPPs). Public Service Company of New Hampshire (PSNH) requested that the issue be considered in a separate docket. At the ECRM hearing on December 28, 1989, the parties agreed to defer this issue, and the commission subsequently set a date for hearing of March 14, 1990. Order Nos. 19,659 (75 NH PUC 556) and 19,665 (75 NH PUC 9). In its report the commission provided the parties an opportunity to file comments by January 12, 1990 on whether this issue should be considered under a separate docket.

The commission's records indicate that PSNH's comments were filed out of time; nevertheless, we will waive this lapse in the interest of efficiently and effectively disposing with the underlying issue.

II. *PSNH's Argument*

In support of its request for a separate docket for consideration of the SPP methodology charge, PSNH offers the following arguments:

1. The commission has repeatedly resisted attempts to change the ECRM methodology;

2. The existing methodology for computing short-term avoided cost rates was the product of a delicate balance of competing interests achieved through settlement in DR 86-41 and should not be changed unilaterally or on a piecemeal basis, and was entered into by persons who are not parties to the current ECRM proceeding;

3. The commission's approval of PSNH's Least Cost Plan, which described the procedure for establishing short term rates during ECRM proceedings as requiring that methodologies be "held constant", is controlling;

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4. Any proposed change to the short term methodology should be noticed to the parties in DR 86-41, and in addition to all SPP's selling power to PSNH.

III. *Commission Analysis*

We have considered PSNH's arguments and have determined that the separate proceeding in this docket previously scheduled for March 14, 1990 is appropriate and reasonable. In support hereof, we will address PSNH's arguments in turn.

First, we agree with the Company that the commission has steadfastly resisted attempts to

change the ECRM methodology during ECRM hearings, particularly in recent years. However, we do not construe the proposed change to SPP methodology as a change to ECRM methodology.

Second, we are mindful of the balancing of interests inherent in any settlement agreement, including the agreement in DR 86-041. Since PSNH was not a party to that settlement agreement, it is proper to infer that the balance struck therein was not satisfactory to PSNH *ab initio*. Nevertheless, in the upcoming proceeding, PSNH (as well as other parties) may present persuasive analysis either to maintain or shift the balance of risks and benefits inherent in that settlement agreement. The existence of this issue, however, does not compel a separate docket; such analysis can be presented in the context of the currently contemplated proceeding.

Third, it is not appropriate to infer that the commission's "approval" of PSNH's Least Cost Plan also constitutes approval of the passage referenced by PSNH in its Least Cost Plan with regard to the established procedure for holding SPP methodology constant during ECRM proceedings. There is nothing expressed or implied in the commission's report and order in this connection. Beyond this, the commission's "approval" should be more aptly characterized as approval of the Company's least cost planning process.

Finally, in our report and order no. 19,659 (74 NH PUC 556), we required PSNH to serve a copy of that report and order on all SPP's currently supplying power to PSNH and to provide notice to the public by publication by January 12, 1990. We also note that the Biomass Producers are represented in the current ECRM proceeding. Therefore, we have in fact already ordered PSNH to provide the notice that PSNH cites the lack of in its request.

Having responded to and disposed of PSNH's arguments for a separate docket we conclude that the duly noticed separate proceeding in this docket is appropriate and reasonable. We do not see how any useful purpose would be served by separately docketing this matter at this point.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a party hereof; it is hereby

ORDERED, that PSNH's request for a separate docket to consider SPP Rate Methodology change be, and hereby is, denied; and it is

FURTHER ORDERED, that the proposed methodology change be heard as presently

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scheduled in this docket.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1990.

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[Go to End of 50897]

75 NH PUC 101

Re Northern Utilities, Inc.

DR 89-170
Order No. 19,713

New Hampshire Public Utilities Commission

February 13, 1990

ORDER approving a stipulation resolving a dispute over whether a natural gas distribution company should be allowed to earn a return on its investment in distribution facilities constructed to serve a special contract customer.

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1. RETURN, § 22 — Reasonableness — Incentives — Ingenuity — Performance — Benefit to ratepayers.

[N.H.] The commission is not opposed to incentives for utility ingenuity and performance, but any such incentive should be linked to benefits received by firm ratepayers. p. 103.

2. VALUATION, § 234 — Property included — Gas distribution company — Facilities to serve special contract customer.

[N.H.] The commission approved a stipulation resolving a dispute over whether a natural gas distribution company should be allowed to earn a return on its investment in distribution facilities constructed to provide interruptible

service to a special contract customer; the stipulation links return on investment to a sharing of the actual margins and benefits of the contract with firm ratepayers. p. 103.

3. REVENUES, § 9 — Special contract services — Margin sharing — Natural gas distribution company.

[N.H.] The right of a natural gas distribution company to earn a return on its investment in distribution facilities constructed to provide interruptible service to a special contract customer was linked to a sharing of the actual margins and benefits of the contract with firm ratepayers. p. 103.

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4. RATES, § 381 — Natural gas — Special factors — Interruptible sales — Special contract service.

[N.H.] The commission has a responsibility to ensure that firm ratepayers do not pay for any imprudent or wasteful expenditures; accordingly, the right of a natural gas distribution company to earn a return on its investment in distribution facilities constructed to provide interruptible service to a special contract customer was linked to a sharing of the actual margins and benefits of the contract with firm ratepayers. p. 103.

By the COMMISSION:

REPORT

I. *Procedural Background*

On September 25, 1989, Northern Utilities, Inc. ("Northern") filed a petition for expedited approval of two special interruptible gas sales contracts with Gold Bond Building Products ("Gold Bond"). The first contract between Northern and Gold Bond relates to Gold Bond's dryer operation and the second contract governs Gold Bond's mill operation.

As filed on September 25 and subsequently modified, the contract relating to the dryer operation is divided into three phases. During the initial phase, Gold Bond would receive a discount of up to $1.59 per MMBTU off the price of its alternate fuel, No. 2 fuel oil, subject to a floor price of $0.25 per MMBTU above Northern's marginal cost of gas (Granite State Transmission Co.'s CD-2 commodity rate adjusted for losses and taxes). The purpose of the first phase is to allow Gold Bond an opportunity to recover its investment necessary to obtain the capability to burn gas. As we interpret the contract, Gold Bond only recovers its investment to the extent that the price of its alternate fuel is above the floor price up to a maximum of $1.59 per MMBtu. Moreover, to the extent that the margins exist above the floor price during any period of the contract and exceed $1.59 per MMBtu, those margins, in addition to the $0.25 per MMBtu adder, flow to firm ratepayers.

In the second phase of the dryer contract as proposed, Gold Bond would pay to Northern its equivalent No. 2 fuel price and Northern would recover its distribution system investment and return thereon, to the extent that margins exist above the above-mentioned floor price.

In phase three, Gold Bond would pay for gas to Northern during the remainder of the contract under terms similar to phase one, except that the discount, if any, would be limited to a maximum of $0.59 per MMBtu.

On November 6, 1989, the commission issued Report and Order No. 19,602 (74 NH PUC 434) which approved both the dryer and mill contracts, but conditioned its approval of the dryer contract, *inter alia*, upon a preclusion of Northern retaining any margin for the purpose of earning a return on its distribution investment in phase two.

On November 27, 1989, Northern moved that the commission rehear its report and order no.

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19,602. Northern requested that the commission schedule a hearing and/or oral argument and specifically requested a rehearing in regard to the denial of any return on its investment during the period its distribution investment is unamortized in phase two.

On December 27, 1989, the commission issued report and order no. 19,653 (74 NH PUC 492) in which it denied Northern's request for oral arguments but permitted Northern to file additional written arguments in regard to the issue of why the commission should allow a return on Northern's unamortized investment. Subsequent to that order, the staff and the Company have entered into discussions regarding this issue and agreed to resolve the matter through a Stipulation and Agreement executed and dated January 17, 1990.

II. *Proposed Stipulation and Agreement*

The proposed Stipulation and Agreement of the staff and Northern provides, in essence, as follows:

1. During the second phase of the dryer contract Northern will be allowed to retain all margins above the floor price until it recovers its actual investment in providing service to Gold Bond, excluding any return on investment.

2. In the third phase of the dryer contract, all margins earned by Northern above the marginal cost of gas (including loss and tax adjustments) will be split evenly between Northern and its firm ratepayers until such time as Northern recovers the return on its unamortized investment accrued during phase two.

3. An estimate of Northern's return on its unamortized investment from the time it is made to the time the investment is amortized in phase two is shown on Exhibit A to the Stipulation and Agreement. This estimate is based on current estimates of Gold Bond's investment costs, Northern's investment costs, oil prices, gas prices and Gold Bond's future use of gas. Northern must seek additional commission approval to recover a return above the amount of $41,888 shown on Exhibit A.

III. *Commission Analysis*

[1-4] The commission will approve the proposed Stipulation and Agreement based upon our finding that it is a just and reasonable resolution of the issues presented, subject to the following analysis and comments.

In our report and order no. 19,602 we stated that we were not opposed to incentives for utility ingenuity and performance, but that we believed that any such incentive should be linked to benefits received by firm ratepayers. The proposal by the parties that Northern's return on its investment be linked to a sharing of the actual margins and benefits with firm ratepayers in phase three meets our stated policy goal.

While the Stipulation and Agreement provides that Northern be allowed an opportunity to recover all of its "actual" distribution investment incurred to serve Gold Bond, we note that our ability to approve this provision is constrained by our responsibility and duty to ensure that firm ratepayers directly or indirectly do not pay for any imprudent or wasteful expenditures. We do not infer that it is the proposal and intent of the parties for the commission to do otherwise. We also note that not only does Northern expect to recover its investment and returns thereon associated with this contract; in addition, the flow-back of unretained margins during the term of

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the contract and all margins thereafter will make Northern's firm rates more competitive and its business franchise stronger. This undoubtedly will benefit its shareholders. Consequently, we believe our policy for providing the utility an opportunity to receive incentive payments in lieu of a guaranteed return is appropriate and in the public interest.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Stipulation and Agreement be, and hereby is, approved retroactively effective as of February 1, 1990; and it is

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1990.

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NH.PUC*02/14/90*[50898]*75 NH PUC 104*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50898]

75 NH PUC 104

Re Public Service Company of New Hampshire/Northeast Utilities

DR 89-244
Order No. 19,714

New Hampshire Public Utilities Commission

February 14, 1990

ORDER clarifying the scope of a proceeding to determine whether the acquisition of Public Service Company of New Hampshire by Northeast Utilities would be in the public good and whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of PSNH should be approved as just and reasonable. For prior order, see 75 NH PUC 30, supra.

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1. BANKRUPTCY — Chapter 11 reorganization — Electric rate agreement — Reasonableness.

[N.H.] To determine whether the public good would be served by the reorganization plan for acquisition of Public Service Company of New Hampshire (PSNH) by Northeast Utilities and by the implementation of an electric rate agreement for resolving Chapter 11 bankruptcy proceeding of PSNH, the commission must first determine whether the resulting rates would be just and reasonable; state statute 362-C requires the commission to determine the justness and reasonableness of rates as part of its decisional process in determining the public good and the state supreme court has held that the commission must prescribe a reasonably probable zone of reasonableness within which just and reasonable rate levels may be prescribed. p. 105.

2. BANKRUPTCY — Chapter 11 reorganization — Electric rate agreement — Reasonableness.

[N.H.] The commission is constrained from finding that the plan of reorganization for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire will serve the public good independently of whether or not the rates required under the electric rate agreement are just and reasonable or of consideration of the public policy impact of resolution of the bankruptcy. p. 105.

3. BANKRUPTCY — Chapter 11 reorganization — Electric rate agreement — Reasonableness.

[N.H.] In determining whether rates established by an electric rate agreement for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire are just and reasonable, the commission intends to balance the interests of investors and ratepayers and consider the traditional components of the rate-making algorithm — operating expenses, rate base, and rate of return. p. 105.

4. RATES, § 648 — Evidence — Burden of proof — Electric rate agreement — Bankruptcy reorganization plan.

[N.H.] Northeast Utilities and the State of New Hampshire, as the proponents of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, bear the burden of proving that the reorganizational plan, the electric rate agreement, and the resulting rates are just and reasonable. p. 105.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On February 8, 1990, the Office of the Consumer Advocate (OCA) filed a Motion for Clarification and/or Rehearing of the

commission's report and order no. 19,674(75 NH PUC 30) of January 19, 1990 regarding the scope of the instant proceeding. To the extent that report and order no. 19,074 may have been misunderstood, we will hereby clarify our order.[1(4)]

The OCA requests

I. That the commission clarify the scope of the proceedings in regards to the determination of, and the relationship between, public good and the establishment of just and reasonable rates and/or grant rehearing;

II. That the commission state that it will review the proposed ratemaking "calculus" proposed by NU and alternatives to insure that rates are just and reasonable;

III. For such other relief as is just and proper.

We have reviewed our order and the Motion of the OCA and will clarify our order as follows.

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[1] It is an indispensable condition of determining whether the Reorganization Plan for acquisition of Public Service Company of New Hampshire (PSNH) by Northeast Utilities (NU), and the implementation of the Agreement and the rates will serve the public good to determine first whether the resulting rates are just and reasonable. As summarized in Report and Order No. 19,674 at 3-5, the General Court in RSA 362-C mandated that this commission determine the justness and reasonableness of rates as part of its decisional process in determining the public good.

In addition, in *Appeal of Conservation Law Foundation*, 127 N.H. 606 (1986), the N.H. Supreme Court held that the commission must prescribe a reasonably probable zone of reasonableness within which just and reasonable rate levels may be prescribed. The ultimate test of the public good in the financing of the Seabrook nuclear power plant in that case was the prescription of a probable low and high level of just and reasonable rates to support the capital structure resulting from the financing. The court further held that it is essential to prescribe just and reasonable rates to afford the court an opportunity for genuine appellate review of a commission finding of public good. Thus, even without the legislative mandate to determine whether rates established in the agreement between NU and the State of New Hampshire are just and reasonable, we are directed by the precedent of judicial decisions to determine whether such rates are just and reasonable to serve the public good.

[2] We believe that we are constrained from finding that the Plan of Reorganization will serve the public good independently of whether or not the rates required under the Rate Agreement are just and reasonable or of consideration of the public policy impact of resolution of the bankruptcy of PSNH. In short, as stated by the commission at pp. 14-15 of its order 19,674,

> [t]he commission recognizes that the ultimate question to be determined by the commission is whether under the totality of substantial evidence and the circumstances, including the legislative intent to facilitate resolution of the PSNH bankruptcy and the negotiated settlement of that bankruptcy between the State of New Hampshire and NU, the rates required under the Rate Agreement are just and reasonable, and the NUSCO Plan of Reorganization will serve the public good.

[3, 4] In regard to the OCA's second prayer, we are well aware of the "constitutional calculus" defined by the U.S. Supreme Court in *Permian Basin Area Rate Cases*, 390 U.S. at 769, 75 PUR3d 257, 20 L.Ed.2d 312, 88 S.Ct. 1344, cited at p. 639 of the *Appeal of CLF, Op.Cit.* The N.H. Supreme Court emphasized that

> "any criteria of reasonableness that might be applied independently from the balancing process that does not reflect such interests would run the risk of unconstitutionality by inviting the fixing of rates without regard to the balancing of interests" *Id.*

The court concluded,

> "A reasonable rate by definition reflects the values placed on those variables and is the result of the process by which those

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values are derived in balancing customer and investor interests" *Id.* at 640.

We intend to apply this constitutional calculus in balancing the interests of investors and ratepayers as we consider the traditional components of the ratemaking algorithm (operating expenses, rate base and rate of return) to determine whether rates are just and reasonable and whether the NU Plan of Reorganization and the Agreement between NU and the State of New Hampshire will serve the public good. NU and the State have the heavy burden of proving that the NU Reorganization Plan, the Agreement, and resulting rates are just and reasonable. In addition, NU and the State must sustain their burden of proving that under the totality of substantial evidence and applicable statutes, the negotiated settlement of the PSNH Bankruptcy and the NU Plan of Reorganization will serve the public good.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that report and order no. 19,674 regarding the scope of the instant proceeding be, and hereby is, clarified in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1990.

FOOTNOTES

[1]Additionally, *sua sponte*, we revise page 6, paragraph a. of our scope order to refer to a fixed rate period of seven years.

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NH.PUC*02/14/90*[50899]*75 NH PUC 106*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50899]

75 NH PUC 106

Re Public Service Company of New Hampshire/Northeast Utilities

DR 89-244
Order No. 19,715

New Hampshire Public Utilities Commission

February 14, 1990

ORDER denying a motion for rehearing of a prior order that established the scope of a proceeding to determine whether the acquisition of Public Service Company of New Hampshire by Northeast Utilities would be in the public good and whether rates for electric service to be established in conjunction with the Chapter 11 reorganization of PSNH should be approved as just and reasonable. For prior order, see 75 NH PUC 30, supra.

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1. COGENERATION, § 24 — Rates — Small power producers — Utility bankruptcy.

[N.H.] The commission declined to expand the scope of a proceeding to investigate the Chapter 11 reorganization plan of Public Service Company of New Hampshire to include a re-examination of small power producer (SPP) rate orders; it was found that inasmuch as SPP rate reductions were not an integral part of the reorganization plan, consideration of possible reductions in the rates in the SPP orders should be deferred until such time a question that requires a resolution arises. p. 107.

2. BANKRUPTCY — Chapter 11 reorganization — Jurisdiction — State commission — Bankruptcy court.

[N.H.] The proceedings of the United State Bankruptcy Court are not matters for direct consideration by the commission; accordingly, small power producers that were intervenors in a commission proceeding to investigate the

Page 106

Chapter 11 reorganization of Public Service Company of New Hampshire were advised to present whatever issues are pertinent to the jurisdiction of the bankruptcy court directly to the bankruptcy court. p. 107.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 25, 1990, the Hydro Intervenors filed a Motion for Rehearing of commission's report and order no. 19,674 (75 NH PUC 30) of January 19, 1990 regarding the scope of the instant proceeding. This order denies the motion.

The Hydro Intervenors request rehearing on the limited issue of whether or not the commission's authority to re-examine Small Power Producer (SPP) rate orders should be addressed in the instant docket for the following reasons:

1. Northeast Utilities' (NU) proposal to reduce the long term SPP rates granted is an integral part of the rate plan on which the reorganization of Public Service Company of New Hampshire (PSNH) depends;

2. Federal bankruptcy law affords NU and PSNH an appropriate forum within which to raise issues regarding the enforceability of SPP rate orders and by including the issue in the Rate Agreement NU and PSNH are seeking to avoid resolution of the issue in the appropriate forum, and

3. The commission staff has assumed that the issue will be dealt within the instant docket, as evidenced by its Question 16 of the staff data requests.

[1, 2] We have reviewed our order, the Motion of the Hydro Intervenors and the Rate

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Agreement, and find no reason to disturb our original decision in report and order no. 19,674 in regard to the SPP rate orders. As we stated at p. 9 in that order

> [T]he Agreement assumes that the rate orders are unchanged and does not at this time require commission action regarding the specifics of modifications to individual rate orders or determinations on the general issues of commission authority to amend its rate orders or whether modifications to rate orders to the possible detriment to certain small power producers to benefit ratepayers is in the public interest.

Contrary to the assertion of the Hydro Intervenors, the actual reduction of the rates in the SPP orders is not an "integral part of the rate plan". We have, therefore, deferred consideration of the reduction of the rates in the SPP orders until there is a question before us that requires resolution. At that time the commission will hear and evaluate the arguments regarding authority, and evidence of reliance, damages, or other claims. In the meantime, as the Hydro Intervenors are receiving payment in accordance with their rate orders, they are not harmed by awaiting the presentation of a relevant factual case and a hearing and decision on the merits in a subsequent docket.

The proceedings of the U.S. Bankruptcy Court are not matters for direct consideration by this commission. The Hydro Intervenors must protect whatever rights and present whatever issues are pertinent to that jurisdiction directly to the court.

Third, a query by staff does not constitute a modification of a commission order and can only be viewed as evidence of staff's efforts to understand the Rate Agreement not as an attempt to widen the commission inquiry.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Motion for Rehearing of the Hydro Intervenors of the commission's report and order no. 19,674 regarding the scope of the instant proceeding be, and hereby is,

denied.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1990.

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NH.PUC*02/14/90*[50900]*75 NH PUC 108*Public Service Company of New Hampshire

[Go to End of 50900]

75 NH PUC 108

Re Public Service Company of New Hampshire

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DR 89-219
Order No. 19,716

Re New Hampshire Electric Cooperative, Inc.

DR 89-245
Order No. 19,716

New Hampshire Public Utilities Commission

February 14, 1990

ORDER authorizing the State Treasurer to pay, from escrow accounts established to hold sums collected by two electric utilities under temporary rates, reasonable expenses incurred in connection with the administration of the escrow accounts.

RATES, § 656 — Escrowed funds — Collections under temporary rates — Administrative costs.

[N.H.] The State Treasurer was authorized to pay, from escrow accounts established to hold sums collected by electric utilities under temporary rates, all reasonable expenses incurred in connection with the escrow accounts; the Treasurer previously had been appointed escrow agent for the accounts.

By the COMMISSION:

ORDER

On February 8, 1990, the State Treasurer, by and through her attorney, the Attorney General, filed an Application of the State Treasurer for Approval of Expenses.

WHEREAS, pursuant to Reports and Orders Nos. 19,655 (74 NH PUC 493) and 19,656 (74 NH PUC 521), the State Treasurer was appointed as the Escrow Agent for the sums collected as Temporary Rates for Public Service Company of New Hampshire (PSNH) and for the New Hampshire Electric Cooperative, Inc. (NHEC); and

WHEREAS, the commission approved the Recommendations of the Parties for Escrow of PSNH Temporary Rates and NHEC's Proposal for Escrow of Temporary Rates, which established that the State Treasurer acting as the Escrow Agent would be entitled to reimbursement for reasonable expenses incurred in connection with the escrow accounts upon approval by the commission; and

WHEREAS, in furtherance of establishing the escrow account for PSNH and NHEC, the State Treasurer has arranged for investment of the escrow funds in United States securities, through the services of the First NH Banks, Inc. The expense to the State Treasurer will be $500.00 per month with a minimum of $3,000.00 and a maximum of $5,000.00, plus a $25.00 charge for each transaction; and

WHEREAS, the State Treasurer proposes to pay one-half of the monthly charge from each escrow account and to pay the transaction charge from the escrow account for which the

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transaction is made; and

WHEREAS, we find the expenses and the State Treasurer's payment arrangements to be reasonable; it is hereby

ORDERED, that the expenses be, and hereby are approved, and that the State Treasurer be, and hereby is, authorized to pay said expenses from the escrow accounts in the manner proposed.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1990.

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NH.PUC*02/15/90*[50901]*75 NH PUC 109*Hampstead Area Water Company, Inc.

[Go to End of 50901]

75 NH PUC 109

Re Hampstead Area Water Company, Inc.

DR 89-047
Order No. 19,717

New Hampshire Public Utilities Commission

February 15, 1990

ORDER approving the transfer of water utility assets for the purpose of forming a consolidated utility under one corporate structure.

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1. CONSOLIDATION, MERGER, AND SALE, § 7 — Commission powers — To approve asset transfers — Statutory considerations.

[N.H.] State statute RSA 374:30 provides that any public utility may transfer any part of its works, system, or franchise located in the state when the commissions shall find that it will be for the public good and shall make an order assenting thereto. p. 110.

2. CONSOLIDATION, MERGER, AND SALE, § 19 — Grounds for approval — Public good — Consolidation — Water utilities.

[N.H.] A water company was authorized to take over the assets and franchises of four separate water utilities for the purposes of consolidating the utilities under one corporate structure; it was found that the transfer of assets, which would not result in any change in management, would be in the public good. p. 110.

3. CERTIFICATES, § 76 — Factors affecting grant or refusal — Need for service — Ability of applicant.

[N.H.] The applicable standard to be applied to requests for a utility franchise is: (1) whether there exists a need for the proposed service; and (2) whether the applicant has the ability to meet that need. p. 110.

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4. CERTIFICATES, § 88 — Factors affecting grant or refusal — Need for service — Water utility.

[N.H.] A request by a water utility for an exclusive franchise to serve an entire town was denied without prejudice where the record evidence was insufficient to support a finding of need for service in areas of the town not previously franchised. p. 110.

APPEARANCES: Stephen Noury on behalf of Hampstead Area Water Company, Inc., and Brickett's Mill Water Company, Inc., Squire Ridge Water Company, Inc., Kent Farm Water Company, Inc. and Woodland Pond Water Company, Inc.; and Eugene F. Sullivan, III for the State of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 31, 1989 Hampstead Area Water Company, Inc. (the "Company") submitted a petition to franchise the entire Town of Hampstead, New Hampshire. On May 12, 1989, the commission issued an order of notice setting a prehearing conference for June 22, 1989.

On July 7, 1989 the commission issued report and order no. 19,460 setting a procedural schedule in this matter. On September 6, 1989 the Company submitted revised petitions requesting a franchise for the entire Town of Hampstead and for permission for Squire Ridge Water Company, Inc., Brickett's Mill Water Company, Inc., Kent Farm Water Company, Inc. and Woodland Pond Water Company, Inc. to discontinue business pursuant to RSA 374:28 and for permission for Hampstead Area Water Company to take over said water companies' assets and franchises pursuant to RSA 374:26 and 374:28 in addition to the Company's request for the entire Town of Hampstead as a franchise area. In response to said petitions the

commission discontinued the above referenced procedural schedule at the request of staff and the Company and the new prehearing conference was set for September 29, 1989. At said prehearing conference the parties stipulated to a procedural schedule which was adopted by the commission in order no. 19,560 dated October 6, 1989. On October 23, 1989 a public hearing was held in the Town of Hampstead. On November 21, 1989 a hearing on the merits was held. On November 22, 1989 the commission received a letter from the Board of Selectmen of the Town of Hampstead dated November 16, 1989 objecting to the issuance of an exclusive franchise for the entire Town of Hampstead to the Hampstead Area Water Company since it is of no great advantage to the Town of Hampstead at this time. Staff took no position on any of the issues in this case. The Company took the position that all of its petitions should be granted.

II. *Background*

On September 6, 1985 in docket DE 85-149, report and order no. 17,848 (70 NH PUC 767) the commission granted a franchise to Brickett's Mill Water Company, Inc. in the southern

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portion of Hampstead. On November 27, 1985 in docket DE 85-274 report and order no. 17,967 (70 NH PUC 996) the commission granted a franchise to Squire Ridge Water Company, Inc. in the northern portion of the Town of Hampstead. On February 4, 1987 in Docket DR 86-198 report and order no. 18,560 (72 NH PUC 43) the commission granted a franchise to the Kent Farm Water Company in the northwestern portion of Hampstead. On January 20, 1988, the commission granted a franchise to Woodland Pond Water Company, Inc. in the north central portion of Hampstead in Docket DE 87-211, Order No. 18,980 (73 NH PUC 26).

All of these water companies are owned by the same principals who control Hampstead Area Water Company; thus the transfer of the assets in the franchise from these water companies to Hampstead Area Water Company would not result in any change of management.

III. *Commission Analysis*

[1-4] (a) RSA 374:30 provides that any public utility may transfer any part of its works system or franchise located in this state when the commission shall find that it will be for the public good and shall make an order assenting thereto. The commission finds that there will be no change in management or ownership in the separate utilities listed above. Hampstead Area Water Company will now consist of one utility under one corporate structure. The commission finds this to be in the public good and will grant permission under RSA 374:28 for the transfer of the franchise and assets from the four separate utilities to Hampstead Area Water Company.

(b) In regard to the requests for the franchise for the entire Town of Hampstead the applicable standard is: 1) whether there exists a need for the proposed service; and 2) whether the applicant has the ability to meet that need. *See e.g. Re New Hampshire Yankee Electric Corporation*, 69 NH PUC 590, 593 (1984). With respect to the second test, the commission takes administrative notice of the previous dockets mentioned above and finds that the principals of Hampstead Water Company have the financial, managerial and administrative, legal and technical capabilities to run a water utility and are generally fit to take over the entire Town of Hampstead as a franchise area. However, the record is insufficient in this docket to support a finding of need for service in areas not previously franchised, particularly in view of the November 16, 1989 letter from the Selectmen of the Town. Thus, we will not here grant an additional franchise. This conclusion is without prejudice; we will entertain a new application when Hampstead Area Water Company is prepared to present additional record evidence.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the request to transfer assets pursuant to RSA 374:30 from Brickett's Mill Water Company, Inc., Squire Ridge Water Company, Inc., Kent Farm Water Company, Inc.

and Woodland Pond Water Company, Inc. to Hampstead Area Water Company, Inc. is granted; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc.'s request for a franchise

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for the entire Town of Hampstead is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1990.

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NH.PUC*02/15/90*[50902]*75 NH PUC 111*Energynorth Natural Gas, Inc.

[Go to End of 50902]

75 NH PUC 111

Re Energynorth Natural Gas, Inc.

DE 88-136
DR 89-181
Order No. 19,718

New Hampshire Public Utilities Commission

February 15, 1990

ORDER granting motions to schedule a prehearing conference in lieu of a scheduled hearing on the merits.

PROCEDURE, § 20 — Hearing and notice — Schedule change — Prehearing conference.

[N.H.] The commission granted motions to schedule a prehearing conference in lieu of a scheduled hearing on the merits where good cause was found to exist to grant the motions.

By the COMMISSION:

ORDER

The Public Utilities Commission Staff (staff) and the Office of Consumer Advocate (OCA) having filed motions on February 7 and 8, respectively, to schedule a prehearing conference on February 15, 1990 in lieu of the hearing on the merits presently scheduled for that day; and

WHEREAS, the commission has been informed that EnergyNorth Natural Gas, Inc. (ENGI) has no objection to the granting of the staff and OCA motions provided that at the procedural hearing the issues to be addressed are delineated and the scope of the proceedings is defined; and

WHEREAS, upon review of the staff and OCA motions the commission finds that good cause exists to grant the requested relief at this time; it is

ORDERED, that the staff and OCA motions to schedule a prehearing conference on February 15, 1990 in lieu of the hearing on the merits presently schedule for that day is hereby granted.

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By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1990.

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[Go to End of 50903]

75 NH PUC 111

Re Nuclear Decommissioning Charge

Movant: Public Service Company of New Hampshire

DR 90-019
Order No. 19,719

New Hampshire Public Utilities Commission

February 15, 1990

ORDER granting a motion for enlargement of time to file responsive materials.

PROCEDURE, § 39 — Time limitations — Responsive filings — Decommissioning charge proceeding — Electric utility.

[N.H.] The commission granted, for good cause shown, a motion by an electric utility for enlargement of time in which to file responsive materials in a nuclear decommissioning charge proceeding.

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By the COMMISSION:

ORDER

Public Service of New Hampshire (PSNH) having filed on February 14, 1990 a motion for enlargement of time to file responsive materials; and

WHEREAS, in its motion, PSNH requests that the time for filing revised tariff materials, supporting documentation and other appropriate pleadings in conformance with the Order of Notice be enlarged from February 15, 1990 to February 23, 1990; and

WHEREAS, in support of its motion, PSNH cites good cause for granting the request; it is

ORDERED, that the PSNH motion is hereby granted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of February, 1990.

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NH.PUC*02/16/90*[50904]*75 NH PUC 112*Southern New Hampshire Water Company, Inc.

[Go to End of 50904]

75 NH PUC 112

Re Southern New Hampshire Water Company, Inc.

DE 88-163
Order No. 19,720

New Hampshire Public Utilities Commission

February 16, 1990

ORDER granting, subject to conditions, an exemption from a local zoning ordinance.

---

1. ZONING — State commission powers — Exemptions from ordinances — Construction of utility structures.

[N.H.] The commission has the statutory authority to grant exemptions from local zoning ordinances to allow for the construction of necessary utility structures. p. 114.

2. ZONING — State commission powers — Exemptions from ordinances — Construction of utility structures.

[N.H.] A public utility may petition the commission for an exemption from any local zoning ordinance and the commission, following public hearing, may grant such an exemption if reasonably necessary for the convenience or welfare of the public. p. 114.

3. ZONING — Exemptions from ordinances — Construction of utility structures — Nonconforming water tank.

[N.H.] A water utility was granted an exemption from a local zoning ordinance to permit the construction of a nonconforming water tank where uncontroverted evidence indicated that the advantages of constructing the tank far outweighed any disadvantage to the public convenience and welfare; nonetheless, the exemption was made subject to conditions, including a requirement that the utility develop a final plan for constructing the tank, as evidenced by receipt of valid approval from the local planning board. p. 114.

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i. ZONING — Exemptions from ordinances — Construction of utility structures — Nonconforming water tank.

[N.H.] Statement, in dissenting opinion, that the majority erred by granting an exemption from a local zoning ordinance to a water utility for the construction of a nonconforming water tank where the construction plans were incomplete; the dissenting commissioner argued that the

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petition for an exemption should have been dismissed as premature. p. 115.

By the COMMISSION:

REPORT

I. *Procedural History*

A detailed recitation of the procedural history of this proceeding is contained in our report and order no. 19,668 (75 NH PUC 11), issued January 10, 1990.

On November 1, 1988, Southern New Hampshire Water Company, Inc. ("Southern" or the "Company") filed a petition pursuant to RSA 674:30, III seeking exemption from the Town of Hudson Zoning Ordinance in order to construct a 50 foot water tower which violated the ordinance's height restriction of 38 feet. The company had previously obtained the unanimous approval of the Town of Hudson Planning Board for construction of the tower.

On November 7, 1989, the commission issued report and order no. 19,606 denying Southern's request for a zoning exemption based on *Appeal of Milford Water Works*, 126 N.H. 127 (1985). The commission set out the standards required by *Appeal of Milford Water Works* and found that all of these standards dealt with questions which the abutters to the project should be given an opportunity to address. As the record revealed that the area was under construction by a developer and that the "abutters" were not yet present since the company was not planning on building the tower until at least 1991, the commission believed it was premature and inappropriate to grant the zoning variance at this time. Additionally, the commission believed that it would not be in the public interest to grant an exemption from the provisions of the zoning ordinance when Southern's plans for a tower had not yet been finalized.

The commission ordered that the petition be dismissed without prejudice, thus allowing the company to re-approach the commission when it was prepared to go forward with its plan and when the "abutters" who would live next to the tank at that time would be present to express any concerns they might have over the tank.

On November 27, 1989, Southern filed a motion for rehearing or reconsideration of report and order no. 19,606 (74 NH PUC 440) pursuant to RSA 541:3.

On January 11, 1990, the commission issued report and order no. 19,668 which granted Southern's motion for rehearing and reconsideration and stated therein that it would be willing to grant the zoning exemption subject to the attachment of reasonable conditions designed to address the foregoing concerns raised by the commission in report and order no. 19,606. A hearing on Southern's motion for rehearing and reconsideration was scheduled for February 2, 1990.

On February 2, 1990, the staff and Southern submitted to the commission a proposed "Stipulation Agreement" intended to resolve the foregoing issues. Exhibit 15. A hearing on the merits of the proposed stipulation was held on February 2, 1990.

II. *The Proposed Stipulation Agreement*

The staff and Southern propose to resolve the issues relating to the exemption sought by Southern from the Town of Hudson Zoning Ordinance, Section 334-9 Height Limitation, in a manner intended to be responsive to the guidance provided by the commission in report and order no. 19,668. The parties recommend that the exemption be granted by the commission subject only to the following conditions:

1. Southern agrees to erect, a sign, in accordance with the Town of Hudson's Zoning Ordinance, indicating that the easement is the future site of a water tank. The sign will be posted at the entrance to the easement and visible from the road. The sign shall be subject to approval of the staff, which approval shall not be unreasonably withheld;

2. The parties agree that the commission's granting, of this exemption is conditioned upon Southern's holding a valid approval from the Hudson Planning Board for the proposed water tank on Rangers Drive, Map 31, Lots 54-13, 54-14 and 54-15;

3. Southern agrees to keep the staff informed of Town of Hudson Planning Board approvals by sending copies of all correspondence between Southern and the Town of Hudson Planning Board regarding the Barrett's Hill Tank to Robert Lessels, Water Engineer;

4. The parties agree that the commission's granting of the exemption from the Town of Hudson Zoning Ordinance does

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not constitute approval or disapproval for cost recovery or other ratemaking treatment, which will be the subject of a future proceeding;

5. The parties agree that the exemption as granted is conditioned upon the plans as submitted to the Planning Board and to the commission in this proceeding including representations as to the size and height of the proposed tank; and

6. The parties agree that actual construction of the tank will take place in accordance with the Company's Long Range Facilities Plan, and is dependent upon demand and other economic conditions. Southern will file the required Form E-22 at the appropriate time.

Finally, the parties recommend that the commission's acceptance of the stipulation agreement constitutes a determination pursuant to RSA 674:30 III that granting of the exemption is reasonably necessary for the convenience and welfare of the public.

III. *Commission Analysis*

[1-3] This proceeding is for consideration of a petition by Southern for exemption from a local zoning ordinance pursuant to RSA 674:30, III.

The Hudson Planning Board has twice given its unanimous consent to the proposed tank (Exh. 8 and 14) with the sole condition being approval of an exemption from the Town of Hudson Zoning ordinance by the New Hampshire Public Utilities Commission since the tank is 12 feet above the allowed height under the town's ordinance.

Although the Planning Board approved Southern's site plan, the Planning Board lacked the

statutory authority, on its own, to waive the local height regulation limiting the height of structure to 38 feet, because the structure exceeded 200 square feet in area (see RSA 673:20 I (supp.)).

The commission by virtue of RSA 674:30 III (supp.) is the proper statutory authority to exempt the proposed structure from the town's zoning regulations:

> 674:30 III. A public utility which uses or proposes to use a structure which does not fit the criteria described in paragraph I, or fits those criteria and has been denied a waiver, or has been granted a waiver with conditions unacceptable to the utility when the waiver was applied for pursuant to Paragraph I, may petition the public utilities commission to be exempted from the operation of any local ordinance, code, or regulation enacted under this title. The Public Utilities Commission, following a public hearing, may grant such an exemption if it decides that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.

In view of the foregoing, the issues before us reduce to the following analysis. If the proposed water tank had been designed to be less than 38 feet in height, it would have complied with Section 334-9 of Hudson's zoning ordinance and the instant case would not be before us. Beyond this, even at the proposed height of 50 feet, the Hudson Planning Board is entitled to grant waivers for a utility structure that is less than 200 square feet in area.

Thus, the exemption from the local zoning ordinance is before us not necessarily only because the proposed tank exceeds the height limitation; it is also in excess of the area in square feet under which the Planning Board is entitled to waive its own zoning regulations.

Thus, in accordance with RSA 674:30, III the commission must decide whether the sought after exemption is "reasonably necessary for the convenience and welfare of the public."

The uncontroverted evidence in the proceeding presented by Southern indicates that the advantages of constructing the water tank far outweigh any disadvantages from the standpoint of public convenience and welfare (Exh. 12: PUC-2-1d).

Consequently, we find based on the record that the exemption should be granted. Nonetheless, in so doing, we are entitled to attach reasonable conditions. *Appeal of Milford Water Works*. 126 N.H. 127, 132 (1980). We find that the conditions to be attached to the exemption recommended by the parties are reasonable.

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They address our concerns set out in our earlier decisions, particularly with regard to the sign to be constructed by Southern which is intended to provide actual notice to future abutters.

Our concern about the lack of a final, firm plan by Southern for constructing the water tank is addressed by the condition attached to the exemption which requires Southern to hold valid approval from the Hudson Planning Board The record in this proceeding indicates that Southern is required by the Planning Board by-laws to undertake substantial and actual development on the site in order to retain planning board approval. Thus, we will rely on the Hudson Planning Board's enforcement of its own by-laws with regard to whether further actions taken by Southern continue to be adequate to retain Planning Board approval. If Planning Board approval expires,

our exemption will lapse unless and until Planning Board approval is again obtained.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the proposed Stipulation Agreement be, and hereby is, approved as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of February, 1990.

COMMISSIONER ELLSWORTH
DISSENTING

[i] If I could find that the petition in the instant docket were timely, or that an adequate internal company review process had led to its filing, I would join my fellow commissioners in approving it. The testimony and exhibits which have been presented, however, convince me that it remains premature and incomplete. For those reasons, I must dissent.

The company's petition was filed on November 1, 1988. The evidence presented at hearings in the case disclosed that the company planned to construct a water tower in 1990.

At the time of hearings, however, the company had not yet finalized its design criteria for the tank. Company witnesses also testified that the Southern New Hampshire Water Company had not received approvals of its parent organization, Consumers Water Company, to finance the project. As the majority notes, the petition was dismissed without prejudice.

In the evidence that was presented at a prehearing conference and hearings in this case the Company has changed its position a number of times as to its construction plans. At the prehearing conference it stated it was going to build the tower in 1990; at the hearing on the merits the Company stated it would build it in 1991 or 1992. A letter from the company's counsel, written in response to our report and order which granted the motion for rehearing, stated that the tower might be built some time in 1994 or thereafter.

I cannot support a Commission Order which authorizes a project of this magnitude when the petition is based on such uncertainty and indecision.

The issues which brought this petition to us were very narrow — those of the height and area of the proposed facility. Despite the narrowness of those issues, however, the very fact that the petition is before us compels us to consider the full issue of whether or not that tank is "reasonably necessary for the convenience and welfare of the public". In my judgment, we have not been adequately persuaded that approval at this time is in the public interest.

It could be argued that the stipulation agreement proposes to protect against any contingencies which might appear between now and the time at which the tank is actually constructed. I agree, in fact, that they do provide reasonable safeguards. My objection is not with the structure of the stipulation, nor is it really with the concept of the tank itself. My objection is with the timing of the petition.

Whether intended or not, this petition takes on the appearance of being the petitioner's

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attempt to use a commission order as an interim step in an approval process which will eventually culminate in a management decision at some later date. In my judgment, that is not the role of a commission order. The commission should expect of a petitioner that a petition is

fully supported as the best alternative to an identified problem, and the public should expect of the commission that its deliberations should have concluded that its order represented the most reasonable — if not the only — solution to that problem.

I cannot find, on the basis of the testimony and exhibits in this proceeding, that approval of this petition at this time is in the public interest. I would hold, as the commission did previously, that the petition should be denied without prejudice.

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NH.PUC*02/21/90*[50905]*75 NH PUC 116*Energynorth Natural Gas, Inc.

[Go to End of 50905]

75 NH PUC 116

Re Energynorth Natural Gas, Inc.

DR 89-181
Order No. 19,721

New Hampshire Public Utilities Commission

February 21, 1990

ORDER granting a petition by a gas utility for confidential treatment of certain documents to be filed in cost of gas adjustment proceeding.

---

1. PROCEDURE, § 16 — Discovery and inspection — Confidential information — Privileged communications.

[N.H.] The commission granted a petition by a gas utility for confidential treatment of privileged communications from its attorneys prepared in anticipation of litigation; however, the appropriateness of continued confidential treatment remained subject to further review. p. 116.

2. PROCEDURE, § 16 — Discovery and inspection — Confidential information — Statutory considerations.

[N.H.] State statute exempts from public disclosure confidential, commercial, or financial information. p. 116.

By the COMMISSION:

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ORDER

Order on Petition for
Confidential Treatment

[1, 2] EnergyNorth Natural Gas, Inc. (ENI) having filed through its attorney on February 9, 1990, a Petition for Confidential Treatment of certain information; and

WHEREAS, this information was requested of the Company by the staff during the mid-period cost of gas adjustment hearing on January 26, 1990; and

WHEREAS, the requested information includes privileged communications from ENI's attorneys prepared in anticipation of litigation; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "\&... confidential, commercial, or financial information ..."; and

WHEREAS, the confidentiality of this information may be reviewed by the commission at any time in the future if a request is made for disclosure; it is

ORDERED, that ENI shall, upon receipt hereof, provide to the staff and counsel appearing for the parties who have intervened in this proceeding the documents addressed in the Company's Petition for Confidential Treatment consisting of privileged communications from ENI's attorneys; and it is

FURTHER ORDERED, that the documents will not be copied and, unless otherwise ordered, all copies submitted to the commission, its staff and counsel for other parties will be returned to ENI upon completion of this docket or upon further order of this commission whichever shall first occur; and it is

FURTHER ORDERED, that the commission, on review of the documents, or on motion by an interested party, may review the appropriateness of continued confidentiality in this matter and may issue appropriate amendments to this order after hearing.

By order of the Public Utilities

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Commission of New Hampshire this twenty-first day of February, 1990.

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NH.PUC*02/21/90*[50906]*75 NH PUC 117*Public Service Company of New Hampshire

[Go to End of 50906]

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DR 89-212
Order No. 19,723

New Hampshire Public Utilities Commission

February 21, 1990

ORDER canceling a scheduled hearing on the prudency of an outage at an electric generating unit and closing inquiry as to the rate recovery of increased energy costs attributable to the outage.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 15 — Purchased energy — Outage related costs — Electric utility.

[N.H.] The commission closed its inquiry as to the rate recovery of increased energy costs attributable to an outage at an electric generating plant where the utility had decided not to seek to recover the costs through its energy cost recovery mechanism (ECRM); nevertheless, the commission directed its staff to audit the increased costs of energy attributable to the outage. p. 117.

2. EXPENSES, § 122 — Electric — Purchased energy — Outage related costs — Prudence.

[N.H.] The commission canceled a scheduled prudence review and closed its inquiry as to the rate recovery of increased energy costs attributable to an outage at an electric generating plant where the utility had decided not to seek to recover the costs. p. 117.

By the COMMISSION:

ORDER

WHEREAS, on December 29, 1989, the commission issued report and order no. 19,574 which ordered that a hearing on the prudency of the incident which occurred at Schiller Station resulting in the outage of Unit 5 be held on March 14, 1990 at 10:00 A.M.; and

[1, 2] WHEREAS, by letter dated January 15, 1990 PSNH, through its attorney, informed the commission that PSNH would not seek ECRM recovery of the increased cost of energy attributable to the outage at Schiller; and

WHEREAS, the decision of PSNH not to seek ECRM recovery of any of the increased cost of energy that has been incurred, or will be incurred, attributable to the entire continuing outage at Schiller Unit No. 5 precludes the need for the commission to determine the prudency of PSNH's actions with regard to said outage and, thus, also precludes the need for the hearing presently scheduled in this regard for March 14, 1990; and

WHEREAS, this order should not be construed in any way as passing judgment on PSNH management efficiency; it is

ORDERED, that the hearing scheduled for March 14, 1990 on the prudency of the outage at Schiller No. 5 is hereby cancelled; and it is

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FURTHER ORDERED, that the staff of the commission conduct an audit of the increased costs of energy attributable to the entire outage and report to the commission on the amount of said increased costs no later than May 1, 1990; and it is

FURTHER ORDERED, that, except for the determination of the foregoing amount of increased costs, the commission's inquiry on the outage at Schiller No. 5 is closed in so far as it relates to recovery from ratepayers.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1990.

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NH.PUC*02/21/90*[50907]*75 NH PUC 118*Long Distance North of New Hampshire, Inc.

[Go to End of 50907]

75 NH PUC 118

Re Long Distance North of New Hampshire, Inc.

DE 87-249
Order No. 19,724

New Hampshire Public Utilities Commission

February 21, 1990

ORDER on a motion for a protective order over information to be produced in response to data requests.

---

1. PROCEDURE, § 16 — Discovery and inspection — Proprietary information — Disclosure.

[N.H.] Access to proprietary information submitted in response to data requests made in a proceeding to consider an application to resell telecommunications services was limited to the parties for purposes of evaluating the application. p. 118.

2. PROCEDURE, § 16 — Discovery and inspection — Confidential information — Statutory considerations.

[N.H.] State statute exempts from public disclosure confidential, commercial, or financial information. p. 118.

By the COMMISSION:

ORDER

Long Distance North of New Hampshire, Inc. (LDN) having filed on February 12, 1990, pursuant to RSA 91-A and report and order no. 19,698 (75 NH PUC 71), dated February 2, 1990,

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a motion for a protective order for information to be produced by LDN in its response to the following data requests:

1. Staff request 21 for a projection of LDN's Income Statement and Balance Sheet for 1989 and 1990, including any assumptions used to arrive at the answer.

2. Staff request 34, which asks for the details of LDN's and BTC's switch locations and additional support arrangements.

3. Staff request 39, which requests projections and supporting work papers regarding the costs of reselling MTS and WATS service to end users at a small discount off NET's MTS rates.

4. Staff request 60, which, in follow-up to staff data request set 1, question 36, asks LDN to specify with which interexchange carriers is LDN co-located.

5. Staff request 68 for a schedule containing a breakdown of all anticipated costs and revenues associated with the provision of resell MTS and WATS within New Hampshire over the first three years of service.

6. Staff request 70, which requests the details of the analysis and any accompanied work papers developed prior to the decision to place a switch in New Hampshire referenced in a previous staff data request, set 1, response 36.

7. Dunbarton request 43, which asks for a description of the terminal facility in Nashua, New Hampshire; and

[1, 2] WHEREAS, LDN asserts that its responses to the above cited data requests should be exempt from public disclosure because they constitute confidential, commercial or financial information and that disclosure would benefit competitors or compromise the security of LDN's facilities, and

WHEREAS, LDN further asserts, *inter alia*, that disclosure of the requested information to the staff and other parties to this proceeding, pursuant to a protective order, protects the public interests while properly minimizing the risk of competitive injury to LDN; and

WHEREAS, the confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ...;" and

WHEREAS, the confidential status of the information covered by this protective order

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may be reviewed by the commission at any time in the future on request of any interested party; it is

ORDERED, that LDN shall, on receipt hereof, provide to the commission staff and to counsel appearing for the parties to this docket, complete responses to the above cited data requests, to wit, staff request 21, staff request 34, staff request 39, staff request 60, staff request 68, staff request 70 and Dunbarton request 43; and it is

FURTHER ORDERED, that the proprietary information is to be submitted by LDN and used

by the parties only for the purpose of evaluating the merits of LDN's petition in this docket; and it is

FURTHER ORDERED, that the proprietary documents will not be copied except by LDN and, unless otherwise ordered, all copies submitted to the intervenors in the docket shall be returned to LDN upon completion of this docket; and it is

FURTHER ORDERED, that the commission, on review of the documents, or on motion by any interested party, may review the appropriateness of continued confidential treatment of the information in question and may issue appropriate amendments to this order after hearing.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1990.

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NH.PUC*02/21/90*[50908]*75 NH PUC 119*Pittsfield Aqueduct Company

[Go to End of 50908]

75 NH PUC 119

Re Pittsfield Aqueduct Company

DR 89-053
Order No. 19,725

New Hampshire Public Utilities Commission

February 21, 1990

ORDER approving permanent rates for water utility service.

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1. RETURN, § 115 — Water — Stipulated return.

[N.H.] A stipulated overall rate of return of 12.05% was adopted in a water rate case. p. 120.

2. RATES, § 595 — Water rate design — Consumption charges — Rate settlement.

[N.H.] As part of a water rate settlement, the utility agreed to eliminate the allowance for consumption in its quarterly service charge, and to replace its declining block rate consumption charge with a single block consumption charge for all metered customers. p. 120.

3. RATES, § 619 — Public fire protection — Water utility.

[N.H.] The municipal fire protection charges of a water utility were increased by a percentage equal to the overall percentage increase in revenues. p. 120.

4. RATES, § 616 — Private fire protection — Water utility.

[N.H.] The private fire protection charges of a water utility were increased by a percentage equal to the overall percentage increase in revenues. p. 120.

5. RATES, § 595 — Water rate design — Step adjustment — Plant additions.

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[N.H.] A water utility was allowed a step adjustment that permits it to reflect in rates increases in plant resulting from the installation of meters, as well as other capital additions. p. 120.

6. EXPENSES, § 89 — Rate case expenses — Method of recovery — Surcharge.

[N.H.] A water utility was directed to surcharge, rather than amortize, its rate case expenses over two years; it was found that recovery through a surcharge would allow the commission and ratepayers to track rate case expenses and would lower rates to customers in the long run by removing the unamortized portion of rate case expense from rate base. p. 121.

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7. REPARATION, § 17 — Grounds for allowing — Overcollections under temporary rates — Water utility.

[N.H.] A water utility was required to refund to customers the difference between the revenue level finally approved in its permanent rate case and the higher revenue level provided for in temporary rates. p. 121.

APPEARANCES: Dom S. D'Ambruoso, Esq. on behalf of Pittsfield Aqueduct Company; Eugene F. Sullivan, III, Esq. on behalf of the staff of New Hampshire Public Utilities Commission.

By the COMMISSION:

I. *Procedural History*

On April 4, 1989, Pittsfield Aqueduct Company (Pittsfield or Company) filed its notice of intent to file rate schedules and request for waiver of certain filing requirements. On May 31, 1989, the commission, through its Executive Director and Secretary, authorized the waiver of certain filing requirements. On June 5, 1989, the Company filed its petition for temporary and permanent rates along with a report of proposed rate changes and proposed revisions to its Tariff No. 4 to support a temporary and permanent rate request. The petition requested permanent rates which would produce an increase in gross annual revenues of $97,249 or an approximate increase of 78%. The Company also requested a temporary rate increase of $56,818 or an increase of 45.42%.

On June 28, 1989 the commission issued order no. 19,444 suspending the rate filing and establishing a hearing for temporary rates and procedural matters for August 7, 1989. On August 7, 1989, a duly noticed public hearing was held on the issue of temporary rates and the procedural schedule. On August 18, 1989, the commission issued report and order no. 19,508 (74 NH PUC 278) approving a temporary rate increase of 41.23% in accordance with the prefiled testimony of Assistant Finance Director, Mary Jean Newell. The commission also established a procedural schedule for the balance of the proceeding. In accordance with the procedural schedule the parties engaged in several points of discovery. Prefiled testimony was filed by James L. Lenihan, Utility Analyst relative to rate structure, Mary Jean Newell, Assistant Finance

Director, regarding revenue requirements and expenses and Robert B. Lessels, Water Engineer with respect to the engineering aspects of the case including certain operation and maintenance expense issues.

The parties met in consultation in an attempt to reach a settlement on December 19 and 20, 1989. The parties reached a settlement which was presented to the commission at a hearing held on January 2, 1990.

II. *Stipulation of the Parties*

[1-5] The parties stipulated to the following components for rates:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base              $565,232
Overall Rate of Return   12.05%
Revenue Requirement    $182,825
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The rate base as stipulated to by the parties was developed using the testimony of Assistant Finance Director Mary Jean Newell which established a number of $542,663. Mrs. Newell's testimony was supported by an audit conducted by the Commission staff. The figure was adjusted by the inclusion of meters installed up to September 30, 1989, (although these meters did not fall within the test year, they would have been includable on January 1, 1990 pursuant to the commission's order no. 15,556 in Docket DR 80-125), certain other minor revisions and the inclusion of the unamortized rate case expenses resulting in the final figure of $564,037 for the test year ending December 31, 1988. The overall rate of return was established through the uncontested testimony of Commission Economist Merwin R. Sands resulting in the final revenue requirement. Both Mrs. Newell and the Company's expert Daniel D. Lanning testified they believed

the stipulation to be just and reasonable.

Although the Company requested a 78% increase in rates the final figure arrived at was a 44% increase in rates. As part of the settlement, the Company agreed to eliminate the allowance for any consumption in the quarterly service charge, as well as declining block rate consumption charge in its present tariff and replace it with a single block consumption charge for all metered customers. For all non-metered customers the Company shall refile a revised fixture rate or reflecting the overall revenue increase in a compliance tariff at the conclusion of the proceedings. Both the municipal and private fire protection charges shall increase by an amount equal to the overall revenue increase. Such compliance tariff to be subject to commission review to determine its compliance with the commission order and the agreement. The parties agreed that the Company would be allowed to recover the difference between the revenue level finally approved and the revenue level provided for in the Company's temporary rates authorized by order no. 19,508 (74 NH PUC 278) by a surcharge over a six-month period in accordance with RSA 378:29.

The methodology and supporting data for recoupment of the difference between temporary and permanent rates was agreed to be submitted with the revised tariff reflecting the permanent

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rates allowed. The parties further agreed that the Company would be allowed to recover in base rates the actual rate case expenses associated with this proceeding. Said expenditures to be submitted by the Company at the end of this proceeding and subject to commission review.

The parties also agreed that the Company would be allowed a step adjustment to reflect increases in plant resulting from the installation of meters and capital addition which are, at the time of the adjustment, completed and in service to customers after staff review of the additions prior to or after June 30, 1990.

The Company also agreed to institute continuing property records, a work order system, a perpetual inventory system for materials and supplies in compliance with the findings of an audit dated October 25, 1989. The company further agreed, for tax purposes, it will use the most advantageous depreciation rate available while normalizing its book for ratemaking purposes

III. *Commission Analysis*

[6, 7] The commission finds the stipulation of the parties to be just and reasonable pursuant to RSA 378:28 and will adopt the stipulation of parties, in part, as it yields a reasonable return on the cost of property used and useful in the public service.

However, the commission will not accept that part of the stipulation which allows the Company to amortize its rate case expenses over two years as the commission believes it is more appropriate to surcharge these expenses over two years. Surcharging allows the commission and the ratepayers to track rate case expenses and lowers the rates to customers in the long run by removing the unamortized portion of rate case expenses from rate base. The commission shall allow the Company to charge interest on the outstanding balance of rate case expenses each quarter based on the prime rate reported in the *Wall Street Journal* on the first day of the month preceding the first month of each quarter. Thus, the components for rates shall be as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base              $557,287
Overall Rate of Return   12.05%
Revenue Requirement    $173,716
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This will result in a refund to customers as the temporary rate increase was 42.5% and the permanent rate increase is 40.7%. The commission realizes that the refund will result in some managerial expenses; however, these expenses would have been incurred in recoupment if the stipulation concerning amortization or rate case expenses had been accepted.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Pittsfield Aqueduct

Company shall file tariff pages and supporting documentation to reflect the foregoing report and stipulation of the parties as modified by the commission before the institution of any charges

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for service effective the date of this order; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company shall comply with all provisions of the stipulation regarding the auditors findings; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company refund its over-collections in the six months following the date of this order; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company shall collect, by surcharge, the rate case expenses over a two year period; and it is

FURTHER ORDERED, that Pittsfield Aqueduct Company file an accounting of the collection of the rate case expenses at the end of each of the two years.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1990.

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NH.PUC*02/23/90*[50909]*75 NH PUC 122*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50909]

75 NH PUC 122

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,726

New Hampshire Public Utilities Commission

February 23, 1990

ORDER denying a motion for reconsideration of a prior report and order that established the scope of a proceeding to determine the justness and reasonableness of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. PROCEDURE, § 34 — Rehearing and reopening — Time limitations.

[N.H.] An application for rehearing of a commission order must be filed with the commission within twenty days after the order or decision in question was issued. p. 123.

2. RATES, § 645 — Scope of proceeding — Bankruptcy reorganization — Electric rate plan — Rehearing.

[N.H.] The commission denied, as untimely and essentially identical to a previously denied motion, a motion for rehearing of a prior order that established the scope of a proceeding to determine the justness and reasonableness of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire. p. 123.

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By the COMMISSION:

ORDER

John V. Hilberg, appearing *pro se* in the subject docket, having filed on February 20, 1990, a motion for reconsideration of order no. 19,674 (75 NH PUC 30) dated January 19, 1990; and

WHEREAS, Mr. Hilberg previously filed a motion to reconsider the same order no. 19,674 on January 25, 1990, alleging essentially the same issues asserted in the motion now before us; and

WHEREAS, the commission denied Mr. Hilberg's motion for rehearing of January 25, 1990 by order no. 19,703 (75 NH PUC 87) issued on February 5, 1990; and

WHEREAS, motions for rehearing are governed by RSA 541:3 *et seq*, which, *inter alia*, requires that any application for rehearing must be filed with the commission within twenty (20) days after the order or decision in question was issued; and

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WHEREAS, Mr. Hilberg's second motion for rehearing was untimely in that it was filed on February 20, 1990, thirty-two (32) days after the order complained of was issued; it is hereby

[1, 2] ORDERED, that the motion filed by John V. Hilberg on February 20, 1990, for reconsideration of commission order no. 19,674 dated January 19, 1990, is denied as being untimely and because the assertions made therein were previously addressed by the commission in its response to Mr. Hilberg's first motion in report and order no. 19,703 (February 5, 1990) and were further addressed in report and order 19,714 (75 NH PUC 104) (February 14, 1990) in response to a motion for rehearing filed by the Office of the Consumer Advocate on February 8, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1990.

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NH.PUC*02/26/90*[50910]*75 NH PUC 123*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50910]

75 NH PUC 123

Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,727

New Hampshire Public Utilities Commission

February 26, 1990

ORDER amending the schedule for a proceeding to determine the justness and reasonableness of

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an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

RATES, § 640 — Procedural schedule — Schedule amendment — Bankruptcy — Electric rate plan.

[N.H.] The schedule for a proceeding to determine the justness and reasonableness of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire was amended to accommodate delays associated with changes in the schedule for the bankruptcy proceeding.

By the COMMISSION:

ORDER

The staff of the New Hampshire Public Utilities Commission (Staff) having filed on February 22, 1990 a motion to amend the procedural schedule previously established in report and order no. 19,674 (75 NH PUC 30), dated January 19, 1990, as follows:

1. Extend filing date for Staff/Intervenor testimony from March 5 to March 12, 1990.

2. Extend due date for data requests to Staff/Intervenor from March 12 to March 16, 1990.

3. Establish a due date for responses to said data requests by Staff/Intervenor for March 23, 1990.

4. The remainder of the previously established procedural schedule would be unaffected by these changes; and

WHEREAS, in support of its motion staff cited delays in receipt of responses to staff data requests beyond the February 21, 1990, due date for said responses established in report and order no. 19,674; and

WHEREAS, Northeast Utilities informed the parties that some of the requested information cannot be forthcoming until it is filed with the Bankruptcy Court on or about April 4, 1990, during the currently scheduled hearing on the merits of the petition, and well beyond the current timeframes established for discovery and filing of testimony; and

WHEREAS, late receipt of said information would accordingly necessitate commensurate delays in the procedural schedule established in report and order no. 19,674 beyond what staff requests in its motion; and

WHEREAS, the Third Amended Disclosure Statement (at page 44), dated December 28, 1989, filed by Northeast Utilities in the PSNH Bankruptcy proceedings indicates that the outside parameter of the first effective date

has changed from July 1, 1990, to August 1, 1990, signifying that a final decision by the

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commission is not required before June 30, 1990; it is

ORDERED, that the staff motion to amend the procedural schedule is denied in that it does not propose extensions sufficient to address the discovery delays and other circumstances cited above; and it is

FURTHER ORDERED, that the procedural schedule established by report and order no. 19,674 is hereby amended to be as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Staff and Intervenor testimony due	March 19, 1990
Data requests on Staff and Intervenor testimony due	March 26, 1990
Data responses due from Staff and Intervenors	April 4, 1990
Petitioner due date for filing supplemental information	April 4, 1990
Hearings on the merits	April 9-May 4, 1990
Rebuttal testimony (all parties)	May 16, 1990
Hearings on rebuttal	May 21-25, 1990
Briefs	June 5, 1990
Commission decision	June 29, 1990

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of February, 1990.

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NH.PUC*02/28/90*[50911]*75 NH PUC 124*Small Power Producers and Cogenerators

[Go to End of 50911]

75 NH PUC 124

Re Small Power Producers and Cogenerators

DR 88-107
Order No. 19,728

New Hampshire Public Utilities Commission

February 28, 1990

ORDER determining the appropriate interpretation and application of procedures for calculating and updating the peak reduction factor component of the formula used to calculate the avoided cost rates paid to qualifying cogenerators and small power producers by an electric utility.

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1. COGENERATION, § 27 — Rates — Capacity costs — Peak reduction factor — Hydroelectric small power producers.

[N.H.] In a proceeding to determine the appropriate means to calculate the peak reduction factor (PRF) component of the formula used by a retail electric utility for setting rates paid to qualifying small power producers and cogenerators (QFs), the utility was directed to monitor the

capacity contributions of the hydroelectric QFs from which it purchases power; if it appears that the current audit methodology is incapable of capturing disparities due to operator inefficiency, the commission will either direct its engineering staff to formulate a new methodology or adopt individual, rather than class, PRFs for hydroelectric QFs. p. 129.

2. COGENERATION, § 27 — Rates — Peak reduction factor — Three year rolling average feature — Non-hydroelectric facilities.

[N.H.] An electric utility was directed to phase in for non-hydroelectric qualifying facilities the use of the three year rolling average feature of the peak reduction factor component of the formula used to set rates paid to small power producers and cogenerators. p. 130.

3. COGENERATION, § 27 — Rates — Capacity — Peak reduction factor.

[N.H.] Qualifying cogenerators and small power producers become eligible for capacity payments from the electric utility to which they

Page 124

sell power once a peak reduction factor is assigned. p. 130.

4. COGENERATION, § 27 — Rates — Capacity — Peak reduction factor — Prospective adjustments.

[N.H.] All adjustments to the peak reduction factor component of the formula used by a retail electric utility for setting rates paid to small power producers and cogenerators are to be applied prospectively. p. 130.

5. WAIVER AND ESTOPPEL — Doctrine of estoppel — Use against state agencies.

[N.H.] Estoppel cannot be applied against a state agency unless the statement or act upon which a party relies was within the authority of the state agency, or unless the wrongful conduct of the agency threatened to work a serious injustice and the public interest would not be damaged by the imposition of estoppel. p. 130.

6. COGENERATION, § 27 — Rates — Capacity — Peak reduction factor — Woodburning facilities.

[N.H.] The commission declined to establish a class peak reduction factor (PRF) for woodburning qualifying cogeneration and small power production facilities (QFs) notwithstanding the fact that a prior order establishing the methodology for calculating the peak reduction factor component of the formula used by an electric utility for setting rates paid to (QFs) contemplated the establishment of a class PRF for woodburners; it was found that given the difficulties of intra-class subsidization between more and less efficient facilities, no useful purpose would be served by adoption of a class PRF for woodburners. p. 130.

APPEARANCES: Robert Olson, Esq. and Meriam Newman, Esq. of Brown, Olson and Wilson on behalf of Alexandria Power Associates, Bridgewater Steam Power Company, Hemphill Power and Light Company, Pinetree Power, Inc., Pinetree Power — Tamworth, Inc., Timco, Inc., and Whitefield Power and Light Company; Daniel G. Murphy, Esq. of Debevoise and

Plimpton on behalf of SES Concord Company, Limited Partnership; Kimball Kenway, Esq. of Curtis, Thaxter, Stevens, Broder, and Micoleau on behalf of Briar Hydro Associates; Thomas B. Getz, Esq. on behalf of Public Service Company of New Hampshire; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report and order concerns the implementation and interpretation of the peak reduction factor (PRF) as provided by *Re Small Energy Producers & Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984). By this decision, we will address the past application of the peak reduction factor and eligibility for capacity payments through a strict reading of the language of the order. We will not order retroactive adjustments to any payments made in 1988.

I. *Procedural History*

The commission instituted this docket by its order of notice issued August 10, 1988 to investigate Public Service Company of New Hampshire's (PSNH) implementation of the procedures for calculating and updating the peak reduction factor. A prehearing conference was scheduled for September 7, 1988.

The commission opened the docket because the staff had advised the commission that PSNH had not correctly implemented the peak reduction factor. In *Re Small Energy Producers & Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984) (order no. 17,104), the commission established procedures for calculating and updating the peak reduction factor. The PRF is a component in the following formula used to calculate the amount paid by PSNH to qualifying small power producers and

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qualifying cogenerators (QFs) for capacity: (Capacity Rate) × (NHPUC Audit Value) × (Peak Reduction Factor). *Id.* at 359. Order no. 17,104 adopted the procedures and formula set forth in the stipulated recommendations of the parties (the stipulation).

On September 22, 1988, the commission issued order no. 19,182 (73 NH PUC 384) adopting the procedural schedule proposed by the parties. It granted the interventions of Alexandria Power Associates, Bridgewater Steam Power Company, Hemphill Power and Light Company (Hemphill), Pinetree Power, Inc., Pinetree Power — Tamworth, Inc., Timco, Inc., and Whitefield Power and Light Company (the woodburners) and approved the agreed scope of issues.

On October 13, 1988, the commission issued order no. 19,194 granting intervention to Pembroke Hydro Associates, Penacook Hydro Associates, Briar Hydro Associates (Briar) and Nashua Hydro Associates. By order no. 19,224 (November 2, 1988) the commission approved a continuance in the procedural schedule, subject to commission review on or before November 16, 1988. On December 1, 1988, the commission granted an extension of the deadline for settlement discussions to December 16, 1988. On December 13, 1988, the commission issued supplemental order no. 19,280 indefinitely postponing the settlement deadline to allow the parties to continue settlement discussions.

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On February 22, 1989, the staff proposed a procedural schedule culminating in a hearing on the merits on May 19, 1989. By order no. 19,346 (Mar. 17, 1989) the commission approved this schedule.

On March 21, 1989, the woodburners filed a motion to amend the procedural order. By report and order no. 19,351 (Mar. 23, 1989) the commission denied the motion. On March 19 1989, the woodburners requested a continuance. By order no. 19,356 (Mar. 30, 1989) the commission granted a procedural schedule incorporating the continuance.

On March 17, 1989, SES Concord Company L.P. (SES) moved for intervention. The commission granted the intervention by order no. 19,358 (Apr. 3, 1989).

On May 8, 1989, the woodburners filed a motion to compel staff responses to certain data requests. The commission required production by a letter dated May 17, 1989 and explained its decision in report and order no 19,465 (74 NH PUC 234) (July 11, 1989).

On July 10, 1989, Briar filed a motion for summary relief. The commission denied the motion by order no. 19,469 (74 NH PUC 242) (July 13, 1989).

On July 14, 1989, SES filed a motion for a commission order requiring PSNH to make capacity payments to SES pending final decision in the instant docket. By our order no. 19,485 (July 21, 1989) we required PSNH to file comments, counterproposals and/or objections to the SES motion by August 3, 1989.

The commission held a hearing on the merits of the case on May 19, 1989 and June 22, 1989. The parties filed briefs and reply briefs.

II. *Issues*

The following issues were argued in this proceeding. They all ask how order no. 17,104 should be interpreted or applied.

1. Whether PSNH is monitoring SPP capacity contributions in relation to audit values and whether the order requires PSNH to re-audit SPP's which consistently perform below their audit value and to update PRFs according to the re-audit values.

2. Whether PSNH is implementing the three year rolling average feature of the PRF and whether the order requires application of the three year rolling average to non-hydro SPPs.

3. Whether the order requires QFs under a long term rate to be on line and audited by January 1, 1989 to receive a capacity credit in its first year of operation or whether capacity credits should accrue as of the completion of a capacity audit and assignment of a hypothetical PRF.

4. Whether the doctrine of equitable estoppel requires the interpretation of order no. 17,104 be applied, if at all, prospectively from the date of a final order in this docket.

5. Whether wood-fired SPPs should now use a class PRF.

6. Capacity payments to specific facilities

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1) Hemphill's PRF
2) Capacity payments to SES, Peterborough, and the Dunbarton Landfill (Dunbarton).

7. The relationship between capacity payments for January 1988 and the PSNH bankruptcy case.

8. Whether PSNH should pay for capacity based on operation in the power year or the capacity year.

Our findings on issue 3 and determinations regarding issue 4 render the bankruptcy issue (7) and the power year/calendar year issue (8) moot and therefore we will not address them further in this order. We will address the remainder of the issues in the sequence listed above.

III. *Positions of the Parties*

A. *Staff*

1. The economics department alleged that PSNH had not been monitoring QF capacity contributions in relation to the NHPUC audit value. It argued that by the clear language of the order, at 359, PSNH should request a re-audit of QFs which consistently perform below audit values in order to stop the intra-class subsidies which result from the poor performances of certain producers. The engineering department contends that a re-audit of a facility is only appropriate after a physical change in the facility. It noted that, given the audit methodology, in the absence of physical modifications, a hydro facility will yield, upon re-audit, similar if not the same values.

2. Staff asserted that PSNH never implemented the three year rolling average and argued that the commission intended to apply the protection of the three year average to all qualifying facilities, both hydro and non-hydro.

3. The economics department, pointing to the importance placed by the order on the peak month of January, asserted that a QF should be on line and audited by January 1st to earn a capacity payment for that power year. It argued that the practice of paying for capacity immediately following an audit is contrary to the intent of order 17,104 and has led to substantial overpayments for capacity, and that, at least for 1988, these should be repaid. The staff attorney averred that the language of the order allowed the payment of capacity credit immediately after an audit value was assigned. For QFs under a short-term rate, the order specifies that only sites on line January 1st will receive capacity payments during that calendar year. Order at 363. There is no such language applicable to long term rate.

4. Staff argued that the doctrine of equitable estoppel does not apply. Parties should not rely on the staff's interpretation of a commission order but should rather seek clarification from the commission. It recommended that while payments for 1985, 1986 and 1987 should not be disturbed, the capacity payments to QFs should be adjusted for over or under payments for 1988.

5. Staff did not take a position on class versus individual PRF's for non-hydro facilities.

6. Staff did not take a position on either the special adjustment requested by Hemphill or specifically the eligibility of SES, Peterborough and Dunbarton for capacity payment in 1989.

B. PSNH

1. PSNH alleged that low peak reduction factors for hydros are not primarily due to operator

inefficiencies but rather are due to the deviations between annual and seasonal flows and the twenty-year median flow for the site. In the absence of physical modifications, it averred, a hydro facility upon re-audit will yield similar if not exact audit values.

2. PSNH agreed that the report and order in DE 83-62 requires updating of the PRF's, and that adjustments are now necessary. However, it argued that prior to 1988, QF performance had not significantly altered the PRFs.

PSNH did not dispute that the three year rolling average applies to all QFs but rather how the average is phased in for hydros compared to

Page 127

non-hydros. It claimed that, according to the language of the order, while hydros implement the three year rolling average immediately using hypothetical numbers in the early years, non-hydros average only the actual PRF.

3. PSNH reads the order to require capacity payments in the same month an audit is performed and an PRF assigned by the commission's engineering department. It cites the order at 359 ("no capacity payments will be made prior to the assignment of an audit value") and at 360 ("when the SPP has been audited, it will be assigned an estimated peak reduction factor. The SPPs capacity payments will be based on that estimated peak reduction factor until the first January after the SPP is on-line under a rate established in this docket.")

4. PSNH did not oppose the reliance claim made by Briar. PSNH proposed that 1) all capacity payments through the year 1987 remain as made, 2) the new 1988 PRFs be put into effect (adjusting for any over or underpayments made since January 1, 1988 in accordance with order no. 17,104), 3) and that new PRFs be implemented annually from now on.

5. PSNH believed that the woodburners should be allowed to retain facility-specific PRFs. It stated that there is no substantive difference in data gathering or analysis done by PSNH and that facilities have the same incentive to operate during the peak, whether they have an individual or a class PRF.

6. PSNH opposed the requested adjustment in Hemphill's PRF, arguing that Hemphill's essential position is that it is dissatisfied with the established method for calculating the PRF. It stated that while it is unfortunate that Hemphill's construction schedule did not allow a higher level of operation in January of 1988, the rule was known in advance.

PSNH acknowledged that it had not initiated capacity payments to SES, Peterborough and Dunbarton because the issue of whether capacity payments should be paid under order no. 17,104 is under commission consideration. It did not oppose SES's motion to initiate capacity payments.

C. The Woodburners

1. The woodburners did not present a position concerning whether QFs should be re-audited.

2. The woodburners posit only that any implementation of the three year rolling average should not be retroactive.

3. The woodburners argued that the order allows capacity for facilities not on-line and

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audited by January 1st. They noted that the language referring to January 1st applies only to small power producers under short term rates and cited the language regarding the audit and estimated peak reduction factor cited by PSNH. They also quoted the following sections of the order in support: "[I]t is the responsibility of the SPPs to request the audit and no capacity payments will be made prior to the assignment of an audit value." *Id.* at 359. "The initial audit value, or if the initial audit value has changed the audit value in effect on January 1st of the year, determines the value to be used for determining payments during that calendar year." *Id.* at 359. They also contended that any interpretation other than eligibility for capacity payments in the first month of operation conflicts with the present value calculations of the capacity rate worksheets.

4. The woodburners requested that any interpretation of the "on-line and audited" issue be applied prospectively due to the doctrine of equitable estoppel.

5. The woodburners maintained that their PRFs should continue to be individually applied, alleging that the data gathering and analysis is the same under either class or individual PRFs, and individual PRFs provide better incentives to operate on PSNH's peak.

6. As representing the woodburning facility of Hemphill, they argued that Hemphill's 1988 actual PRF of .60 be replaced by .806, the average of the 1988 actual (.60) and the 1989 actual (1.03). They claimed this is a reasonable adjustment given the capacity value actually provided to PSNH since January 1988. They did not take a position on capacity payments to SES, Peterborough and Dunbarton.

D. Briar

1. Briar did not take a position on the

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re-audit of QFs.

2. Briar argued that any implementation of the three year rolling average should not be retroactive.

3. Briar posited that the order requires capacity payments for facilities on long-term rates to commence upon assignment of the NHPUC audit value, quoting the same provisions of the order (Order at 359 and 360) as the woodburners in support. Briar argued that the Briar facility became commercially available on December 28, 1987, and that it was audited on January 4, 1987. Briar also contended that if it had known of the economics department's position (that projects not on-line and audited before January 1st should not qualify for capacity payment until the first month of the next power year) I would have asked for an audit before January 1st.

4. Briar contended that the commission may not legally apply an interpretation retroactively, especially since such application would require Briar to forfeit its 1988 capacity payments with no opportunity to conform its 1988 conduct to a newly announced rule. It averred that it reasonably relied on prior commission practice and that the commission would abuse its discretion if it failed to consider this reasonable reliance.

5. Briar did not take a position on individual versus class PRFs for non-hydro facilities.

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6. Briar did not take a position on the specific capacity payments to Hemphill, SES, Peterborough and Dunbarton.

E. SES

1. SES did not present a position on whether QFs should be re-audited.

2. SES argued that any implementation of the three year rolling average should be prospective.

3. SES argued that the plain language of order no. 17.104 provides for the initiation of capacity payments for SPPs under long-term rate orders immediately upon completion of a capacity audit. It alleged that there is no reason to look beyond this language because every element of the order is consistent with this interpretation. It contended that the order adopts the methodology described in the stipulation, Exhibit 12, Attachment 1. Under this methodology PSNH claims credit against its New England Power Pool (NEPOOL) capability responsibility for SES and the other large QFs on a monthly basis as soon as the facility is operational. Therefore, it contended, PSNH receives capacity value as soon as SPPs start production.

SES averred that a January "on-line and audited" requirement would prohibit most facilities from fully earning their commission-approved avoided capacity payments.

4. SES posited that any change in capacity payment procedure should be prospective. A retrospective ruling, it claimed, would prejudice the parties who have justifiably relied on the clear language of the order.

5. SES did not take a position on the issue of class/individual PRFs for non-hydro facilities.

6. SES averred that PSNH withheld capacity payment pending a final decision in this case and argue that PSNH should be ordered to pay SES for capacity immediately. It advanced no position on the capacity payments to Hemphill, Peterborough and Dunbarton.

IV. *Commission Analysis*

1. Monitoring QF capacity contributions and re-audits.

[1] Exhibit 4, Attachment E-2 shows that there are several hydro facilities that are consistently performing below their audit value. If those SPPs were re-audited and individual and class audit values brought into alignment with actual production, individual facilities would be more nearly rewarded according to their contribution.

However, it appears that under the current auditing methodology, in the absence of physical modifications, a hydro facility will yield upon re-audit, similar if not the same values. The methodology assumes that low peak reduction factors for hydros are due to deviations between annual and median flow for the site, rather than operator inefficiencies.

Order no. 17,104 at 359 states "Following the initial audit periodic reviews will be

conducted", and therefore requires re-auditing of facilities that consistently perform below audit value. We will direct PSNH to monitor the capacity contributions of the hydro facilities in relations to the NHPUC audit value and identify to the commission any facilities whose

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consistent performance below their audit value is not due to normal deviations between annual and median flows for the site. If the current audit methodology cannot capture the disparities due to operator inefficiency, we will either direct the NHPUC Engineering staff to formulate a methodology that does, or, if such reformulation is not possible, adopt individual rather than class PRFs for hydro facilities.

2. Three year rolling average

[2] At the time this docket was opened, PSNH had not updated the annual PRF in the three year rolling average. After discussions with the NHPUC staff on procedures and timing, PSNH has computed PRFs for use prospectively.

We will interpret the issues regarding eligibility and the formulas for capacity payments strictly according to the wording of the order. While the parties and the commission may have intended to afford non-hydro facilities the protection of a three year rolling average from year one using hypothetical PRFs as necessary, the order itself does not specifically provide such protection. Therefore, we will approve the three year rolling average being phased in from one year in year one, two years in year two, and three years in year three.

We will not rule on the logic of the staff analysis and recommendation, which addresses what the order should have said given the probable intent of the parties and the commission, rather than interpreting what the order actually says.

3. Timing of eligibility for capacity

[3] In reviewing the language of the order, we find that the order allows payment for capacity to commence once the audit is completed and a PRF assigned.

We will not rule on the logic of the staff analysis and recommendation at this time. We put all parties on notice that should we be required to address issues of eligibility for capacity (and energy) payments at a future time, such determinations will be made *de novo* in the then existing context rather than by reference to order no. 17,104 and its progeny.

4. Prospective versus retroactive adjustments

[4, 5] All adjustments required by this order will apply prospectively. Therefore, we will not require any adjustments to be made for 1988, either among the different QF technologies or between QFs and ratepayers.

In regard to the issue of estoppel the New Hampshire Supreme Court has held that estoppel cannot be applied against a state agency unless the statement or act upon which a party relies was within the state employees authority to act. See *City of Concord v. Tompkins*, 124 N.H. 463, 468.

While staff brings a unique knowledge to issues before the commission and its opinions carry significant weight, its advice and opinions do not bind the commission; the commission speaks only through its Reports and Orders.

However, the court also stated in *dicta* in *Tompkins* that it would consider estoppel where the government employee's "wrongful conduct threatens to work a serious injustice and if the public interest would not be unduly damaged by the imposition of estoppel". *Tompkins*, 124 N.H. at 472; (quoting *United States v. Lazy FC Ranch*, 481 F.2d 985, 989 (9th Cir. 1973)). We note,

however, applying even the more stringent standard quoted above the representations of staff did not rise to the level of working a serious injustice and, thus, the doctrine of estoppel is not applicable.

5. Class versus individual PRFs in woodburners

[6] Order no. 17,104 contemplates that at some point class PRFs would be established for non-hydro facilities. However, especially given the difficulties of intra-class subsidization between more and less efficient hydro facilities,

Page 130

we find that no useful purpose would be served by adopting a class PRF in woodburners at this time.

6. Capacity payments to specific facilities

We find that Hemphill was paid for capacity in accordance with the language of order no. 17,104. We will not retroactively change the method of computing the PRF for this one facility.

We find that SES, Peterborough and Dunbarton became eligible for capacity payments when they were audited and assigned a PRF and will direct PSNH to make the appropriate payments.

Our order will issue accordingly.

ORDER

Based on the foregoing report which is made a part hereof, it is hereby

ORDERED, that Public Service Company of New Hampshire (PSNH) monitor the capacity contribution of all qualifying facilities (QFs), identify to the commission those facilities which consistently perform below their audit values and substantiate PSNH's claim that the discrepancies are due to normal deviations between annual and median flows for the site; and it is

FURTHER ORDERED, that the NHPUC Engineering Department review the current audit methodology and report to the commission whether it is capable of capturing discrepancies between performance and audit values due to operator inefficiencies; and it is

FURTHER ORDERED, that the three year rolling average for non-hydro facilities be phased in over three years using only actual data; and it is

FURTHER ORDERED, that facilities whose rate petitions were filed pursuant to order no. 17,104 and its progeny are eligible for capacity payments as soon as the audit is completed and an estimated Peak Reduction Factor (PRF) is assigned; and it is

FURTHER ORDERED, that any further adjustments required by this order will apply prospectively, that the adjustments made to the applications of the PRF in February 1989 for 1989 capacity payments be, and hereby are, approved, and that no adjustments be made for 1988; and it is

FURTHER ORDERED, that non-hydro facilities, including woodburners, be assigned individual PRFs; and it is

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FURTHER ORDERED, that the petition by Hemphill Power and light for modification of it PRF calculation be, and hereby is, denied; and it is

FURTHER ORDERED, that PSNH forward to SES Concord, L.P., Peterborough Hydro and Dunbarton Landfill the capacity payments for which they were eligible in 1989 under this order.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1990.

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NH.PUC*02/28/90*[50913]*75 NH PUC 133*Fryeburg Water Company

[Go to End of 50913]

75 NH PUC 133

Re Fryeburg Water Company

DR 89-162
Supplemental Order No. 19,733

New Hampshire Public Utilities Commission

February 28, 1990

ORDER authorizing a water utility that provided service in both Maine and New Hampshire to increase rates for its New Hampshire customers to the level approved by the Maine commission. Commission finds that the Maine commission, which had jurisdiction over 92.2% of the customers served by the utility, had reached a decision that was in the best interests of the approximately 40 New Hampshire customers served by the utility.

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1. RATES, § 124 — Reasonableness — Multi-jurisdictional utility — Findings of neighboring state — Water service.

[N.H.] A water utility that provided service in both Maine and New Hampshire was authorized to increase its rates for New Hampshire customers to the level approved by the Maine commission; it was found that the Maine commission, which had jurisdiction over 92.2% of the customers served by the utility, had reached a decision that was in the best interests of the approximately 40 New Hampshire customers served by the utility. p. 134.

2. RATES, § 595 — Water — General service.

[N.H.] A water utility was authorized to implement a 16.2% increase in its general service rates. p. 134.

By the COMMISSION:

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SUPPLEMENTAL ORDER

[1, 2] On August 25, 1989, Fryeburg Water Company (Fryeburg), a public utility engaged in the business of supplying water service in the State of Maine and New Hampshire, filed revisions to its tariff NHPUC No. 7, which would increase revenues from all its General Service customers 16.2%; and

WHEREAS, a similar filing was made before the Maine Public Utilities Commission which has jurisdiction over 92.2% of the customers served by Fryeburg; and

WHEREAS, the Maine Commission by order dated January 3, 1990, found the tariff rates to be just and reasonable as filed; and

WHEREAS, this Commission is satisfied that the deliberations and decision of the Maine Commission is in the best interest of the approximately 40 New Hampshire customers; it is hereby

ORDERED, that the proposed rates reflecting Fryeburg's $25,703 annual increase be approved for effect for those customers served in New Hampshire; and it is

FURTHER ORDERED, Fryeburg submit revised tariff pages for service rendered on or after the date of the Maine Commission Order; and it is

FURTHER ORDERED, that such tariff pages shall bear the date and number of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1990.

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NH.PUC*02/28/90*[50914]*75 NH PUC 134*Birchview by the Saco, Inc.

[Go to End of 50914]

75 NH PUC 134

Re Birchview by the Saco, Inc.

DR 89-207
Order No. 19,734

New Hampshire Public Utilities Commission

February 28, 1990

ORDER suspending a proposed temporary water rate increase pending further investigation, scheduling a hearing on the temporary rate request, and scheduling a prehearing conference on a proposed permanent rate increase.

RATES, § 248 — Suspension — Temporary and permanent rate requests — Water utility.

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[N.H.] The commission suspended a proposed temporary water rate increase pending further investigation, scheduled a hearing on the temporary rate request, and scheduled a prehearing conference on a proposed permanent rate increase.

By the COMMISSION:

ORDER

On February 5, 1990 Birchview By the Saco, Inc. (petitioner), serving a limited area in the town of Bartlett, New Hampshire filed proposed rate schedules and supporting documents which would result in an increase in annual water revenues of $17,120 or a 117.84% annual increase; and

WHEREAS, the proposed tariff page NHPUC No. 1 — Water, 3rd Revised Page Number 5 of Birchview By the Saco, Inc. was submitted for effect on March 5, 1990; and

WHEREAS, in conjunction with the request by the petitioners for a permanent increase in rates, a request for a temporary rate increase in the amount of $10,003 on an annual basis was filed; and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that the proposed tariff page is suspended pending further investigation and decision; and it is

FURTHER ORDERED, that a hearing on the petitioner's request for temporary rates and a prehearing conference to address procedural matters regarding the proposed permanent rate increase be held before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Building #1, Concord, New Hampshire at ten o'clock in the forenoon on May 15, 1990; and it is

FURTHER ORDERED, that pursuant to Puc Rule No. §203.01, the petitioner notify all persons desiring to be heard that they should appear at said hearing, when and where they may be heard on the question of whether the proposed tariff is in the public good, by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted; such publication to be no later than May 1, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and Puc §203.02, any party seeking to intervene in the proceeding must submit a motion to intervene, with a copy to the petitioner, at least three (3) days prior to the hearing:

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1990.

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NH.PUC*03/01/90*[50912]*75 NH PUC 131*Rowan Tree Associates/Town of Meredith

[Go to End of 50912]

75 NH PUC 131

Re Rowan Tree Associates/Town of Meredith

DS 89-213
Order No. 19,729

New Hampshire Public Utilities Commission

March 1, 1990

ORDER nisi authorizing a municipality to extend its sewer service beyond its municipal boundaries and exempting it from regulation as a sewer utility.

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1. PUBLIC UTILITIES, § 57 — Municipal corporations — Operations beyond municipal boundaries — Exemption from regulation.

[N.H.] Pursuant to state statute RSA 362.4 municipal corporations that extend utility service beyond their municipal boundaries are exempt from regulation as public utilities, provided that rates for service are no higher than those charged to customers within the municipality, and the service level is equal to that

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provided within the municipality. p. 132.

2. PUBLIC UTILITIES, § 57 — Municipal sewer utility — Operations beyond municipal boundaries — Exemption from regulation.

[N.H.] The provision of service beyond municipal boundaries would not subject the municipal sewer utility to regulation as a public utility where the rates for service would be no higher than those charged to customers within the municipality and the service level would be equal to that provided within the municipality. p. 132.

3. MUNICIPAL PLANTS, § 11 — Jurisdiction and powers — State commissions — Operations outside municipal limits.

[N.H.] State statute RSA 374:22 requires municipal utilities to obtain the approval of the commission before extending service to new areas outside of their municipal boundaries. p. 132.

4. MUNICIPAL PLANTS, § 21 — Operations outside municipal limits — Grounds for approval.

[N.H.] A municipal sewer utility was conditionally authorized to extend service beyond its municipal boundaries where the city into which the extension would be made had no objection

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and no other sewer utility had franchise rights in the area; final authorization was conditioned on the public being afforded an opportunity to respond in support of, or in opposition to the extension. p. 132.

By the COMMISSION:

ORDER

WHEREAS, Rowan Tree Associates, a partnership with offices located in the Town of Meredith, proposes to develop a site consisting of adjoining parcels of land located on each side of the boundary between the City of Laconia and Town of Meredith; and

WHEREAS, Rowan Tree Associates and the Town of Meredith have entered into an agreement stating that the Town will accept sewage from said site provided that certain conditions in the referenced agreement are first met; and

WHEREAS, Rowan Tree Associates has agreed to the stated conditions; and

WHEREAS, the above agreement further states that the sewer system within the proposed development will remain privately owned and that the entire development will be treated and billed by the Town of Meredith as a single multiple unit customer; and

WHEREAS, Rowan Tree Associates has petitioned the commission on behalf of the Town of Meredith, that the latter be exempt from regulation as a sewer utility in this case; and

[1-4] WHEREAS, RSA 362.4 III (a) now provides for such exemption based on provision of service outside the municipal boundaries at a rate no higher than that charged to customers within the municipality, and at a level of service equal to that provided customers within the municipality; and

WHEREAS, RSA 374:22 nonetheless requires commission permission and approval to extend service to a new area outside the municipal boundaries; and

WHEREAS, sewer service is not available or anticipated to the site from the City of Laconia; and

WHEREAS, the City of Laconia has stated that it has no objection to this petition; and

WHEREAS, no other sewer utility has franchise rights in the subject area; and

WHEREAS, although other alternatives such as septic systems or on-site package treatment facilities are available, after investigation and consideration the stated proposal appears to be for the public good; and

WHEREAS, it is not the intent of this ORDER to address the franchise rights or regulatory requirements concerning Rowan Tree Associates in regard to the proposed development, but only those concerning the Town of Meredith, such issues concerning Rowan Tree Associates to await more specific future

knowledge of the proposed type of ownership, financing, plant and equipment, etc.; and

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WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than March 22, 1990; and it is

FURTHER ORDERED, that Rowan Tree Associates effect said notification by publication of an attested copy of this order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 12, 1990; and it is

FURTHER ORDERED, *NISI* that the Town of Meredith be authorized pursuant to RSA 374:22 and 26, to extend its sewer service (in the sense of accepting sewage from a customer, but not construction of facilities; said facilities to be built, owned and maintained by others) in the City of Laconia in an area known and referred to as lots 2 and 2A, Plan 23Q, on the Laconia tax maps; and it is

FURTHER ORDERED, that Rowan Tree Associates provide the commission with accurate maps at 1:24000 sale (1" = 2000´) showing the above lots, as well as the Meredith portion of the proposed development; and it is

FURTHER ORDERED, that the Town of Meredith shall not be considered a public sewer utility in this case providing the conditions of rate and service of RSA 362.4 III (a) are satisfied; and it is

FURTHER ORDERED, that such authority and exemption shall be effective on March 27, 1990, unless a request for hearing is filed with the commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1990.

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NH.PUC*03/02/90*[50915]*75 NH PUC 135*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50915]

75 NH PUC 135

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,736

New Hampshire Public Utilities Commission

March 2, 1990

ORDER granting requests for protective orders covering materials filed in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. PROCEDURE, § 16 — Discovery and inspection — Protective orders.

[N.H.] The commission granted requests for protective orders covering confidential, commercial or financial information to be filed in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire; however, the appropriateness of continued confidentiality remained subject to further review. p. 137.

2. PROCEDURE, § 16 — Discovery and inspection — Attorney work product privilege — *In camera* inspection.

[N.H.] The commission reserved, pending completion of an *in camera* review of the document, a decision on whether the attorney work product privilege applied to a document prepared under the supervision of persons in the rate division of Public Service Company of New Hampshire at the request of its counsel. p. 137.

By the COMMISSION:

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ORDER

WHEREAS, the Staff of the New Hampshire Public Utilities Commission (Staff) filed by letter dated February 27, 1990, a request for a protective order pursuant to RSA 91-A:5 IV covering any materials to be filed by the Public Service Company of New Hampshire (PSNH) in response to Staff's data request, set 1, number 2, filed on February 2, 1990, which asked PSNH to provide a list of all employees covered by the September 13, 1989 special severance pay plan, including each employee's name, title and annual salary; and

WHEREAS, Staff asserted in support of its request for protective order that PSNH has advised Staff that it considers the requested information to be confidential, commercial and financial insofar as it requests identification of individual employees by name, title and salary rather than summary information that does not identify the individuals in question or their salaries; and

WHEREAS, Northeast Utilities (NU) filed on February 27, 1990, a motion for a protective order to cover its pending response to Staff's data request, set 1, number 24, which requests NU to "... provide a copy of all studies and analyses done by or for NU relating to the acquisition of PSNH and/or its impacts and effects on others."; and

WHEREAS, in support of its motion, NU asserts that request number 24 is for highly sensitive, confidential, commercial and financial information; and

WHEREAS, PSNH filed on February 20, 1990, a motion for protective order to restrict dissemination and disclosure of certain materials in PSNH's possession which staff has requested in data request set 1, number 243, to wit: "... all related studies done by PSNH personnel and

other consultants regarding the bearable and feasible level of rates."; and

WHEREAS, PSNH asserts in its motion that NU does not seek access to any of the items in question, and NU has not objected to PSNH's motion as worded; and

WHEREAS, it appears to the commission that the only parties to this proceeding who are involved in the issue of "The bearable and feasible level of rates" are the Staff, the Consumer Advocate, the Attorney General and the Business and Industry Association; and

WHEREAS, PSNH's response to said data request, which was attached to its motion for protective order, reads as follows:

Response: The following items are supplied without restriction:
1A. "Price Elasticity of Demand — Exegesis of Assumptions and Methods Used", Dennis C. Delay, March 15, 1987.
1B. "PSNH Preliminary Analysis and Comments on the BIA Rate Survey `The Effect of Electric Price Increases on New Hampshire Businesses"', March 17, 1989.

The following items prepared by PSNH personnel or by consultants at PSNH's direction, will be the subject of a Motion for Protective Order:
2A. "A Report on Key Areas of Competition — Threats and Opportunities", D.C. Delay, *et. al.*, April 15, 1987.
2B. "Cogeneration Competition in the PSNH Marketplace", PSNH System Planning/Energy Management, July 27, 1988.
2C. Clemente, Frank, "Electric Rate Increases and Socioeconomic Change in the Northeast".
2D. Nelson, Jon P., "An Analysis of the Impact of Higher Electricity Prices on Employment in the New Hampshire Economy 1988-1994", September, 1988.
2E. "PSNH Market Based Rate Study, Class By Class Threshold Rate Analysis", Ed. 1.1, September 6, 1988.
2F. "PSNH Market Based Rate Study, Government Takeover Threshold Rate Analysis", December 12, 1988.
2G. "Economic Impact of the Class By Class Threshold Rate Analysis", D.C. Delay, February 1, 1989.

WHEREAS, the above cited items IA and IB have been supplied without restriction and are thus not the subject of this order; and

WHEREAS, PSNH requests authority to decline to produce item 2F in that it was prepared under the supervision of persons in the PSNH Rates Division, at the request of counsel in anticipation of a Seabrook rate case and is privileged as attorney work product; and

WHEREAS, PSNH further requests in its motion that it be authorized to provide the remaining items (i.e. items 2A, 2B, 2C, 2D, 2E and 2G) to Staff only; and

WHEREAS, the public interest and interests of due process require that information pertinent to this proceeding be subject to the scrutiny of the parties thereto; it is

WHEREAS, the confidentiality of the information may be reviewed by the commission at

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any time in the future if a request is made for disclosure; and

[1] ORDERED, that staff's request for a protective order covering PSNH's response to Staff data request set 1, number 2 is granted; and it is

FURTHER ORDERED, that NU's motion for a protective order covering its response to Staff's data request set 1, number 24 is granted except that the 22 documents referred to in said motion shall be available for review and examination at the office of the commission; and it is

[2] FURTHER ORDERED, that PSNH submit for *in camera* inspection its response to item 2F by March 6, 1990. The commission will defer ruling on this request until it has completed its *in camera* review of the materials in question; and it is

FURTHER ORDERED, that PSNH's request for authority to provide items 2A, 2B, 2C, 2D, 2E and 2G to Staff only is granted in part and denied in part. PSNH shall submit one copy of said items to the Secretary of the Commission who shall ensure the propriety treatment of the material in question and who shall make it available on request for review at the commission offices to the Commission Staff, the Consumer Advocate, the Attorney General and the Business and Industry Association; and is

FURTHER ORDERED, that on motion of any party, the commission will reconsider the extent to which the material in question should be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that NU shall submit its responses to staff request set 1, number 2 and number 24 and PSNH shall file its response to Staff request set 1, number 243 as provided herein to the commission offices no later than March 6, 1990; and it is

FURTHER ORDERED, that the proprietary documents to be submitted are to be used by the parties only for the purpose of evaluating the merits of the petition in this docket; and it is

FURTHER ORDERED, that the proprietary documents shall not be reproduced or duplicated nor shall they be distributed, disclosed or otherwise disseminated beyond the parties specifically authorized herein; and it is

FURTHER ORDERED, that, unless otherwise ordered, all copies of the proprietary documents shall be destroyed or returned to the originator of the response at the conclusion of these proceedings; and it is

FURTHER ORDERED, that the commission, on review of the documents, or on motion by an interested party, may review the appropriateness of continued confidentiality in this matter and may issue appropriate amendments to this order after hearing.

By order of the Public Utilities Commission of New Hampshire this second day of March, 1990.

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NH.PUC*03/06/90*[50916]*75 NH PUC 138*Public Service Company of New Hampshire

[Go to End of 50916]

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75 NH PUC 138

Re Public Service Company of New Hampshire

Additional applicant: Granite State Telephone, Inc.

DR 90-005
Order No. 19,737

New Hampshire Public Utilities Commission

March 6, 1990

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist that render departure from the general schedules to be just and reasonable. p. 138.

2. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Special contract rate.

[N.H.] An electric utility was authorized to implement a special contract rate for interruptible electric service where it demonstrated that special circumstances existed that rendered departure from its general schedules to be just and reasonable. p. 138.

3. RATES, § 250 — Retroactive effect — Special contract rate — Interruptible electric service.

[N.H.] The commission waived a portion of PUC 1601.02(c) to allow a special rate contract for interruptible electric service to take effect retroactively. p. 138.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued Report and Order No. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

WHEREAS, in its Report the Commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1] WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

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WHEREAS, the proposed Contract with Granite State Telephone, Inc. (hereinafter Granite State) which was filed with the Commission on January 12, 1990, waives the requirement under the AVAILABILITY section which provides, in part, that service under Rate WI is only available to Rate GV and Rate TR customers, and waives the requirement under the DEFINITIONS section which provides, in part, that service under Rate WI is permitted only to customers able to designate a minimum of 100 KW as interruptible load; and

WHEREAS, the proposed Contract provides for PSNH to install the necessary metering required for service under Rate WI, and for Granite State to pay for such metering since PSNH would not have otherwise incurred this cost in the absence of this Contract; and

[2, 3] WHEREAS, the Commission finds that the terms of the Agreement between PSNH and Granite State are reasonable consistent with the terms of Rate WI, and PSNH has demonstrated that Granite State has evidenced special circumstances which render departure from the

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terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 16, 1990, said publication to be documented by affidavit filed with this office on or before April 5, 1990; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c), in that the Special Contract will be retroactively effective as of January 1, 1990 unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order Nisi will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1990.

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NH.PUC*03/06/90*[50917]*75 NH PUC 139*Public Service Company of New Hampshire

[Go to End of 50917]

75 NH PUC 139

Re Public Service Company of New Hampshire

Additional applicant: Department of Resources and Economic Development

DR 90-009
Order No. 19,738

New Hampshire Public Utilities Commission

March 6, 1990

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist that render departure from the general schedules to be just and reasonable. p. 140.

2. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Special contract rate.

[N.H.] An electric utility was authorized to implement a special contract rate for interruptible electric service where it demonstrated that special circumstances existed that rendered departure from its general schedules to be just and reasonable. p. 140.

3. RATES, § 250 — Retroactive effect — Special contract rate — Interruptible electric service.

[N.H.] The commission waived a portion of PUC 1601.02(c) to allow a special rate contract for interruptible electric service to take effect retroactively. p. 140.

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By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued Report and Order No. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989, and

WHEREAS, in its Report the Commission accepted the recommendations for the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1] WHEREAS, the Commission has authority under NH RSA 378:18 to approve special

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contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed Contract with the Department of Resources and Economic Development (hereinafter DRED), which was filed with the Commission on January 18, 1990, waives the requirement under the AVAILABILITY section which provides, in part, that service under Rate WI is only available to Rate GV and Rate TR customers; and

[2] WHEREAS, the Commission finds that the terms of the Special Contract between PSNH and DRED are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that DRED has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 16, 1990; and it is

[3] FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c), in that the Special Contact will be retroactively effective as of January 1, 1990 unless otherwise provided by Commission Order and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order Nisi will become effective 20 days after the date of publication of the Order of Notice, unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1990.

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NH.PUC*03/06/90*[50918]*75 NH PUC 140*Public Service Company of New Hampshire

[Go to End of 50918]

75 NH PUC 140

Re Public Service Company of New Hampshire

Additional applicant: Shaw's Supermarket, Inc.

DR 90-014

Order No. 19,739

New Hampshire Public Utilities Commission

March 6, 1990

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority

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under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist that render departure from the general schedules to be just and reasonable. p. 141.

2. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Special contract rate.

[N.H.] An electric utility was authorized to implement a special contract rate for interruptible electric service where it demonstrated that special circumstances existed that rendered departure from its general schedules to be just and reasonable. p. 141.

3. RATES, § 250 — Retroactive effect — Special contract rate — Interruptible electric service.

[N.H.] The commission waived a portion of PUC 1601.02(c) to allow a special rate contract for interruptible electric service to take effect retroactively. p. 141.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1989, the New Hampshire Public Utilities Commission issued Report and Order No. 19,608 (74 NH PUC 443) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1989; and

WHEREAS, in its Report the Commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts which are not consistent with the standard form; and

[1] WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed Contract with Shaw's Supermarket, Inc. (hereinafter Shaw's) which was filed with the Commission on February 1, 1990, waives the requirement under the

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DEFINITIONS section which provides, in part, that service under Rate WI is permitted only to customers able to designate a minimum of 100 KW of interruptible load; and

[2] WHEREAS, the Commission finds that the terms of the Agreement between PSNH and Shaw's are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that Shaw,s has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 16, 1990, said publication to be documented by affidavit filed with this office on or before April 5, 1990; and it is

[3] FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c), in that the Special Contract will be retroactively effective as of January 1, 1990 unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order

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Nisi will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1990.

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NH.PUC*03/06/90*[50919]*75 NH PUC 142*Resort Waste Services Corporation

[Go to End of 50919]

75 NH PUC 142

Re Resort Waste Services Corporation

DR 90-035
Order No. 19,741

New Hampshire Public Utilities Commission

March 6, 1990

ORDER requiring the officers and directors of a public sewer utility to appear before the commission to report on the current financial and operating condition of the utility.

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1. SERVICE, § 215 — Discontinuance of service — Need for authorization — Sewer utility.

[N.H.] Citing imminent danger of discontinuance of service, the commission directed the officers and directors of a public sewer utility to appear and report on the current financial and operating condition of the utility; the commission had been informed that the capacity control member of the utility was discontinuing business due to financial difficulties, that the president and chief financial officer of the utility had resigned, and that the engineering firm that operated the sewer plant had not been paid for its services in over three months. p. 142.

2. SERVICE, § 215 — Discontinuance of service — Need for authorization — Sewer utility.

[N.H.] State statute RSA 374:28 requires authorization from the commission for the discontinuance of utility service. p. 142.

By the COMMISSION:

ORDER

[1] On or about February 9, 1991, the Public Utilities Commission (commission) was notified that the Satter Companies of New England, a New Hampshire general partnership, the Capacity Control Member of Resort Waste Services Corporation (RWSC), a New Hampshire public sewer utility in the Town of Carroll, New Hampshire, was discontinuing business due to financial difficulties; and

WHEREAS, the commission was also notified that RWSC's president and chief executive officer had resigned; and

WHEREAS, the Capacity Control Member is responsible for over fifty percent (50%) of the revenues of RWSC; and

WHEREAS, the engineering firm which operates the sewer plant has not been paid for its services in over three (3) months; and

WHEREAS, RSA 374:28 requires authorization from the commission for the discontinuance of service; and

[2] WHEREAS, there is an imminent danger that the engineering firm may abandon the plant resulting in a discontinuance of service; it is hereby

ORDERED, that the officers and directors of RWSC appear at the commission's offices at 8 Old Suncook Road, Concord, New Hampshire at 1:00 o'clock in the afternoon on the twenty-sixth day of March, 1990, pursuant to RSA 374:4 to inform the commission of RWSC's current financial and operating condition; and it is

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FURTHER ORDERED, that pursuant to RSA 378:7, RSA 378:9 and RSA 378:28, the commission shall investigate the current tariff of RWSC to determine its continuing viability and the possibility of alterations to its terms, conditions, rates and charges; and it is

FURTHER ORDERED, that any party wishing to file testimony in this matter do so by March 19, 1990; and it is

FURTHER ORDERED, that the commission shall provide notice of this hearing by publication in a newspaper having general circulation in the State of New Hampshire; and it is

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FURTHER ORDERED, that any party seeking to intervene in this proceeding shall file a motion to intervene pursuant to RSA 541-A:17 three days prior to the scheduled hearing date.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1990.

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NH.PUC*03/07/90*[50920]*75 NH PUC 143*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50920]

75 NH PUC 143

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,742

New Hampshire Public Utilities Commission

March 7, 1990

ORDER determining, on the basis of an *in camera* inspection, that the attorney work product privilege did not apply to a certain document requested in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

PROCEDURE, § 16 — Discovery and inspection — Privileged material — Attorney work product — Protective orders.

[N.H.] On the basis of an *in camera* inspection, the commission determined that the attorney work product privilege did not apply to a certain document requested in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire; however, the commission found that the document was eligible for protection against widespread public disclosure.

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By the COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), having filed a Motion for Protective Order on February 20, 1990, which, in pertinent part, requested authority to decline to produce a document, identified as "Item 2F" which was requested by the staff of the public utilities in data request set 1, number 243; and

WHEREAS, PSNH asserted in its motion that the requested information in Item 2F is privileged as an attorney work product in that it was prepared under the supervision of persons in the PSNH Rates Division, at the request of counsel in anticipation of a Seabrook rate case; and

WHEREAS, the commission ordered in Order No. 19,736, dated March 2, 1990, that PSNH submit for *in camera* inspection, its response to Item 2F by March 6, 1990, thereby deferring ruling on the PSNH request until the commission completes its *in camera* review of the materials in question; and

WHEREAS, if the commission were to accept PSNH's argument that the documents in question qualify as an attorney work product under these circumstances, the same privilege could be asserted in virtually all proceedings prepared for review by regulatory commissions. Attorneys and company personnel always work closely together to develop cases for presentation before this commission; and

WHEREAS, it is speculative as to whether evidence is developed initially at the request of counsel or by company personnel and subsequently conveyed to counsel for appropriate presentation; and

WHEREAS, PSNH cited no legal or regulatory precedent for its assertion of an attorney work product privilege relating to the document identified as Item 2F; and

WHEREAS, it appears to the commission that the only parties to these proceedings, other than Northeast Utilities (NU), who are involved in the issue relating to Item 2F, are the Consumer Advocate, the Attorney General and the Business and Industry Association; and

WHEREAS, PSNH asserts in its motion

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that NU does not seek access to any of the items in question and that NU has developed independent analyses which support its proposals in this proceeding; and

WHEREAS, NU has not objected to PSNH's motion as worded;

On conclusion of its *in camera* inspection of Item 2F which was submitted by PSNH to the commission on March 2, 1990, the commission finds that the information contained in the documents specified in Item 2F do not qualify as being privileged as attorney work product, but rather more closely recorded as work product of PSNH, or regulated company; and

IT IS ORDERED that, for reasons cited above, the commission hereby denies PSNH's request that it be authorized to decline to produce Item 2F; and it is

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FURTHER ORDERED that, to ensure protection of PSNH from wide-spread public disclosure, which will not serve any useful purpose at this time, the commission provides that:

1. The documents submitted by PSNH for *in camera* inspection, identified as Item 2F, will be placed by the commission in the care of the secretary of the commission who shall ensure the proprietary treatment of the material in question and who shall make it available on request for review at the commission offices of the commission staff, the Consumer Advocate, the Attorney General and the Business and Industry Association;

2. On motion of any party, the commission will reconsider the extent to which the material in question should be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good;

3. The proprietary documents to be submitted are to be used by the designated parties only for the purpose of evaluating the merits of the petition in this docket;

4. The proprietary documents shall not be reproduced or duplicated nor shall they be distributed, disclosed or otherwise disseminated beyond the parties specifically authorized herein; and

5. Unless otherwise ordered, all copies of the proprietary documents shall be destroyed or returned to the originator of the response at the conclusion of these proceedings; and it is

FURTHER ORDERED, that the commission, on review of the documents, or on motion by an interested party, may review the appropriateness of continued confidentiality in this matter and may issue appropriate amendments to this order after hearing.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1990.

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NH.PUC*03/07/90*[50921]*75 NH PUC 144*Continental Cablevision of New England

[Go to End of 50921]

75 NH PUC 144

Re Continental Cablevision of New England

DE 90-015
Order No. 19,743

New Hampshire Public Utilities Commission

March 7, 1990

ORDER authorizing a cable television company to operate and maintain aerial plant across public waters.

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CERTIFICATES, § 101.1 — Cable television — Aerial crossing — Over public waters.

[N.H.] A cable television company was granted a license to operate and maintain aerial plant across public waters where such crossing was found necessary to meet reasonable requirements for service.

By the COMMISSION:

ORDER

WHEREAS, on January 26, 1990 Continental Cablevision of New England (petitioner)

filed with this commission a petition seeking a license pursuant to RSA 371:17 to place and maintain cable television aerial plant over the Pemigewasset River in Bristol and New Hampton, New Hampshire; and

WHEREAS, this plant will consist of a support strand and double lashed .750 aerial trunk cable as detailed on a submitted plan entitled Continental Cablevision of New England Aerial Crossing over Public Waters, Pemigewasset River, on file with this commission; and

WHEREAS, this petition seeks to cross the Pemigewasset River from telephone pole 346/11 (existing) on property of the State of New Hampshire, Department of Transportation (NHDOT) in Bristol, N.H. to telephone pole 346/12 (existing) also on property of NHDOT in New Hampton, N.H., 2 feet above existing New England Telephone Company plan approved by Order No. 19,354 (74 NH PUC 105) in docket DE 89-024; and

WHEREAS, this crossing will be utilized to provide cable television service to the town of New Hampton, NH; and

WHEREAS, the commission finds such crossing necessary for the petitioner to meet the reasonable requirements for service, thus it is in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is hereby

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file written request for a hearing on the matter before this commission no later than March 26, 1990; and it is

FURTHER ORDERED, that Continental Cablevision effect such notification by publication of this order once in *The Union Leader*, no later than March 14, 1990; and it is

FURTHER ORDERED, *NISI* that Continental Cablevision of New England be, and hereby is, granted license pursuant to RSA 371:17 *et seq* to place, operate and maintain cable television aerial plant across the Pemigewasset River as depicted on submitted Plan entitled Continental Cablevision of New England Aerial Crossing Over Public Waters, Pemigewasset River, on file with this commission; and it is

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FURTHER ORDERED, that all construction meet established minimum safety standards, such as the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective April 2, 1990, unless a hearing is requested as provided herein or the commission so directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1990.

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NH.PUC*03/07/90*[50922]*75 NH PUC 145*Northern Utilities

[Go to End of 50922]

75 NH PUC 145

Re Northern Utilities

DR 90-027
Order No. 19,744

New Hampshire Public Utilities Commission

March 7, 1990

ORDER approving a contract for interruptible gas sales.

RATES, § 384 — Gas — Interim interruptible sales — Firm transportation — Propane distributor.

[N.H.] The commission approved an interruptible gas sales contract between a gas distribution utility and a manufacturing plant for a limited period between the startup of the plant and the completion by the gas utility of a propane-air facility that will enable it to provide the plant with firm transportation service; the issue of a capital contribution from the plant to the utility to cover the costs of distribution system investments incurred in providing the interruptible service was deferred for resolution in the proceeding to address the contract for firm transportation service.

By the COMMISSION:

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ORDER

On February 21, 1990 Northern Utilities (Northern) filed a proposed interim interruptible gas sales contract with Domtar Gypsum, Inc., a wallboard manufacturer with plant facilities in Newington, New Hampshire; and

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WHEREAS, Northern intends to petition the commission later this year for approval to provide firm transportation service to Domtar for propane purchased from the Sea 3 facility in Newington; and

WHEREAS, the provision of this transportation service is dependent on the prior construction and operation by Northern of a propane-air plant; and

WHEREAS, the completion of the aforementioned plant has been delayed; and

WHEREAS, Domtar desires to purchase gas on an interim interruptible basis from Northern and Northern desires to sell gas on that basis; it is hereby

ORDERED, that the proposed interruptible contract between Northern and Domtar be approved for a limited period between the startup of Domtar's plant and the date Northern's propane-air facility goes into operation or October 31, 1990, whichever comes first; and it is

FURTHER ORDERED, that Northern file with the commission a written report no later than July 31, 1990 on the progress of the propane-air facility; and it is

FURTHER ORDERED, that the issue of a capital contribution from Domtar to cover the cost of distribution system investments incurred in providing the interruptible service be addressed in Northern's petition for firm transportation service; and it is

FURTHER ORDERED, that the commission's approval of this interim contract is without prejudice to the examination of the forthcoming contract for firm transportation service;

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1990.

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NH.PUC*03/07/90*[50923]*75 NH PUC 146*Public Service Company of New Hampshire

[Go to End of 50923]

75 NH PUC 146

Re Public Service Company of New Hampshire

DE 90-018
Order No. 19,745

New Hampshire Public Utilities Commission

March 7, 1990

ORDER granting a request by an electric utility for deferral of the filing of its least cost plan.

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1. ELECTRICITY, § 4 — Least cost planning — Deferral of filing — Bankruptcy reorganization.

[N.H.] The commission granted a request by an electric utility for deferral of the filing of its

least cost plan where the adequacy of power supplies was under consideration as part of an ongoing investigation of the reorganization plan for resolving the utility's bankruptcy proceeding and the need for additional resources could be significantly changed if the reorganization plan were approved. p. 147.

2. ELECTRICITY, § 4 — Least cost planning — Deferral of filing — Bankruptcy reorganization.

[N.H.] An electric utility that was the subject of an ongoing investigation of the reorganization plan for resolving its bankruptcy proceeding was directed to file the following information in lieu of its least cost planning filling: (1) a report on its plans and progress in developing end-use data; (2) a report on the current status of demand-side management implementation; (3) a report updating the transmission constraints assessment from its 1989 least cost planning filing; (4) a report on the status of requests for proposals for new supply sources including current long-term avoided cost estimates; and (5) a current 15 year forecast of future demand and energy. p. 147.

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By the COMMISSION:

ORDER

On February 1, 1990, Public Service Company of New Hampshire (PSNH or company) filed a letter requesting that the commission defer the filing of PSNH's least cost plan scheduled to be made by April 30, 1990; and

[1] WHEREAS, PSNH indicated that the adequacy of its power supplies is under consideration as part of the investigation of the Northeast Utilities (NU) plan of reorganization in docket no. DR 89-244 and that PSNH's need for additional resources and the associated economics may be significantly changed if the NU plan of reorganization is approved; and

WHEREAS, the uncertainty created by this situation indicates that it would not be an appropriate use of company or staff resources to prepare and review a detailed and comprehensive least cost planning filing at this time; and

WHEREAS, there is information that is usually included in the company's least cost planning filing that is useful to the commission and staff, is in the public interest to provide, and that the company either has available or can produce without substantially taxing its current resources; it is hereby

ORDERED, that PSNH's request for a deferral of the filing of its least cost plan due April 30, 1990 be, and hereby is, granted in part; and it is

[2] FURTHER ORDERED, that PSNH file the following information with the commission by April 30, 1990 in lieu of its least cost planning filing:

1. a report on its plans for and progress in developing end-use data by the end of 1990 as required by commission order no. 19,549;

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2. a report on the current status of demand-side management implementation at PSNH;

3. a report updating the transmission constraints assessment from PSNH's 1989 least cost planning filing;

4. a report on the status of PSNH's Request for Proposals for new supply resources including current long-term avoided cost estimates against which proposals are being evaluated, with supporting data and calculations; and

5. a current 15 year forecast of future demand and energy with supporting documentation.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1990.

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NH.PUC*03/08/90*[50924]*75 NH PUC 147*New England Telephone and Telegraph Company, Inc.

[Go to End of 50924]

75 NH PUC 147

Re New England Telephone and Telegraph Company, Inc.

DR 85-182
DR 89-010
Order No. 19,747

New Hampshire Public Utilities Commission

March 8, 1990

ORDER adopting a stipulation settling revenue requirement issues in a telephone local exchange carrier rate proceeding. Commission sets permanent rates at an amount to produce in increase in intrastate revenues of $11.574 million reflecting a cost of equity of 13.25%, an actual cost of debt of 8.27%, and an overall cost of capital of 11.25%. Rate structure and price cap issues are left open for further consideration.

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1. RATES, § 532 — Telephone — LEC — Stipulation.

[N.H.] The commission adopted a stipulation settling revenue requirement issues in a telephone local exchange carrier rate proceeding; permanent rates were set at an amount to produce in increase in intrastate revenues of $11.574 million reflecting a cost of equity of 13.5%, an actual cost of debt of 8.27%, and an overall cost of capital of 11.25%; rate structure and price cap issues were left open for further

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consideration. p. 148.

2. RETURN, § 26.4 — Cost of equity — Telephone LEC — Stipulation.

[N.H.] Pursuant to stipulation, a cost of equity of 13.5% was adopted in a telephone local exchange carrier (LEC) rate case. p. 150.

3. RETURN, § 26.2 — Cost of debt — Telephone LEC — Stipulation.

[N.H.] Pursuant to stipulation, a cost of debt of 8.27% was adopted in a telephone local exchange carrier (LEC) rate case. p. 150.

4. RETURN, § 26 — Cost of capital — Telephone LEC — Stipulation.

[N.H.] Pursuant to stipulation, an overall cost of capital of 11.25% was adopted in a telephone local exchange carrier (LEC) rate case. p. 150.

5. RATES, § 532 — Telephone rate design — Allocation of increase — Stipulation — LEC.

[N.H.] A stipulated increase in rates for telephone local exchange carrier (LEC) services was allocated on an across-the-board basis by applying an approximate uniform percentage increase to all services and rate groups, with the exception of local coin rates and services provided under contract. p. 151.

6. EXPENSES, 140 — Telephone — Affiliate costs — Strike — Excise tax — LEC.

[N.H.] As a condition on a stipulated increase in rates for telephone local exchange carrier (LEC) services, the commission staff reserved the right to investigate the effect in New Hampshire of the transactions of an affiliate of the LEC, the effect of a strike, and the effect of any changes resulting from the passage of a New Hampshire excise tax. p. 151.

7. RATES, § 532 — Telephone — Recoupment — LEC.

[N.H.] A telephone local exchange carrier (LEC) was authorized to recover, through a one-time charge applied on an equal per access line basis, the difference between amounts billed under temporary rates and the rates that the commission found should have been in effect during the temporary rate period. p. 151.

8. RATES, § 650 — Informal disposition — Contested case — Stipulation.

[N.H.] Informal disposition of any contested rate case may be made by stipulation of the parties. p. 151.

APPEARANCES: Victor DelVecchio, Esq. and John Reilly, Esq. on behalf of New England Telephone Company; Kenneth Traum and Elaine Planchette present for the Consumer Advocate; Alan Linder, Esq. on behalf of Volunteers Organized in Community Education; Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman on behalf of Kearsarge Telephone Company and Wilton Telephone Company; Frederick J. Coolbroth, Esq. of Devine, Millimet, Stahl and Branch on behalf of Granite State Telephone Company and Merrimack Telephone Company; and Gary Cohen on behalf of the commission staff.

By the COMMISSION:

REPORT ON STIPULATION SETTLING
REVENUE REQUIREMENTS ISSUES

[1] This report and order addresses the request of New England Telephone & Telegraph Company (NET) for an increase in rates. It approves a stipulation of the parties setting permanent rates at an amount to produce an increase in intrastate revenues of $11,574,000, while leaving several issues open for further consideration.

I. *Procedural History*

On March 3, 1989, NET filed proposed

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permanent rate schedules, for effect April 2, 1989, to produce an increase in intrastate revenues of $21,187,000 (8.4%) after uncollectable and independent telephone company settlements. The filing was accompanied by the company's direct testimony and prefiled case for the proposed increase.

By order no. 19,352 dated March 23, 1989, the commission suspended NET's proposed rate schedules pending investigation and decision thereon. By order no. 19,442 (74 NH PUC 195) dated June 27, 1989, the commission established a procedural schedule which allowed for the filing of testimony on temporary rates by September 8, 1989 and scheduled a hearing on temporary rates on September 19, 1989.

On March 28, 1989, New England Telephone filed additional detail pertaining to the testimony which was pre-filed in this docket.

On September 28, 1989, the commission issued order no. 19,544 (74 NH PUC 322) approving a stipulation of the parties and authorizing NET to place in effect temporary rates which would increase intrastate revenues in the amount of $10,771,000. The issues related to NET's labor dispute were deferred until later in the proceedings.

On October 23, 1989 by order no. 19,580 (74 NH PUC 417) the commission approved a bifurcated procedural schedule which separated the revenue requirement issues (phase I) from the rate structure and price issues (phase II) of this docket

On December 15, 1989 PUC staff direct testimony on cost of capital issues was filed by Merwin R. Sands, Staff Economist. On December 20, 1989 PUC staff direct testimony on revenue requirements issues was filed by Eugene F. Sullivan, Finance Director.

During the period January 12, 1990 through January 26, 1990 the parties met on four days to review their respective positions on the issues and to attempt to negotiate an acceptable stipulation settling the revenue requirements phase of the case.

On January 31, 1990 a stipulation was signed by New England Telephone Company, the Office of the Consumer Advocate, VOICE and staff of the Public Utilities Commission. Subsequently all other parties signed an agreement to not oppose the stipulation, although three parties: (Kearsarge Telephone Company, Merrimack County Telephone Company, and Granite State Telephone Company) have reserved their rights to argue the issue of independent company toll settlements in Phase II of the case. The stipulation is attached to this order as Appendix A.

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On February 5, 1990 a duly noticed public hearing was held by the Public Utilities Commission to hear testimony on the revenue requirements stipulation.

II. *Positions of the Parties*

A. New England Telephone Company:

At the hearing NET presented testimony supporting the stipulation and describing the major adjustments made to their prefiled case to arrive at the proposed settlement.

The most significant adjustment in negotiation of the appropriate revenue requirement was the overall rate of return. In its original filing NET had proposed a cost of equity in the range of 14.2% to 15.7% and a cost of debt of 8.6% (testimony of Pamela A. Heidt, p. 4). The actual capital structure of NET at the time of its filing led to a weighted cost of capital of 11.92% to 12.80%. NET proposed using the midpoint of this range, 12.36% (14.95% cost of equity) for calculation of revenue requirements. During settlement discussions, NET agreed to reduce the proposed cost of equity to 13.25% and to adjust the cost of debt to reflect actual debt costs at the time of the negotiation, or 8.27%. These changes resulted in the overall weighted cost of capital of 11.25% used to calculate the stipulated revenue requirement.

In its original filing NET had proposed a rate base which reflected an end of test year investment of $525,815,000, (testimony of David Benson, exhibit 1). During settlement discussions this figure was adjusted to reflect the average investment during the test year of $506,001,000 in accordance with normal commission practice. Adjustments for deferred income taxes, plant under construction and

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other minor changes results in the stipulated a rate base of $414,489,000

In its original filing NET's test year earnings of $44,289,000 were adjusted for known and measurable changes of $4,067,000 to produce adjusted test year results of $40,222,000 (testimony of David Benson, exhibit 1). During settlement discussions the known and measurable changes were increased by $620,000 to produce the stipulated adjusted test year results of $39,602,000. The increase reflected the net changes which were agreed to by the parties. Included were additional wage increases and medical and dental expense increases which occurred in the twelve months after the end of the test year and changes resulting from staff testimony.

The company concludes that the proposed revenue level contained in the stipulation will represent rates that are just and reasonable (oral testimony of David Benson, transcript of February 5, 1990, p. 27).

B. Staff of the Public Utilities Commission

[2-4] In prefiled testimony of Merwin Sands, staff had concluded that a return on equity of 12.75% and an overall return of 10.86% are reasonable for NET at this time (testimony p. 2). During settlement discussions NET provided five packages of additional information on determination of an appropriate return on equity for NET including several recent security analysts' research reports. These packages have been entered as exhibit 11 in the case. Based on

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his review of these packages, Mr. Sands concluded that the recommended rate of return on equity should be raised to 13.25%. The primary reason for this change was the fact that these packages showed that investor's long-term expectations of the profitability of NYNEX cellular telephone operations had raised the stock price (and hence reduced the dividend yield) in a manner which did not reflect the regulated portions of the company. When an adjustment was made to Mr. Sands' discounted cash flow analysis, the resulting return on equity increased and this led to the acceptance of 13.25 as an appropriate value.

In prefiled testimony of Eugene Sullivan, staff proposed a series of proforma adjustments to the net operating income of NET which raised it from $40,222,000 (proposed by NET) to $41,217,000 (testimony of Eugene Sullivan, p. 8). During settlement discussions NET demonstrated that adjustments totalling $77,000 for mobile telephone, network channel terminating equipment and support to the Telephone Pioneers organization were necessary and these adjustments were withdrawn. Additionally, a total of $1,538,000 in expenses previously unrecognized, was applied to the net operating income producing a final figure of $39,602,000 as shown in the stipulation. Most of the adjustments were unknown at the time of the rate case filing; such as medical and dental cost increases. Other known and measurable adjustments included property taxes, initial allocation of excessive charges by NYNEX material enterprises, added mobile telephone expenses and interest synchronization.

In his testimony, Mr. Sullivan demonstrated that a rate base of $415,476,000 was the appropriate value. In adjustments for mobile telephone and station apparatus, a total of $501,000 should be included in rate base for these facilities and during settlement discussions the rate base was adjusted to $415,977,000. However, further discussions resulted in additional reductions of $1,000 for mobile telephone equipment and $1,487,000 for equipment and facilities used by NYNEX Material Enterprises and not included as part of NET's New Hampshire rate base. The finally calculated rate base of $414,489,000 is used in the revenue requirement stipulation.

On the basis of these operating expense and rate base adjustments and the revised rate of return developed by Mr. Sands, a new revenue requirement increase of $11,574,000 was calculated as shown in the stipulation. The commission staff testified that the revenue requirement stipulated to by the parties is just and reasonable, (oral testimony of Eugene Sullivan, transcript of February 5, 1990 hearing, p. 40).

As a result of the stipulation, staff has agreed that no precedent has been established for several of the original proposed pro forma adjustments, including charitable contributions, lobbying, corporate advertising and employee

Page 150

discounts.

III. *Findings of Fact*

[5-7] Following extensive discovery and negotiation the stipulation on revenue requirements was prepared and is supported by NET, commission staff, the Consumer Advocate and VOICE. No other party has contested the stipulation. Therefore the provisions of the stipulation are set forth below as our findings of fact.

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The parties have agreed to recommend an increase in rates in the amount of $11,574,000 after adjusting for uncollectibles and Independent Company Settlements. The increase would be effective for services rendered on an after October 3, 1989. The increase is to be allocated across-the-board by applying an approximate uniform percentage increase to all services and rate groups with the exception of local coin rates and services provided under contract. The calculations to illustrate these facts are given in appendices A through C of the stipulation.

As a condition of the stipulation the commission staff has reserved the right to investigate the impact in New Hampshire of NYNEX Material Enterprises transactions, the financial and service impact of the strike and any changes resulting from the passage of a New Hampshire Excise Tax. Further, the commission and staff have the right to take any lawful and appropriate action as a result of those investigations. Furthermore, any party may raise in phase II of this proceeding, rate of return issues of relevance to phase II.

The difference between amounts billed under temporary rates and the rates which the commission finds should have been in effect during that period shall be recovered equally on a line basis over a period of time and in a manner to be prescribed by the commission. In appendix D to the stipulation, a per access line recoupment of $.78 is calculated on the assumption that temporary rates are in effect for 6 months from October 2, 1989 through April 2, 1990. This amount represents a monthly recoupment amount of $.13 for each month temporary rates are in effect.

The stipulation is expressly conditioned on the commission's acceptance of all the provisions of it without change or condition. If it is not accepted in its entirety it shall be deemed withdrawn and shall not constitute any part of the record in the proceeding. The stipulation is the result of negotiation and compromise and is without prejudice to the rights of any party to make any contention respecting any other issue in this docket or in any future proceedings.

Commission Analysis

[8] Under RSA 378:7 the commission is authorized to determine just and reasonable rates and to fix the same by order. Informal disposition of any contested case may be made by stipulation of the parties in accordance with RSA 541-A:16V. Our review shows that rates set at the level and in the manner described in the Stipulation settling the revenue requirements issues would be just and reasonable and in the public interest. The stipulation was signed by the company, commission staff, the Consumer Advocate and VOICE. It was not opposed by any other party. For these reasons we approve the stipulation. Permanent rates in accordance with the stipulation shall become effective on April 2, 1990 and shall allocate the increase across-the-board by applying an approximate uniform percentage increase to all services and rate groups with the exception of local coin rates and services provided under contract.

In accordance with RSA 378:29 and the Stipulation, New England Telephone shall be permitted to recover the difference between the gross income obtained under temporary rates and the gross income which would have been obtained under the rates finally determined if they were applied during the period such temporary rates were in effect. The stipulation has included a mechanism for recovery of this difference through a per access line charge of $.78 to be collected in a manner established by the commission. Because the recoupment charge amounts to less than one dollar, we find that it should be collected through a one time charge on the first bill

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issued to each customer after the April 2, 1990 effective date of permanent rates. The recoupment charge shall be shown as a

separate line item on the bill.

On March 6, 1990 an order of notice in Docket DR 90-037 was issued setting a hearing for March 26, 1990 to effect the reduction of property taxes due to the communications services tax. The rates established in this order will be subject to any changes required by the order to be issued in Docket DR 90-037.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that New England Telephone and Telegraph Company (NET) shall be authorized to file and implement permanent rates for service rendered on and after April 2, 1990 in accordance with the stipulation approved in the foregoing report; and it is

FURTHER ORDERED, that NET shall file, on or before April 2, 1990, tariffs in compliance with the foregoing report; and it is

FURTHER ORDERED, that NET shall be allowed to recoup the difference between temporary and permanent rates for the period October 2, 1989 through April 2, 1990 by application of a one time charge of $.78 per access line.

By order of the Public Utilities Commission of New Hampshire this eighth day of March, 1990.

APPENDIX A

STIPULATION

The undersigned parties; New England Telephone and Telegraph Company ("NET"), the Staff of the Public Utilities Commission ("Staff"), the Office of the Consumer Advocate ("OCA"), and Volunteers Organized in Community Education ("VOICE") hereby enter into this Stipulation for the purposes of settling all revenue requirement issues raised in this docket. The remaining parties have no opposition to this Stipulation.

Procedural History

1. On March 3, 1989 NET filed proposed rate schedules for effect April 2, 1989 to produce an increase in intrastate revenues of $21,187,000 (8.4%) after adjusting for uncollectibles and Independent Company Settlements.

2. By order no. 19,352 dated March 23, 1989 the Commission suspended NET's proposed rate schedules pending investigation and decision thereon.

3. By order no. 19,442 (74 NH PUC 195) dated June 27, 1989 the Commission established a procedural schedule covering the initial stages of the proceeding which allowed for the filing of testimony on temporary rates by September 8, 1989 and scheduled a hearing on temporary rates

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on September 19, 1989.

4. On August 4, 1989 NET filed proposed temporary rate schedules for effect October 2, 1989 and supporting testimony to produce an increase in intrastate revenues of approximately $15.7M after adjusting for uncollectibles and Independent Company Settlements.

5. On September 8, 1989 Staff filed testimony concerning NET's temporary rate request. On September 11, 1989 Staff filed revised testimony concerning NET's temporary rate request.

6. In order to avoid the potential complexity associated with refunds should the Company implement its filed rates under bond pursuant to RSA 378:6, and in order to minimize the burdens associated with recoupment should existing rates remain in effect, on September 18, 1989 NET, Staff, OCA and VOICE entered into an agreement settling all temporary rate issues. Pursuant to this agreement the aforementioned parties recommended that the Commission authorize a temporary increase in rates of $10.771M after adjusting for uncollectibles and Independent Company Settlement. This increase was to be collected through an across-the-board increase in present rates by applying an approximate uniform percentage increase to all services and rate groups with the exception of local coin rates and services provided under contract. The other parties had no objection to the settlement agreement.

7. By order no. 19,521 (74 NH PUC 293) dated September 5, 1989 the Commission

established a procedural schedule for the remainder of the proceeding which allowed for Intervenor testimony to be filed on November 17, 1989, Staff testimony to be filed on December 15, 1989, and hearings to be held from February 5, 1990 to February 16, 1990.

8. By order no. 19,544 (74 NH PUC 322) dated September 28, 1989 the Commission authorized the Company to file and implement temporary rates in accordance with the above-mentioned agreement of the parties.

9. By order no. 19,580 (74 NH PUC 417) dated October 23, 1989 the Commission bifurcated this proceeding and revised the procedural schedule. In Phase I of the proceeding revenue requirement issues were to be addressed. The Phase I revenue requirement procedural schedule allowed for Intervenor testimony to be filed on November 17, 1989, Staff testimony to be filed on December 15, 1989, hearings to be held from February 5, 1990 to February 9, 1990 and a Commission decision on March 23, 1990. In Phase II of the proceeding the Commission was to consider rate design and Price Regulation issues.

10. After a full and complete investigation Staff submitted revenue requirement testimony on December 15 and 20, 1989. None of the Intervenors filed testimony for Phase I of the proceeding.

11. On January 12, 22 and 24 meetings of the parties were held to discuss a possible settlement of the revenue requirement issues in this docket. As a result of those meetings NET, Staff, OCA and VOICE have agreed on a settlement proposed under the terms and conditions set forth herein. The other parties have no objection to the agreement.

STIPULATION

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The following provisions constitute the full and complete agreement of the parties.

1. The purpose of this Stipulation is to resolve all revenue requirement issues in the proceeding except as described in paragraph 2.

2. The Commission Staff specifically reserves the right and the parties agree that the Commission and its Staff have such right to investigate: the impact in New Hampshire of NYNEX Materiel Enterprises transactions, the financial and service impact of the strike and any changes resulting from the passage of an Excise Tax, and to take any lawful and appropriate action as a result of those investigations. It is further agreed that the parties are free to raise in Phase II of this proceeding rate of return issues of relevance in Phase II.

3. It is agreed that the Commission may base its decision to accept or reject this Stipulation on the testimony, exhibits and other information filed in this proceeding.

4. It is agreed that NET's schedule of temporary rates established in order no. 19,544 shall remain in effect pending a final order of the Commission in Phase I of this proceeding.

5. For the purpose of determining the Company's revenue requirement the parties have agreed to use the Company's current capital structure and an overall cost of capital of 11.25 percent as shown in Appendix A.

6. For the reasons set forth herein, the parties have agreed to recommend that the Commission authorize an increase in rates in the amount of $11.574M after adjusting for uncollectibles and Independent Company Settlements. The parties agree that the proposed increase will be effective for services rendered on and after October 3, 1989. The calculation of the revenue requirement is described in Appendix B.

7. Rate schedules filed pursuant to an order of the Commission based upon this Stipulation shall allocate the increase across-the-board by applying an approximate uniform percentage increase to all services and rate groups with the exception of local coin rates and services provided under contract. The distribution of the rates among rate classes is described in Appendix C.

8. The difference between the amounts collected under temporary rates and the rates which the Commission finds should have been in effect during such period shall be recovered in accordance with paragraph 9 of the Stipulation on Temporary Rates. The amount of the recoupment shall be the difference between the gross revenue increase authorized as temporary rates and the gross revenue increase authorized as permanent rates. The recoupment will be

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recovered equally on a per access line basis over a period of time and in a manner to be prescribed by the Commission in its order establishing permanent rates, as described in Appendix D attached hereto. Recoupment will cover the period from October 3, 1989 until permanent rates are established. Permanent rates are to be established for billing periods on or before April 2, 1990.

9. This Stipulation is the result of negotiation and compromise and is without prejudice to the rights of any party to make any contention respecting any other issue in this docket or in any

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future proceedings.

10. This Stipulation is expressly conditioned upon the Commission's acceptance of all the provisions hereof, without change or condition.

11. This Stipulation represents the entire agreement between the parties with respect to the matter contained herein. If the Commission does not accept the Stipulation in its entirety, the Stipulation shall be deemed withdrawn and shall not constitute any part of the record in the proceeding or be used for any other purposes without the prior written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Stipulation to be duly executed in their respective names by their agents or attorneys, each being fully authorized to do so on behalf of their principals dated January 31, 1990.

Staff of the Public Utilities
Commission

Office of Consumer Advocate

New England Telephone
and Telegraph Company

Volunteers Organized in
Community Education

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MCI, AT&T, Union Telephone, Merrimack County Telephone, Granite State Telephone, Kearsarge Telephone, Wilton Telephone, Continental Telephone, US Sprint, LDN and BIA do not oppose this Stipulation.

Lee M. Weiner
MCI Telecommunications Corporation
Date: 1/30/90

Thomas M. Eichenberger
AT&T Communications of New Hampshire, Inc.
Date: 1/30/90

Dorothy M. Bickford
Union Telephone Company
Date: 1/31/90

Dom S. D'Ambruoso
Kearsarge Telephone Company*
Wilton Telephone Company
Date: 2/01/90

Joseph W. Haust, Jr.
Continental Telephone Company of N.H., Inc.
Date: 1/30/90

Cherie R. Kiser
US Sprint Communications Company
Date: 1/31/90

David William Jordan
Long Distance North of New Hampshire, Inc.
Date: 1/31/90

Dave Wilez
Business & Industry Association of NH
Date: 2/05/90

Frederick J. Coolbroth
Merrimack County Telephone Company**
Granite State Telephone, Inc.**
Date: 2/01/90

_____

*Kearsarge Telephone Company reserves its rights to raise and argue the issue of its levels of independent company toll settlements and the methods used to calculate such levels of independent company toll settlements with NET in Phase II of this docket and in any other proceeding or forum.

**Kearsarge, Merrimack, and Granite State reserve their respective rights to raise and argue the issue of their levels of independent company toll settlements and the methods used to calculate such levels of independent company toll settlements with NET in Phase II of this docket and in any other proceeding or forum.

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75 NH PUC 160

Re Claremont Gas Corporation

DR 89-185
Supplemental Order No. 19,748

New Hampshire Public Utilities Commission

March 8, 1990

ORDER approving the revised cost of gas adjustment rate filing of a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment — Rate revision — Gas distribution utility.

[N.H.] The commission approved the revised cost of gas adjustment rate filing of a gas distribution utility; it was found that computational errors that served as the basis for the rejection of an earlier filing had been corrected.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on January 22, 1990 Claremont Gas Corporation (Claremont or Company) filed a Mid Winter Cost of Gas Adjustment (CGA) that was rejected by the commission per Order No. 19,706 (75 NH PUC 95); and

WHEREAS, on February 16, 1990 Claremont filed a revised Mid Winter CGA which contained several computational errors; and

WHEREAS, on March 1, 1990 the Company filed a second revised Mid Winter CGA that corrected the previous errors; it is hereby

ORDERED, that Claremont Gas Corporation, 127th Revision, Page 12-2, NHPUC No. 9 — Gas, issued February 23, 1990 for effect February 1, 1990 through April 30, 1990, providing for a Mid Winter Cost of Gas Adjustment of $0.2750 per therm, before the franchise tax, is approved; and it is

FURTHER ORDERED, that notice of the revision to the CGA and its delayed implementation be given by the inclusion of an insert in each customer's February bill.

By order of the Public Utilities Commission of New Hampshire this eighth day of March, 1990.

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75 NH PUC 160

Re Bretton Woods Telephone Company

DR 89-182
Order No. 19,749

New Hampshire Public Utilities Commission

March 8, 1990

ORDER establishing temporary rates for telephone service. Commission grants an increase of 25.8% to be applied equally across-the-board to all rate classes.

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1. RATES, § 85 — Commission powers and duties — Temporary rates — Statutory considerations.

[N.H.] Pursuant to RSA 378:27, the commission may in any rate proceeding, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine and prescribe for the duration of the rate proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service, less accrued depreciation. p. 161.

2. RATES, § 532 — Telephone — Temporary rates — Allocation of increase.

[N.H.] A telephone carrier was granted a 25.8% temporary rate increase to be applied equally across the board on all rate classes for

Page 160

the duration of the proceeding, without prejudice to any party in regard to the permanent rate determination. p. 161.

3. RATES, § 630 — Temporary rates — Telephone carrier.

[N.H.] Temporary rates were approved for a telephone carrier pending the outcome of its permanent rate proceeding. p. 161.

APPEARANCES: Margaret H. Nelson, Esquire on behalf of Bretton Woods Telephone Company; Eugene F. Sullivan, III on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

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I. *Procedural History*

On November 21, 1989, Bretton Woods Telephone Company (Bretton Woods) a public utility engaged in the business of supplying telephone service in the State of New Hampshire filed revised tariff pages providing for an increase in rates of $61,011 or a 100% increase.

On December 21, 1989, the commission issued order no. 19,647 establishing a hearing on January 29, 1990 on procedural matters regarding the proposed permanent rate increase. The parties met on January 29, 1990 and stipulated to a procedural schedule. In Report and Order No. 19,708 (75 NH PUC 98) dated February 5, 1990, the commission approved the stipulated procedural schedule of the parties and on February 22, 1990, a hearing on the issue of temporary rates was held.

On February 1, 1990, the company filed its testimony concerning temporary rates and on February 21, 1990, staff filed its testimony concerning temporary rates. The company requested temporary rates at existing rates; however, the staff suggested a temporary rate increase of $17,499 or a 25.8% increase to be applied equally across the board to all rate classes. Staff testimony was based on the company's filed testimony and annual reports on file with the commission. Staff testimony found that the company had a rate base of $490,908, which, when multiplied by the last found rate of return of 9.09% results in a revenue deficiency of $30,499. Thus, staff recommended a temporary rate increase to meet this deficit as required by RSA 378:27. Staff indicated that its testimony was not based on a full investigation of the company's filings and the company indicated that it was stipulating to staff testimony without prejudice to the rate of return determination.

II. *Commission Analysis*

[1-3] Pursuant to RSA 378:27 "[i]n any proceeding involving the rates of a public utility ... the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation as shown by the reports of the utility filed with the commission ..." Based on RSA 378:27, the commission finds the stipulation of the parties regarding temporary rates to be just and reasonable and sufficient to yield not less than a reasonable return on the cost of the property used and useful in the public service.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Bretton Woods Telephone Company is granted a temporary rate increase of 25.8% to be applied equally across the board to all rate classes for the duration of this proceeding without prejudice to either party

in regard to the permanent rate determination.

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By order of the Public Utilities Commission of New Hampshire this eighth day of March, 1990.

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NH.PUC*03/08/90*[50927]*75 NH PUC 162*Public Service Company of New Hampshire

[Go to End of 50927]

75 NH PUC 162

Re Public Service Company of New Hampshire

Additional applicant: Union Telephone Company

DR 90-021
Order No. 19,750

New Hampshire Public Utilities Commission

March 8, 1990

ORDER approving a special contract rate for interruptible electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist that render departure from the general schedules to be just and reasonable. p. 162.

2. RATES, § 322 — Electric rate design — Demand and load — Interruptible service — Special contract rate.

[N.H.] An electric utility was authorized to implement a special contract rate for interruptible electric service where it demonstrated that special circumstances existed that rendered departure from its general schedules to be just and reasonable. p. 162.

3. RATES, § 250 — Retroactive effect — Special contract rate — Interruptible electric service.

[N.H.] The commission waived a portion of PUC 1601.02(c) to allow a special rate contract for interruptible electric service to take effect retroactively. p. 162.

By the COMMISSION:

ORDER

WHEREAS, on December 1, 1988, the New Hampshire Public Utilities Commission issued Order No. 19,251 (73 NH PUC 489) approving Special Contract No. NHPUC-56-1 permitting Public Service Company of New Hampshire (hereinafter PSNH) to render service to Union Telephone Company (hereinafter Union) under PSNH's Winter Interruptible Service and use of

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Customer Standby Generation Rate WI for effect on December 1, 1988; and

WHEREAS, proposed Special Contract No. NHPUC-67 provides for the same service under Rate WI thereby superseding Contract No. NHPUC-56-1, except that the proposed Contract provides for a change to the amount of Designated Load and eliminates the provision for monthly meter payments by Union since Union has fulfilled its obligation under Contract No. NHPUC-56-1; and

[1-3] WHEREAS, the Commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, proposed Special Contract No. NHPUC-67 with Union, which was filed with the Commission on February 8, 1990, is the same as the original Contract except for the above-mentioned changes; and

WHEREAS, the Commission finds that the terms of the proposed Special Contract No. NHPUC-67 between PSNH and Union are reasonably consistent with the terms of Rate WI, and PSNH demonstrated in Docket No. DR 88-186, that Union has evidenced special

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circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED, NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described Special Contract No. NHPUC-67 which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 19, 1990, said publication to be documented by affidavit filed with this office on or before April 9, 1990; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c) which requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract will be retroactively effective as of December 1, 1989 unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this eighth day of March,

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1990.

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NH.PUC*03/09/90*[50928]*75 NH PUC 163*Hampstead Area Water Company

[Go to End of 50928]

75 NH PUC 163

Re Hampstead Area Water Company

DE 89-047
Order No. 19,751

New Hampshire Public Utilities Commission

March 9, 1990

ORDER granting a request for authorization to provide water utility service in specified areas. For related order approving the transfer of water utility assets for the purpose of forming a consolidated utility under one corporate structure, see — NH PUC —, supra.

CERTIFICATES, § 125 — Water — Need for service — Fitness to provide service.

[N.H.] A water utility that had been found to possesses the requisite financial, managerial, administrative, legal and technical capabilities to operate a water utility was authorized to provide service in specified areas in which an immediate need for service had been demonstrated.

APPEARANCES: Stephen Noury, Esq., on behalf of Hampstead Area Water Company; Eugene F. Sullivan, III, Esq., on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On February 15, 1990, the commission issued Report and Order No. 19,717 (75 NH PUC 109) which granted the request of Bricketts Mill Water Company, Inc., Squire Ridge Water Company, Inc., Kent Farm Water Company, Inc. and Woodland Pond Water Company,

Inc. to go out of business and to transfer their assets and franchises to Hamptead Area Water Company (the Company). In that order the commission further denied a request of the Company to franchise the entire Town of Hampstead. In its report the commission stated that the Company has the administrative, legal and technical capabilities to run a water utility and is generally fit to

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serve the entire Town of Hampstead. However, the commission also found that the record was insufficient to support a finding of need to franchise the entire Town of Hampstead. On February 21, 1990, the Company filed a motion for rehearing requesting reconsideration of its request for particular franchise areas within Hampstead where there is an immediate need for service.

As it was not the commission's intent to deny a franchise to the Company for those areas which the Company had demonstrated an immediate need for service, this order will address this issue.

II. *Findings of Fact*

In Report and Order No. 19,717 of February 15, 1990, the commission found that the Company has the financial, managerial, administrative, legal and technical capabilities to operate a water utility and is generally fit. (See Report and Order No. 19,717, page 4) At the hearing, testimony of Stephen Noury resulted in the production of Exhibit A. Exhibit A designated those specific areas of Hampstead that had an immediate need for service and on March 6, 1990, the Company submitted a description of those areas. (as described on Exhibit A). The commission here finds that there is an immediate need for service in the specified areas. Accordingly, we will grant the request for franchises for the specific areas of Hampstead as described and shown in Exhibit 1 of this report and order which were substantiated at the hearing on Exhibit A. Those areas are specifically described on Exhibit 1 and generally described herein;

> An area known as Colby Corner; a laundromat located at the intersection of Route 111 and Emerson Avenue; the Emerson Mobile Park and Village Green Housing; the Hampstead Hospital; the area of downtown Hampstead allegedly contaminated by Exxon; and the Timberlane system.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Hampstead Area Water Company be granted the specific franchise areas listed generally in our report and order and specifically described and shown in Exhibit 1 to this report and order.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1990.

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NH.PUC*03/12/90*[50929]*75 NH PUC 167*Pennichuck Water Works, Inc.

[Go to End of 50929]

75 NH PUC 167

Re Pennichuck Water Works, Inc.

DF 90-026
Order No. 19,752

New Hampshire Public Utilities Commission

March 12, 1990

ORDER authorizing a water utility to issue unsecured debt.

SECURITY ISSUES, § 50.1 — Factors affecting authorization — Improvement of capital structure — Unsecured debt.

[N.H.] A water utility was authorized to issue unsecured debt with a fixed interest rate of 9.1% for the purpose of repaying outstanding short term debt on which the utility had paid an average interest rate of 10.7%.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works, Inc., by letter to the Public Utilities Commission dated February 16, 1990, requested authority to issue and sell $3,500,000 of unsecured debt; and

WHEREAS, Pennichuck Water Works, Inc., has obtained a loan commitment from the American United Life Insurance Company in the total amount of $3,500,000 for permanent financing. This financing will be accomplished by the issuance of a $3.5 million unsecured note with interest at a fixed rate of 9.10 percent for 15 years; and

WHEREAS, Pennichuck Water Works, Inc. shall use the loan proceeds to repay its outstanding short term debt of $3,421,015, at November 30, 1989, on which the Company has paid interest at an average rate of 10.7% per annum to the Parent Company; and

WHEREAS, Pennichuck Water Works, Inc. has filed with the New Hampshire Public Utilities Commission schedules and statements reflecting among other things, the estimated costs of the financing; a Balance Sheet and Statement of Capitalization Ratios at November 30, 1989 adjusted to reflect the issuance of $3,500,000 of unsecured debt; a Statement of Income and Statement of Interest Coverages for the 12 months ended November 30, 1989 also proformed; and

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WHEREAS, after investigation, this Commission under RSA 369:1 finds that the request is consistent with the public good; it is hereby

ORDERED, that Pennichuck Water Works, Inc., be, and hereby is, authorized to issue and sell, for cash its notes, bonds, or other

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evidences of short term indebtedness, in the principal amount of up to $3,500,000 upon terms set forth; and it is

FURTHER ORDERED, that on or about January first and July first of each year, said Pennichuck Water Works, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing disposition of proceeds of said notes, bonds, or other evidences of indebtedness payable herein authorized, until the whole of said proceeds have been accounted for to the full satisfaction of said Commission.

FURTHER ORDERED, that finalized copies of the unsecured note be filed with the commission.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1990.

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NH.PUC*03/12/90*[50930]*75 NH PUC 168*EnergyNorth Natural Gas, Inc.

[Go to End of 50930]

75 NH PUC 168

Re EnergyNorth Natural Gas, Inc.

DR 90-011
Order No. 19,753

New Hampshire Public Utilities Commission

March 12, 1990

ORDER establishing the schedule for a proceeding to review proposed revisions to the main and service installation tariff pages of a gas distribution utility.

RATES, § 640 — Procedural schedule — Tariff revisions — Main and service installation — Gas distribution utility.

[N.H.] The commission established a schedule for a proceeding to review proposed revisions to the main and service installation tariff pages of a gas distribution utility.

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By the COMMISSION:

ORDER

WHEREAS, on January 22, 1990 EnergyNorth Natural Gas Inc. (ENGI or Company) filed revised tariff pages addressing main and service installations; and

WHEREAS, the omission of an effective date on the proposed tariff pages avoids the need for suspension; and

WHEREAS, Company direct testimony was submitted on March 2, 1990; it is hereby

ORDERED, that the following procedural schedule shall govern the proceedings in this case:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

March 22, 1990 Motions for Intervention Due
March 27, 1990 Hearing on Intervention
April 5, 1990  Staff and Intervenor
               Data Requests Due
April 12, 1990 Company Responses Due
April 30, 1990 Staff and Intervenor Testimony
May 7, 1990    Company Data Requests Due
May 21, 1990   Staff and Intervenor Responses
May 25, 1990   Settlement Conference
June 7, 1990   Hearing;
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and it is

FURTHER ORDERED, that pursuant to NH Admin. Code Puc §203.01, the petitioner notify all persons desiring to be heard in this case by causing an attested copy of this order to be published once in a newspaper having general circulation in those portions of the state in which the petitioner's operations are proposed to be conducted, such publications to be no later than March 16, 1990 said publication to be documented by affidavit filed with this office on or before July 12, 1990; and it is

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1990.

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NH.PUC*03/13/90*[50931]*75 NH PUC 169*Southern New Hampshire Water Company, Inc.

[Go to End of 50931]

75 NH PUC 169

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,754

New Hampshire Public Utilities Commission

March 13, 1990

ORDER adopting a stipulation concerning the submission of revenue requirement analyses in a

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water rate proceeding and scheduling a hearing on whether to waive the filing of a depreciation study.

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1. RATES, § 143 — Reasonableness — Cost of service — Revenue requirement analysis — Rate design — Burden of proof — Water utility.

[N.H.] In a water rate proceeding, the commission adopted a nonunanimous stipulation allowing the utility to submit a revenue requirement analysis by core and satellite system rather than a fully allocated cost of service study supporting its proposed rate design; however, the commission noted that the burden of proof as to the reasonableness of the proposed rate design would be on the utility and that its failure to provide a cost of service study may work to its detriment. p. 170.

2. PROCEDURE, § 32 — Modification of prior order — Hearing and notice.

[N.H.] The commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. p. 170.

3. RATES, § 640 — Procedure and practice — Stipulations — Modification of prior order — Hearing requirements — Water rate case.

[N.H.] Where adoption of a stipulation excusing a water utility from filing a depreciation study in its rate case would entail modifying a requirement imposed by prior order, the commission determined that it must first hold a hearing on whether or not it should modify its prior order. p. 170.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 1, 1989, the Commission received a Notice of Intent to File Rate Schedules pursuant N.H. Admin. Rules, PUC 1603.02 from Southern New Hampshire Water Company, Inc. (Southern).

On January 25, 1990, the Commission received prefiled testimony and exhibits, rate design schedules and workpapers, a long-range facilities plan and revised tariff pages, pursuant to RSA 378:9, RSA 378:27 and RSA 378:28 and PUC 1603.03.

On February 12, 1990, the Commission issued Order No. 19,711 rejecting the above filings by Southern, pursuant to RSA 541-A:14, II,(a). The Commission based the above action on the fact that Southern had not supplied written testimony addressing rate design, had not filed a complete test year and had failed to file a depreciation study as stipulated and ordered in docket DR 87-135.

On February 28, 1990, Southern filed a Motion for Reconsideration and Rehearing of Order No. 19,711 pursuant to RSA 541:3. Said Motion for Rehearing included a Stipulation between Southern and the staff of the Commission, reached on February 16, 1990, concerning Order No.

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19,711. On March 7, 1990, the Office of the Consumer Advocate filed an objection to Southern's Motion for Rehearing. Furthermore, on March 6, 1990, Southern filed a request for emergency rates pursuant to RSA 378:9.

II. *Positions of the Parties*

Staff and Southern's stipulated agreement

as contained in the Motion for Rehearing and Reconsideration filed on February 28, 1990, and as orally confirmed by staff, stated that the Commission staff would agree to a waiver of the requirement for a depreciation study at this time, for this rate proceeding as Southern's research and staff's research had indicated that a depreciation study would merely increase the rates of Southern, although the staff felt it was sound business practice to conduct a depreciation study at regular intervals and as Southern had not done so, would require the company to submit a depreciation study six months prior to its next rate filing.

Staff and the company further agreed that the company would perform a revenue requirement analysis by core and satellite systems to submit with its filings and staff would not require the submission of a fully allocated cost of service study supporting and company's proposed rate design. However, staff indicated to the company that the burden of proof was the company's in the rate case and that its failure to provide a cost of service study may work to its detriment.

Finally, Southern has already supplied 12 months of actual data and has agreed to insert all revised testimony, work papers and schedules into the filings already filed with the Commission in order to reduce the burden on Commission staff.

The Consumer Advocate, in his motion objecting to the Motion for Reconsideration and rehearing raised a number of points. Essentially, the Consumer Advocate's first point was that the Commission was making rates without due notice and hearing in an unconstitutional manner. The Consumer Advocate's second point was that the Commission lacked jurisdictional authority to amend its final order in docket DR 87-135. Finally, the Consumer Advocate contended that "Numerous parties to ... [DR 87-135] ... gave up something to get these filing commitments from Southern ... the company should not now be heard to complain that its rates are confiscatory when it refuses to supply the information necessary for the Commission to make that very determination". See Consumer Advocate's objection to Southern's Motion for Rehearing, paragraph 8. The Consumer Advocate further objected to the motion for rehearing on the grounds that the company had not supplied a cost of service study as stipulated to.

III. *Commission Analysis*

[1-3] In regard to staff and the company's agreement concerning the submission of a revenue requirement analysis by core and satellite system rather than a fully allocated cost of service study supporting the company's proposed rate design the commission will accept the agreement of staff and the company as the commission can find no evidence of a stipulation as stated by the Consumer Advocate that a fully allocated cost of service study supporting the company's proposed rate design be submitted, or in the commission's rules for such a filing. However, the commission notes that the burden of proof is the company's and its failure to provide a cost of

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service study may work to its detriment.

In regard to the company's agreement to file 13 months of data and to insert all revised testimony, workpapers and schedules into the filings already filed with the commission in order to reduce the burden on the commission staff, the commission will accept the stipulation of the parties.

Finally, in regard to staff and the Company's agreement to waive the requirement of the depreciation study as stipulated to in docket DR 87-135, RSA 365:28 states that "[a]t any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside or otherwise modify any order made by it."

As Southern's motion for reconsideration and the agreement between the company and staff contained therein requests the commission to waive the requirement of a depreciation study which was ordered by the commission in docket DR 87-135, Report and Order No. 19,153[1(5)] a hearing must be held pursuant to RSA 365:28, quoted above, to determine whether or not the commission should modify its previous order.

Our order will issue accordingly.

ORDER

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Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the stipulation between staff and the company concerning the cost of service study and the insertion of all revised testimony, workpapers and schedules to comply with the 12 month filing requirement are accepted; and it is

FURTHER ORDERED, that a hearing be held on April 3, 1990 at 10:00 a.m., pursuant to RSA 365:28 on Southern's request to modify report and order no. 19,153 in docket DR 87-135; and it is

FURTHER ORDERED, that individual notice be given to each of the signatories to the stipulation adopted by the commission in docket DR 87-135 by mailing a copy of this report and order to them, first class mail postage prepaid; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. provide notice of this hearing by causing an attested copy of this report and order to be published once in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be no later than March 16, 1990, said publication to be documented by affidavit filed with this office on or before March 16, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc §203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene at least three (3) days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1990.

FOOTNOTES

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[1]The depreciation study was part of a stipulation adopted by the Commission.

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75 NH PUC 171

Re Nuclear Decommissioning Charge

Movant: Northeast Utilities Service Corporation

DR 90-019
Order No. 19,755

New Hampshire Public Utilities Commission

March 13, 1990

ORDER designating issues and establishing a procedural schedule for a proceeding to prescribe appropriate nuclear decommissioning charges to be assessed against the joint owners of Seabrook Unit 1. Commission makes New Hampshire Yankee a mandatory party and authorizes Northeast Utilities Service Corporation to intervene.

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1. NUCLEAR PLANT DECOMMISSIONING, § 4 — State commission duties — Commencement of funding — Statutory considerations — Seabrook Unit 1.

[N.H.] State statute RSA 162-F:19 requires that the collection of nuclear decommissioning financing funds from the joint owners of Seabrook Unit 1 must commence in the billing month which reflects the first full month of service from the facility; however, the collection of money in payment of the fund cannot be effected without appropriate tariff revision approved by the commission pursuant to state law. p. 172.

2. NUCLEAR PLANT DECOMMISSIONING, § 7 — State commission duties — Ratemaking — Assessment of charges — Statutory considerations.

[N.H.] The commission is required, pursuant to RAS 162-F:19, to permit a utility to charge its customers on a per kilowatt hour basis the amount it pays into a nuclear decommissioning financing fund; the charge shall be

designated a nuclear decommissioning charge and shall be separately stated on billing statements. p. 172.

3. NUCLEAR PLANT DECOMMISSIONING, § 1 — Procedure — Intervention — Seabrook Unit 1.

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[N.H.] Northeast Utilities Service Company (NUSCO) was authorized to intervene as a full party in the Seabrook Unit 1 nuclear decommissioning charge proceeding; full party intervention was appropriate because NUSCO has proposed to takeover a Seabrook joint owner, Public Service Company of New Hampshire (PSNH), in order to resolve the ongoing PSNH bankruptcy proceedings; furthermore, NUSCO was negotiating with another joint owner, New Hampshire Electric Cooperative, Inc., to purchase its rights to Seabrook power. p. 173.

4. NUCLEAR PLANT DECOMMISSIONING, § 1 — Procedure — Parties — Seabrook Unit 1.

[N.H.] New Hampshire Yankee, the agent of the Seabrook Unit 1 joint owners in the decommissioning process, was made a party to a proceeding to prescribe the appropriate decommissioning charges to be paid by the joint owners. p. 173.

APPEARANCES: Eve H. Oyer, Esquire on behalf of Northeast Utilities; Michael W. Holmes, Esquire on behalf of the Office of the Consumer Advocate; Martin L. Gross, Esquire and Gerald M. Eaton, Esquire on behalf of Public Service of New Hampshire; Stephen E. Merrill, Esquire on behalf of New Hampshire Electric Cooperative, Inc. and James T. Rodier, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

[1, 2] This report addresses the issues raised in the prehearing conference held in this docket on March 5, 1990. The proceedings were scheduled by order of notice dated February 8, 1990, to effect appropriate revisions to the tariffs of Public Service of New Hampshire (PSNH) and the New Hampshire Electric Cooperative, Inc. (NHEC or Coop), to allow timely collection from ratepayers of the decommissioning fund allotments mandated by RSA chapter 162-F:14 *et seq.* The commission will prescribe the appropriate nuclear decommissioning charges to be assessed against jurisdictional utilities.

RSA 162-F:15, I, provides for the establishment of a nuclear decommissioning finance committee (NDFC) for a nuclear electric generating facility such as Seabrook Unit 1. Pursuant to RSA 162-F:15-26, said nuclear decommissioning financing committee established a nuclear decommissioning financing fund (fund) and the level of payments to be deposited into the fund by the joint owners of Seabrook Unit 1 in Docket DF 87-1, Report and 17th Supplemental Order dated June 2, 1989.

The actual collection of money from the joint owners of Seabrook Unit 1 and payment to the nuclear decommissioning financing fund shall, pursuant to RSA 162-F:19 II, commence in the billing month which reflects the first full month of service from the facility. This docket now before us has been initiated because of the imminence of receipt by Seabrook Unit 1 of full power operating authority from the nuclear regulatory commission.

This collection of money in payment to the fund by PSNH and NHEC cannot be effected without appropriate tariff revisions approved by the commission pursuant to RSA 378:3 which provides:

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> Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after thirty days' notice to the commission and such notice to the public as the commission shall direct.

Page 172

The public utilities commission is required, pursuant to RSA 162-F:19, III, to:

> ...permit the utility to charge its customers on a per kilowatt hour basis the amount it pays directly into the fund created under this section. The charge, as determined by the public utilities commission, shall be designated a nuclear decommissioning charge and shall be separately stated on the customer's billing statement.

Interventions

[3, 4] The mandatory parties to these proceedings include PSNH, NHEC and the commission staff. The Office of the Consumer Advocate is participating as an intervenor of right. The only motion to intervene pursuant to RSA 541-A:17 was filed on behalf of Northeast Utilities Service Company (NUSCO) on February 28, 1990. NUSCO is under consideration by the commission in docket DR 89-244 to take over PSNH in order to resolve the ongoing PSNH bankruptcy reorganization proceedings. Furthermore, NUSCO is currently negotiating with NHEC regarding possible purchase of certain NHEC rights to Seabrook Unit 1 power. For these reasons, and because there have been no objections filed to NUSCO's motion to intervene, we will grant NUSCO full party intervention in these proceedings.

At the prehearing conference it became apparent that participation by New Hampshire Yankee (NHY), as agent of the Joint Owners in the decommissioning process[1(6)] , should also be a party to these proceedings to ensure the development of a complete record and to ensure that the nuclear decommissioning charge to be paid by the joint owners will be appropriately assessed. Accordingly, we will order New Hampshire Yankee to participate as a full party for the duration of these proceedings.

DF 87-01-Nuclear Decommissioning Financing Committee Proceeding to Establish Decommissioning Fund for Seabrook Unit 1 Nuclear Station

The commission will consider the orders of the New Hampshire Decommissioning Financing Committee in its deliberations in this docket. NDFC's 17th Supplemental Order in DF 87-01 provides, in pertinent part, at pages 1 and 2, that:

> 1. A nuclear decommissioning financing fund is established for Seabrook Station Unit 1 in the amount of $242,429,000 in 1987, with this amount to be increased each year after 1987 by a 4% annual inflation factor until the plant begins commercial operation, and
>
> 2. That the Joint Owners of Seabrook Station Unit 1, when required by law, are required to make monthly payments into the fund with schedules as set forth in the order.

Seabrook Unit 1 was granted its operating authority on March 1, 1990 and appeals were filed in Federal District Court by intervenors in the federal licensing proceedings on March 7, 1990.

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The appeals, among other things, requested the federal courts to stay the operation of Seabrook Unit 1. It is likely that the first "full month" of operation would not be until April, at the earliest. Necessary tariff revisions will be made within the appropriate timeframe.

The commission, in the docket now before us, will, pursuant to RSA 162-F:19, III, determine the amount of the nuclear decommissioning charge (charge) and will require that said charge be separately stated on each customer's billing statement.

PSNH's filing in this proceeding includes the decommissioning charge as being part of the 5.5% temporary rate increase granted by this commission to PSNH effective January 1, 1990, pursuant to RSA 363-C:4 and by the subsequent 5.5% increases currently under consideration by the commission in the PSNH reorganization proceedings in Docket DR 89-244. The NHEC filing, on the other hand, presents the nuclear decommissioning charge as a surcharge to existing rates. The commission will consider the question of whether the nuclear decommissioning charge applies beyond the rate increases mandated by RSA 363-C as well as the manner in which the charge will be deposited in escrow with the State Treasurer.

Page 173

The NDFC, in the aforementioned 17th Supplemental Order in DF 87-1, found, at page 20 of the report accompanying the order, that the Master Trust Agreement proposed by New Hampshire Yankee in DF 87-1 provides a proper and reasonable method for funding decommissioning. The commission will be guided by the procedures set forth in said master trust agreement in determining the disposition of the decommissioning charge assessed in this case.

The NDFC specifically cited the following provisions of the master trust agreement, at pages 20-22 of the above cited 17th supplemental order, as being particularly pertinent:

1. Participating in this Master Trust Agreement would be the joint owners of Seabrook Station, through New Hampshire Yankee, the State Treasurer, and a trustee.

2. This Committee would establish the aggregate monthly payments to be made to the trust.

3. The State Treasurer would determine each joint owner's monthly contributions based on the payment schedule established by this Committee.

4. Monthly, the joint owners would make payments to the trust in the amount determined by the State Treasurer.

5. Except for periodic withdrawals to cover expenses, the trustee would hold all the monies until they are withdrawn to cover decommissioning expenses.

6. The State Treasurer would, under RSA 162-F:20, be responsible for administering the fund.

7. The trust would provide each joint owner with the ability to fund either through a so-called qualified trust (Trust A) or a so-called nonqualified trust (Trust B).

8. A qualified trust is subject to tax at the *trust* level, whereas a non-qualified trust is subject to tax at the *owner* level, that is as if the trust income were earned by the owner itself. The benefit to a taxable owner in contributing to a qualified trust would be an

> immediate tax deduction. In contrast, a tax-exempt owner would have no need or use for a tax deduction, and thus would derive no benefit from contributing to a qualified trust. If a tax-exempt owner were to use a qualified trust, the income from that trust would be taxed at the *trust* level, meaning income taxation except for interest on tax-exempt obligations. A tax-exempt owner could thus be expected to prefer a non-qualified trust, since the income from that trust would be treated for tax purposes at the *owner* level, meaning a tax exemption.

The NFDC found that:

> Insofar as terms of the Master Trust Agreement are concerned, whether money should go into a qualified trust (Trust A) or a nonqualified trust (Trust B) is not an issue for this Committee, but rather one for the ratemaking authorities, each joint owner, and the Internal Revenue Service.
>
> The Committee finds and approves that the Master Trust Agreement and the funding schedule proposed by New Hampshire Yankee permit the joint owners to avail themselves of certain tax advantages, and that they provide for funding over a sufficient term of years that ratemaking bodies will consider reasonable.

Report accompanying 15th Supplemental Order, NDFC Docket DF 87-1 (January 6, 1989) at 22.

The Master Trust Agreement was executed by the respective bank trustees, the State Treasurer of New Hampshire, and the New Hampshire Yankee Division of PSNH on October 11, 1988. Subsequent to the final order in docket DF 89-71; 17th supplemental order dated June 2, 1989, the Agreement was approved as to form, substance and execution by Assistant Attorney General Larry M. Smukler on July 10, 1989.

The commission will determine the amount and method of payment of the nuclear decommissioning charge to the trustees under the Master Trust Agreement.

The NDFC's 17th Supplemental Order was appealed to the New Hampshire Supreme Court by the Campaign for Ratepayers Rights (CRR), a party to Docket DF 87-1. The issue

before the supreme court is whether the NDFC's decision to establish the nuclear decommissioning fund was reasonable. Pending appeal we will adopt the NDFC's nuclear decommissioning fund as the basis for the nuclear decommissioning charge to be assessed against applicable utilities. In the event that the supreme court's decision should require revision of the nuclear decommissioning charge our order will be appropriately modified.

Issues Identified by the Parties

At the prehearing conference, the parties tentatively identified the following issues:

1. When should collection of the nuclear decommissioning charge from ratepayers commence?

2. RSA 162-F:19 provides that the nuclear decommissioning charge shall be on "a per kilowatt hour basis." Should the charge be per kilowatt generated or per kilowatt sales on a

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company wide or other basis?

3. Temporary rate escrow: the PSNH nuclear decommissioning charge is included in the 5.5% temporary surcharge that was put into effect on January 1, 1990; but should the funds flowing into the temporary rate escrow account
established in Docket DR 89-244 be diminished by the nuclear decommissioning charge or be subsequently reimbursed to the utility on release of the escrowed funds?

4. At what extent should PSNH recover decommissioning costs from its wholesale customers, such as NHEC?

5. Tariff format: should the tariff revisions be reflected to be a revised tariff supplement as opposed to new rates and charges for each rate schedule?

6. Are joint owners other than PSNH and NHEC prepared to contribute to the decommissioning fund on a timely basis?

These issues were presented on the record by the parties solely to establish a framework for preliminary discussions. The commission has set forth additional issues above and contemplates that some of the issues identified by the parties will be resolved prior to the hearing on the merits, subject to the commission review at the hearing.

Procedural Schedule

The parties proposed the following procedural schedule for commission consideration to govern the duration of these proceedings:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

March 8, 1990  Data requests by staff and
                 intervenors to PSNH and NHEC
March 14, 1990 Data responses from PSNH and
                 NHEC to staff and intervenors
March 14, 1990
(2:00 p.m.)    Off-the-record prehearing
                 conference to narrow the issues
                 and to facilitate discovery
March 19, 1990 Staff and intervenor direct
                 testimony and exhibits due
March 26, 1990
(10:00 a.m.)   Hearing on the merits
```

The proposed procedural schedule appears to be reasonable and in the public interest. Accordingly, the commission will accept the proposed procedural schedule as governing the duration of the proceedings unless and until otherwise ordered.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the motion to intervene filed by Northeast Utilities Service Corporation on February 28, 1990 is granted; and it

FURTHER ORDERED, that New Hampshire Yankee is made a mandatory party to these proceedings. New Hampshire Yankee shall attend the prehearing conference

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scheduled for March 14, 1990 at 2:00 p.m. at the commission offices, shall respond to data requests propounded to it by other parties to these proceedings, shall file testimony and exhibits on or before March 19, 1990, on the issues identified by the commission or the parties in the report accompanying this order or relating to other issues deemed appropriate by New Hampshire Yankee and shall otherwise participate in these proceedings as necessary to provide the commission with a complete and accurate record; and it is

FURTHER ORDERED, that the parties file a written report with the commission summarizing the results of the March 14, 1990 prehearing conference on or before March 16, 1990; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties and set forth in the report accompanying this order is approved.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1990.

FOOTNOTES

[1]See attachment 4 to the nuclear decommissioning financing committee's 15th supplemental order, master trust agreement at 1 where NHY is designated "Managing Agent" for the "Seabrook participants".

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75 NH PUC 176

Re EnergyNorth Natural Gas, Inc.

DE 89-175
Order No. 19,756

New Hampshire Public Utilities Commission

March 13, 1990

ORDER authorizing a natural gas distribution utility to extend mains and provide service in a previously unserved area.

SERVICE, § 199 — Extensions — Natural gas — New service area.

[N.H.] A natural gas distribution utility was authorized to extend its mains and service into an area outside its then existing service area where no other gas utility had franchise rights in the

area sought, the ability of the utility to provide the service was demonstrated, the need for service was demonstrated, and the utility agreed to serve the area under its regularly filed tariff; the commission directed that the utility must continue to provide sufficient supplemental storage for the expected peak week, including the anticipated demand in the new service area.

By the COMMISSION:

ORDER

By a petition dated September 27, 1989, EnergyNorth Natural Gas, Inc., (company), a public gas utility operating under the jurisdiction of this commission, sought authority under RSA 374:22 to operate as a public utility in the Town of Derry; and

WHEREAS, the company has shown a need for natural gas service in the Town of Derry and has demonstrated that the company is able to provide said gas service; and

WHEREAS, no other gas utility has franchise rights in the area sought and the petitioner has communicated his intention to serve the area under its regularly filed tariff; and

WHEREAS, the staff of the commission and the company have reached an agreement that all outstanding issues have been resolved; and

WHEREAS, this agreement is incorporated and herein referenced and attached as Appendix A; and

WHEREAS, a hearing was held on January 25, 1990 and no intervenors were present; and

WHEREAS, after investigation the commission finds that the availability of an additional alternative energy source in the town

Page 176

would be for the public good; and

WHEREAS, the commission finds the company has the administrative, technical, legal and managerial expertise to operate a public gas utility; it is hereby

ORDERED, that EnergyNorth Natural Gas, Inc. be authorized pursuant to RSA 374:22, to extend mains and provide service in the Town of Derry; and it is

FURTHER ORDERED, that the commission approves and adopts the agreement as attached; and it is

FURTHER ORDERED, that the company continue to comply with to Order No. 15,768, providing sufficient supplemental storage volumes for the expected peak week, including the anticipated demand for the new service area; and it is

FURTHER ORDERED, that the petitioner shall file revised tariff pages reflecting the expansion of service territory to include Derry.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1990.

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[Go to End of 50934]

75 NH PUC 177

Re Nuclear Emergency Planning

DE 89-200
Order No. 19,757

New Hampshire Public Utilities Commission

March 15, 1990

ORDER directing the nuclear operations division of the joint owners of the Seabrook nuclear power plant to apply its fiscal year 1989 credit balance for the costs of Seabrook radiological emergency response plans against its 1990 assessment. Commission establishes a schedule of payments for the 1990 assessment.

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1. ATOMIC ENERGY — Nuclear emergency planning — Seabrook station — Cost assessment.

[N.H.] The nuclear operations division of the joint owners of the Seabrook nuclear power plant was directed to apply its fiscal year 1989 credit balance for the Seabrook radiological emergency response plans against its 1990 assessment. p. 178.

2. ATOMIC ENERGY — Nuclear emergency planning — Seabrook station — Cost assessment.

[N.H.] In response to a request by the New Hampshire Office of Emergency Management, the commission established a schedule of payments for the 1990 assessment against the operator of the Seabrook nuclear plan for costs incurred in radiological emergency response planning. p. 178.

By the COMMISSION:

ORDER

WHEREAS, I was notified by memorandum dated March 1, 1990 that New Hampshire Yankee Electric Corporation (NHY) has credit balance for the Seabrook Radiological Emergency Response Plans (RERP) account of $442,305.53 for fiscal year 1989; and

WHEREAS, the New Hampshire Office of Emergency Management (NHOEM) has requested that NHY be allowed to apply this credit against the current 1990 assessment under PUC Order No. 19,439 (June 26, 1989); and

WHEREAS, good cause exists to approve the request to allow the credit to be applied against the current 1990 assessment; and

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WHEREAS, in the same March 1, 1990 memorandum NHOEM also requested the establishment of a schedule of payments under the assessment directed in PUC Order 19,676 (75 NH PUC 41) (January 22, 1990), which schedule is to consist of six monthly installments of $53,254 each to be paid during each of the months of July through December, 1990; and

[1, 2] WHEREAS, good cause exists to approve the request of NHOEM for the establishment of a schedule of payments, in that such a schedule will more closely align the expected needs for assessed funds with the level of activity associated with the RERP; it is hereby

ORDERED, that NHY apply its credit balance of $442,305.53 for fiscal year 1989 against the current 1990 assessment under PUC Order 19,439; and it is

FURTHER ORDERED, that a schedule of payments for the assessment in PUC Order 19,676 be, and hereby is, established, to wit 6 monthly installments of $53,254 to be paid during each of the months of July through December, 1990.

By order of the Chairman of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1990.

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NH.PUC*03/15/90*[50935]*75 NH PUC 178*Pennichuck Water Works, Inc.

[Go to End of 50935]

75 NH PUC 178

Re Pennichuck Water Works, Inc.

DE 89-191
Order No. 19,758

New Hampshire Public Utilities Commission

March 15, 1990

ORDER authorizing a water utility to extend its service territory.

SERVICE, § 210 — Extensions — Water service — New territory.

[N.H.] A water utility was authorized to extend its service into an area outside its then existing service area where no other water utility had franchise rights in the area sought, the utility intended to charge rates equal to those charged for service in an adjacent area, the town government was in accord with the extension, and the utility had obtained the requisite approvals from the Water Supply and Pollution Control Divisions and Water Resources Division of the state Department of Environmental Services.

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By the COMMISSION:

ORDER

On October 16, 1989, the commission received a petition from Pennichuck Water Works, Inc. (Pennichuck) to provide water service to a limited area in the Town of Derry, New Hampshire on Penny Lane adjacent to Pennichuck's service area known as Drew Woods, pursuant to RSA 374:22 and implicitly to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Pennichuck intends to charge rates equal to those rates now being charged in Drew Woods; and

WHEREAS, service for Penny Lane will be provided from the plant at Drew Woods; and

WHEREAS, the Town of Derry has indicated it has no objection to the proposed franchise extension; and

WHEREAS, Pennichuck has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resources Division granting approval for the proposed franchise extension; and

WHEREAS, there is a need for service in the proposed area and the applicant has the financial, managerial, administrative, legal and technical capabilities to meet that need; and

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity before the commission acts on this petition; it is hereby

ORDERED, *NISI* that Pennichuck be granted a franchise for all lots located on Penny Lane, a cul-de-sac located off Olson Road in the Town of Derry; and it is

FURTHER ORDERED, *NISI* that Pennichuck be allowed to charge rates pursuant to those rate schedules approved for Drew Woods; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be

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notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 26, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before April 16, 1990; and it is

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FURTHER ORDERED, that such authority shall be effective on April 16, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1990.

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NH.PUC*03/15/90*[50936]*75 NH PUC 179*Eastern Utilities Associates, Inc.

[Go to End of 50936]

75 NH PUC 179

Re Eastern Utilities Associates, Inc.

Additional parties: Unitil Corporation and City of Concord

DF 89-085
Order No. 19,759

New Hampshire Public Utilities Commission

March 15, 1990

ORDER granting Unitil Corporation and the City of Concord full party status in a proceeding to review a petition by Eastern Utilities Associates for authorization to acquire the shares of Unitil Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 65 — Procedure — Parties — Holding company acquisition.

[N.H.] The City of Concord and Unitil Corporation were granted full party status in a proceeding to review a petition by Eastern Utilities Associates to acquire the shares of Unitil; it was found that the City and Unitil would be affected by the proceedings and would represent rights, duties and interests that no other party could adequately present to the commission. p. 180.

2. CONSOLIDATION, MERGER, AND SALE, § 61 — Procedure — Hearing schedule — Holding company acquisition.

[N.H.] The commission established a preliminary hearing schedule for a proceeding to review a petition by a public utility holding company for authorization to acquire the shares of another public utility holding company. p. 180.

APPEARANCES: Eastern Utilities Associates ("EUA") by Richard A. Samuels, Esq. and Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton, P.A.; Theodore E. Dinsmoor, Esq.

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and David A Fazzone, Esq. of Gaston & Snow; Unitil Corporation ("UNITIL") by Dom D'Ambruoso, Esq. of Ransmeier & Spellman; Elias G. Farrah. Esq. and Paul K. Connolly, Esq. of LeBoeuf, Lamb, Leiby & MacRae; City of Concord by Paul Cavanaugh, Esq.; Office of Consumer Advocate by Michael Holmes, Esq. and Joseph Rogers, Esq.; Staff of New Hampshire Public Utilities Commission by Eugene F. Sullivan, III, Esq. and James T. Rodier, Esq.

By the COMMISSION:

REPORT

On May 15, 1989, EUA filed a petition for a determination of jurisdiction or, alternatively, for approval to acquire shares of UNITIL.

EUA and UNITIL filed letters dated January 3, 1990, and February 7, 1990, respectively, seeking expedited treatment of the petition.

This docket was opened by order of notice dated February 9, 1990. Pursuant to that order, a prehearing conference was held on March 12, 1990 to determine whether motions to intervene should be granted, to establish a procedural schedule for the duration of the proceedings consistent with EUA's and UNITIL's request for expedited disposition, and to address any other matters which might aid the commission in the disposition of the proceedings.

Prior to the hearing, the commission received petitions from the City of Concord, New Hampshire and UNITIL to intervene.

At the procedural hearing held on March 12, 1990, the parties jointly presented certain recommendations for aiding the commission in its determination of a scope and procedural schedule for this proceeding.

I. *Interventions*.

[1] The mandatory parties to this proceeding are EUA and the commission staff. The Office of Consumer Advocate is participating as an intervenor of right.

The City of Concord and UNITIL will be affected by these proceedings and will represent rights, duties and interests that no other party can adequately present to the commission. Additionally, UNITIL should be a party to the proceedings in order to ensure the development of a complete record.

For these reasons, and because there have been no objections filed to the City of Concord's and UNITIL'S motions to intervene, we will grant the City of Concord and UNITIL full party status as intervenors in these proceedings.

II. *Recommendations of the Parties*.

[2] The parties to the prehearing conference made the following recommendations subject to commission approval on the record at the procedural hearing on March 12, 1990:

1. The parties will respond to EUA's Motion to Define the Scope of the Hearing by Friday, March 16, 1990;

2. Oral arguments on the scope of the proceeding will be held by the commission on

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Monday, March 19, 1990 at 10:00 AM.

3. The commission's report and order regarding scope and procedure will be issued by Friday, March 23, 1990.

4. The parties will also submit by Friday, March 16, 1990, recommendations on the remainder of the procedural schedule premised upon a non-bifurcated hearing schedule and upon the issuance of a commission determination in this proceeding by the middle of August, 1990.

III. *Commission Analysis*.

The foregoing recommendations of the parties for commencing this proceeding are reasonable and, by the order attached hereto, govern the commencement of the proceedings in this docket.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein by reference; it is hereby

ORDERED, that the City of Concord and UNITIL are granted full party status; and it is

FURTHER ORDERED, that oral arguments regarding scope of this proceeding be held at the commission offices on March 19, 1990 at 10:00 AM; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report shall govern these proceedings until further ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 1990.

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NH.PUC*03/16/90*[50937]*75 NH PUC 181*Locke Lake Water Company, Inc.

[Go to End of 50937]

75 NH PUC 181

Re Locke Lake Water Company, Inc.

DR 89-205
Order No. 19,760

New Hampshire Public Utilities Commission

March 16, 1990

ORDER opening an investigation of over-earnings by a water utility. Commission grants the utility a four-month period in which to sell the utility, during which time all rates charged shall be considered temporary and subject to refund.

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1. RATES, § 32 — Jurisdiction and powers — State commissions — To determine reasonable rates.

[N.H.] State statute RSA 378:7 provides that whenever the commission shall be of the opinion, after hearing had upon its own motion, that rates demanded or collected by any public utility for service rendered are unjust or unreasonable, the commission shall determine the just and reasonable or lawful rates to be thereafter observed and enforced as the maximum to be charged for the service. p. 182.

2. RATES, § 176 — Reasonableness — Overearnings — Investigation — Temporary rates.

[N.H.] Based on unrebutted testimony that a water utility was earning in excess of its authorized rate of return, the commission opened an investigation of the rates charged by the utility and set current rates as temporary rates to prevent the company from retaining the windfall of over-earnings at the expense of its customers. p. 182.

3. RATES, § 630 — Temporary rates — Pending sale of overearning utility — Water utility.

[N.H.] A water utility that was earning in excess of its authorized rate of return was not required to implement a rate decrease where it was claimed that a sale of the utility was pending; instead, the commission granted the utility a four-month period in which to sell the utility during which time all rates charged would be temporary and subject to refund. p. 182.

APPEARANCES: Dom S. D'Ambruoso, Esquire on behalf of Locke Lake Water Company, Inc.; and Eugene F. Sullivan, III, Esquire on behalf of the staff of New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On or about March 31, 1988, Locke Lake Water Company, Inc. (Locke Lake) submitted its annual report to the commission. Staff analysis of said annual report indicated Locke Lake was earning a rate of return of 21.33%. In its most recent rate case (see Docket DR 85-207, Order No. 18,300 [71 NH PUC 362]) Locke Lake was authorized to earn a rate of return of 11.25%. In a letter dated September 12, 1989, Locke Lake was requested to inform the staff of the commission of any unusual circumstances that would justify such earnings and which would negate the need for a proceeding to examine a rate reduction. Locke Lake responded to said inquiry with a letter from its attorney stating that the company believed it was entitled to increased revenues to compensate better an affiliate company. In light of the fact that the company had not filed a rate case to support its desire for increased revenues the commission, by order no. 19,610 (74 NH PUC 447), scheduled a hearing for December 11, 1989. The company was required to show cause why a docket should not be opened to investigate whether the rates and charges currently

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demanded by Locke Lake were unjust and unreasonable pursuant to the provisions of RSA 378:7. The December 11, 1989, hearing date was continued until January 16, 1990, at the request of the company.

II. *Position of the Parties*

The testimony of Mary Jean Newell, Assistant Finance Director, was that the company is earning a return on equity of between 18.57% and 20.97% whereas its last granted rate of return was 11.25%. The company presented testimony which established that it had not been surcharging rate case expense during that entire period which would reduce those percentages somewhat, however, not significantly. The company further presented testimony that its increase in customers justified an increase in revenues to compensate better an affiliated company for services rendered, although the company never attempted to revise the contract either before or after the January 16, 1990 hearing. Moreover, the company claimed that the timing for a rate decrease is not correct because a sale of the company may be pending and, presumably, the new owners will soon be before the commission for an adjustment in rates after the sale is consummated. Tr. at 67.

III. *Commission Analysis*

[1-3] RSA 378:7 provides that "[w]henever the commission shall be of the opinion, after hearing had upon its own motion that the rates, fares or charges demanded or collected ... by any public utility for service rendered ... are unjust or unreasonable ... the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and enforced as the maximum to be charged for the service to be performed"

Based on staff testimony, which was not effectively rebutted, the commission finds that the company is over-earning and accordingly we will open an investigation pursuant to the above referenced statute. However, the commission will grant the company a four-month period in which to sell the utility during which time all rates charged from the date of this order shall be considered temporary rates at current tariff levels pursuant to RSA 378:29. If such a sale should be consummated the purchasing public utility shall file for permanent rates, or, in the alternative, if no sale is consummated the company shall initiate by filing testimony in support or revision of its current rate. The establishment of current rates as temporary rates will provide for rate stability during a period when circumstances may change significantly. At the same time, temporary rates will prevent the company from retaining the windfall of over-earnings at the expense of its customers.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that pursuant to RSA 378:7 the commission shall open an investigation into the rates and charges of Locke Lake Water Company, Inc.; and it is

FURTHER ORDERED, that all charges made for services rendered as of the date of this order shall be made pursuant to RSA 378:27, RSA 378:29 and RSA 378:30; and it is

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FURTHER ORDERED, that Locke Lake Water Company, Inc. shall have four (4) months to consummate its proposed sale of the utility; and it is

FURTHER ORDERED, that should no sale be consummated within four (4) months of the date of this order, the company shall file testimony on the issue of rates on or before said date; and it is

FURTHER ORDERED, that any company purchasing the utility must file testimony in accordance with this order.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of March, 1990.

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NH.PUC*03/19/90*[50938]*75 NH PUC 183*Pittsfield Acqueduct Company

[Go to End of 50938]

75 NH PUC 183

Re Pittsfield Acqueduct Company

DR 89-053
Order No. 19,762

New Hampshire Public Utilities Commission

March 19, 1990

ORDER correcting an error in the computation of a refund of the difference between temporary and permanent rates for water utility service.

REPARATION, § 15 — Grounds for allowing — Correction of computational error — Water utility.

[N.H.] A water utility was directed to refund $224.12 to its customers through a reduction in its rate case expense; the refund requirement resulted from the correction of an error in the computation of a previously-ordered refund of the difference between temporary and permanent rates for water utility service; it was found that accomplishing the refund through a reduction in rate case expense would save administrative costs.

By the COMMISSION:

ORDER

On February 21, 1990 the commission issued report and order no. 19,725 (75 NH PUC 119) in Docket DR 89-053 approving a 40.7% rate increase for Pittsfield Acqueduct Company

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(Company); and

WHEREAS, on February 28, 1990, the commission received a letter from the Company concerning report and order no. 19,725 in which the Company pointed out an error in the temporary rate figure used on page 5 in said order; and

WHEREAS, the letter further stated that the company and staff had discussed the commission's order for a refund of the difference between the approved permanent rate increase and the temporary rate increase; and

WHEREAS, the commission finds that the temporary rate increase was in fact 41.23% and incorrectly reported as 42.5% on page 5 of report and order 19,725; and

WHEREAS, the difference between temporary and permanent rates is approximately $224.12; and

WHEREAS, the Company and staff agreed that the refund should be made by reducing the Company's rate case expense by $224.12; and

WHEREAS, the commission finds it just and reasonable to allow the Company to refund this overcharge to its customers through a reduction in rate case expense; it is hereby

ORDERED, that page 5 of report and order no. 19,725 be amended to read "temporary rate increase of 41.23% ..."; and it is

FURTHER ORDERED, that the Company shall refund the difference between temporary and permanent rates by a reduction in rate case expense as this will save administrative costs for the Company which would ultimately be borne by the ratepayers; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Pittsfield Acqueduct Company effect notification of this order by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 26, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before April 26, 1990; and it is

FURTHER ORDERED, that such authority shall be effective on April 26, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1990.

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NH.PUC*03/19/90*[50939]*75 NH PUC 184*Pittsfield Aqueduct Company

[Go to End of 50939]

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Re Pittsfield Aqueduct Company

DR 89-053
Order No. 19,763

New Hampshire Public Utilities Commission

March 19, 1990

ORDER scheduling a hearing to address concerns regarding the adequacy of municipal fire protection service provided by a water utility.

SERVICE, § 475 — Water — Municipal fire protection — Adequacy.

[N.H.] A water utility was directed to appear at a hearing to address concerns regarding the adequacy of its provision of municipal fire protection service.

By the COMMISSION:

ORDER

On February 27, 1990, the commission received a letter from the office of the selectmen for the Town of Pittsfield, New Hampshire (Town), specifying a number of concerns the selectmen have regarding Pittsfield Aqueduct Company's (utility) provision of service to the town of Pittsfield, particularly regarding municipal fire protection; and

WHEREAS, the Town specifically alleged:

1) a lack of notification to customers of a business location, mailing address and telephone number at which the company could be contacted;

2) a lack of maintenance of and snow removal from fire hydrants;

3) a failure to furnish the Town with an itemized water bill;

4) unsatisfactory excavation work, compacting and replacement materials.

5) a history of failure to comply with
orders of the Town concerning excavation which took place on Chestnut Street as well as a general failure to comply with the Town's excavation ordinance; and

6) the lack of flow tests on hydrants; and

WHEREAS, Pittsfield Aqueduct Company should address these concerns raised by the Town of Pittsfield; it is hereby

ORDERED, that pursuant to, *inter alia*, RSA 365:1 *et seq.* and RSA Chapter 374, that a hearing be held at 10:00 a.m. on May 29, 1990 at the commission offices to afford the utility an opportunity to respond to the allegations made by the Town; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this order

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of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 12, 1990, said publication to be documented by affidavit filed with this office on or before May 29, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17, and N.H. Admin. Rules PUC subsection 203.02, any party seeking to intervene in the proceedings shall submit a motion to intervene at least three days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1990.

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NH.PUC*03/19/90*[50940]*75 NH PUC 185*US Sprint

[Go to End of 50940]

75 NH PUC 185

Re US Sprint

DR 90-032
Order No. 19,764

New Hampshire Public Utilities Commission

March 19, 1990

ORDER granting a motion by a nondominant provider of intrastate telecommunications service for a waiver of compliance with certain accounting requirements.

ACCOUNTING, § 54 — Telephone — Intrastate services — Nondominant carrier — Waiver of requirements.

[N.H.] A nondominant provider of intrastate telecommunications services was granted a waiver of compliance with certain commission accounting rules; however, the company was directed to file with the commission on a quarterly basis its balance sheet, income statement, and a statement of New Hampshire gross revenues.

By the COMMISSION:

ORDER

WHEREAS, US Sprint Communication Company of New Hampshire Inc. (US Sprint) is authorized to operate as a telephone public utility to the limited extent of providing FTS 2000 Services to the federal government in the State of New Hampshire; and

WHEREAS, US Sprint on March 1, 1990, pursuant to N.H. Admin. Rules Puc 401.01 (b) and

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409.01(i), filed for a waiver of the New Hampshire Public Utilities Commission's ("PUC's") rules, N.H. Code of Admin. Rules Puc 406.03 and 407.13; and

WHEREAS, US Sprint's authority is limited to the provision of FTS 2000 Services to the federal government, which is a unique one customer offering, provided under contract terms and conditions, which have been specified by that customer; and

WHEREAS, US Sprint is a nondominant carrier, is not a monopoly provider of telecommunications service, nor does it pose a threat of becoming a monopoly provider of such services; and

WHEREAS, US Sprint is not required by the Federal Communications Commission, or any of the 42 states where it provides intrastate service, to provide USOA information; and

WHEREAS, US Sprint is not subject to rate base rate-of-return regulation and the use of the Uniform System of Accounts (USOA) is essential to rate base rate-of-return regulation; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it is consistent with the public good to approve US Sprint's Motion for waiver; it is hereby

ORDERED, that US Sprint is exempted of complying with the PUC's filings and reporting requirements as codified at N.H. Code Admin. Rules Puc 406.03 — Accounting Records, which are kept in accordance with, N.H. Code Admin. Rules PART PUC 409 — Uniform System of Accounts for Telecommunications Companies (USOA), and N.H. Code Admin. Rules Puc 407.02-407.13 — Forms Required of All Telephone Utilities; and it is

FURTHER ORDERED, this waiver is granted subject to any changing conditions that should occur in the future, for example if intrastate competition were allowed in the State of New Hampshire; and it is

FURTHER ORDERED, US Sprint provide the Public Utilities Commission (PUC) with the company Balance Sheet and Income Statement, and a statement of New Hampshire Gross Revenues; and it is

FURTHER ORDERED, that US Sprint shall on a quarterly basis file with this Commission the above detailed statements; and it is

FURTHER ORDERED, that this Order shall be effective from the date of this order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1990.

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NH.PUC*03/23/90*[50941]*75 NH PUC 186*Atlantic Connections, Ltd.

[Go to End of 50941]

75 NH PUC 186

Re Atlantic Connections, Ltd.

DE 90-042

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Order No. 19,766

New Hampshire Public Utilities Commission

March 23, 1990

ORDER directing a telecommunications company to appear and show cause why it should not be fined for operating as a public utility without authority.

FINES AND PENALTIES, § 7 — Unauthorized operations — Show cause order — Intrastate telecommunications services.

[N.H.] A telecommunications company that allegedly was charging customers for unauthorized intrastate telecommunications services in violation of state statute was directed to appear and show cause why it should not be fined for operating as a public utility without authority.

By the COMMISSION:

ORDER

WHEREAS, the staff of the New Hampshire Public Utilities Commission (PUC) on information and belief, alleges Atlantic Connections, Ltd. (Atlantic) is providing intrastate telecommunications service in the State of New Hampshire; and

WHEREAS, Atlantic has not applied for or been granted franchise authorization pursuant to RSA 374:22; and

WHEREAS, pursuant to RSA 362:2 the term "public utility" includes, in pertinent part, every corporation or company owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone and telegraph messages for the public; and

WHEREAS, Atlantic has not filed appropriate rate schedules showing the rates, fares, charges and prices for any services rendered or to be rendered pursuant to, *inter alia*, RSA 378:1 *et seq.* and N.H. Admin. Rules Chapter 1600; and

WHEREAS, the commission staff alleges, on information and belief, that Atlantic is charging customers for unauthorized intrastate telecommunications services in violation of, *inter alia*, RSA 374:22, 378:1 *et seq.*; and 374:2

WHEREAS, Atlantic registered with The New Hampshire Secretary of State on April 29, 1988, listing as its agent therein, J. Craig Tefft of 104 Congress St., Suite 202, P.O. Box 6620, Portsmouth, New Hampshire, it is

ORDERED, that docket DE 90-042 be established for the purpose of investigating whether Atlantic Connections, Ltd. should be fined up to $25,000, pursuant to RSA 365:41 or any of its agents or officers should be fined up to $10,000, for each day of a continuing violation pursuant to RSA 365:42, or whether Atlantic and its officers and agents should be subjected to criminal prosecution or other appropriate sanctions pursuant to *inter alia*, RSA 365:41, 365:42, or 374:41

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et seq. for operating as a public utility without authority and for charging rates without authority; and it is

FURTHER ORDERED, Atlantic Connections, Ltd., its officers and agents, including, without limitation, said J. Craig Tefft, appear before the commission in a hearing at the offices of the commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on May 9, 1990 for the purpose of showing cause why it should not be found to be in violation of, *inter alia*, RSA 374:2, 374:22, and 378:1 *et seq.*, and subjected to the sanctions cited above.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 1990.

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NH.PUC*03/23/90*[50942]*75 NH PUC 187*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50942]

75 NH PUC 187

Re Public Service Company of New Hampshire/Northeast Utilities

DR 89-244
Order No. 19,767

New Hampshire Public Utilities Commission

March 23, 1990

ORDER requiring the respondents to a data request to file comments on whether certain intervenors should be permitted to review responses submitted under a protective order.

PROCEDURE, § 16 — Discovery and inspections — Responses filed under protective order.

[N.H.] The commission directed the respondents to a data request to file comments on whether certain intervenors should be permitted to review responses submitted under a protective order.

By the COMMISSION:

ORDER

WHEREAS, by orders 19,736 (75 NH PUC 135) and 19,742 (75 NH PUC 143) the commission provided protection to the responses by Public Service Company of New Hampshire (PSNH) and Northeast Utilities (NU) to staff data request, set 1, numbers 243 and 24 respectively; and

WHEREAS, said orders denied the Hydro Intervenors and the Biomass Intervenors an opportunity to review the responses as parties who are not involved in the issue of the bearable

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and feasible level of rates; and

WHEREAS, on March 12, 1990, the Hydro Intervenors filed an Objection to Portions of Protective Orders No. 19,736 and 19,742 and Motion for Reconsideration, stating that there is no basis in law for treating the interests of the Hydro Intervenors differently from those of any other full party and requesting review of the responses by the counsel to the Hydro Intervenors on the same basis as counsel for other full parties; and

WHEREAS, on March 19, 1990, the Biomass Intervenors filed an Objection to Portions of Protective Order Nos. 19,736 and 19,742 and Motion for Reconsideration asserting that they have a substantial interest in the level of retail rates and requesting that counsel for the Biomass Intervenors be permitted to review the studies on the same basis as counsel for the other full parties; and

WHEREAS, order nos. 19,736 and 19,742 also permitted review of the studies by the respective staffs of the commission and the Office of Consumer Advocate and review was limited to counsel of NU and the BIA by agreement of those parties; and

WHEREAS, the commission wishes to solicit the positions of PSNH and NU regarding whether the counsels and/or staffs of the Hydro Intervenors and the Biomass Intervenors should be permitted to review the protected studies filed in response to staff data request set 1, no. 243 and no. 24, it is hereby

ORDERED, that PSNH and NU file comments on the requests by the Hydro Intervenors and the Biomass Intervenors by March 30, 1990; and it is

FURTHER ORDERED, that other parties be, and hereby are, invited to file comments also on said requests by March 30, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 1990.

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NH.PUC*03/23/90*[50943]*75 NH PUC 188*Eastern Utilities Associates/Unitil Corporation

[Go to End of 50943]

75 NH PUC 188

Re Eastern Utilities Associates/Unitil Corporation

DF 89-085
Order No. 19,768

New Hampshire Public Utilities Commission

March 23, 1990

ORDER establishing the scope of a proceeding to review the proposed merger of two public utility holding companies.

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1. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval — Public good — Rate considerations — Utility merger.

[N.H.] To approve a proposed merger, the commission must ensure that an appropriate portion of the benefits of the merger would be obtained by the ratepayers of the acquired entity; the commission need not attempt to an exact determination of the post-merger rate levels of the acquired entity, but the acquiring entity must demonstrate that net economic benefits will flow to the ratepayers of the acquired entity in the form of lower rates than otherwise would be obtainable. p. 190.

2. CONSOLIDATION, MERGER, AND SALE, § 62 — Scope of proceedings — Holding company merger.

[N.H.] The following were included in the scope of a proceeding to investigate the proposed merger of two public utility holding companies: (1) the effect of the merger on utility operations; (2) the reasons for the proposed merger; (3) rate effects; (4) benefits to customers and utility employees; (5) allocations of synergies; (6) effect of the acquiring entities ownership interest in the Seabrook nuclear generating plant on the ratepayers of the acquired entity; and (7) the terms of the merger offer. p. 191.

3. PROCEDURE, § 16 — Commission powers — Scope of discovery.

[N.H.] The commission has authority to require discovery from utilities beyond that required in traditional legal proceedings. p. 192.

4. PROCEDURE, § 16 — Discovery — Merger proceeding.

[N.H.] The following discovery procedures were established for use in an investigation of the proposed merger of two public utility holding companies: (1) date requests must be responded to in a manner that, at a minimum, is consistent with discovery in traditional legal proceedings: (2) the commission will, upon a motion to compel, require responses beyond those required in traditional legal proceedings if the request is designed to discover relevant data, is not difficult to comply with, and the request is clearly the party best able to gather the information; (3) other motions to compel discovery will be addressed on a case-by-case basis and determined after balancing the interests of the requestor and the request in light of the relevance of the material. p. 192.

5. PROCEDURE, § 16 — Discovery — Merger proceeding.

[N.H.] To avoid procedural delays in the discovery portion of an investigation of the proposed merger of two public utility holding companies, the commission ordered that (1) all documents held on claims of privilege or commercial sensitivity must be identified and itemized and the basis for the claim must be specified and supported; (2) all data requests must be responded to within 10 working days, unless otherwise authorized by the commission; (3) objections to discovery requests must be filed within 3 working days of the request. p. 192.

APPEARANCES: Richard A. Samuels, Esq. and Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton, P.A.; Theodore E. Dinsmoor, Esq. and David A. Fazzone, Esq.

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of Gaston & Snow; for Eastern Utilities Associates ("EUA"); Dom D'Ambruoso, Esq. of Ransmeier & Spellman; Elias G. Farrah, Esq. and Paul K. Connolly, Esq. of LeBoeuf, Lamb, Leiby & MacRae; for Unitil Corporation ("UNITIL") Paul Cavanaugh, Esq., for City of Concord; Michael Holmes, Esq. and Joseph Rogers, Esq. for Office of Consumer Advocate; Eugene F. Sullivan, III, Esq. and James T. Rodier, Esq., for Staff of New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

On May 15, 1989, EUA filed a petition for a determination of jurisdiction or, alternatively, for approval to acquire shares of UNITIL.

EUA and UNITIL filed letters dated January 3, 1990, and February 7, 1990, respectively, seeking expedited treatment of the petition.

Pursuant to an order of notice dated February 9, 1990, a prehearing conference was held on March 12, 1990 to determine whether motions to intervene should be granted, to establish a procedural schedule for the duration of the proceedings consistent with EUA's and UNITIL's request for expedited disposition, and to address any other matters which might aid the commission in the disposition of the proceedings.

Prior to the hearing, the commission received petitions from the City of Concord, New Hampshire and UNITIL to intervene.

At the procedural hearing held on March 12, 1990, the parties jointly presented certain recommendations for aiding the commission in its determination of a scope and procedural schedule for this proceeding. On March 12, EUA filed a formal Motion to Define Scope of Proceeding. The joint procedural recommendations were found reasonable by the commission and approved and interventions granted in report and order no. 19,759 (75 NH PUC 179), dated March 15, 1990.

In accordance with report and order no. 19,759, on March 16, 1990 UNITIL and OCA filed written responses to EUA's Motion to Define Scope of Proceeding; EUA filed a memorandum of law in support of its Motion to Define Scope of Proceeding; EUA, UNITIL, and OCA filed proposed procedural schedules. UNITIL also filed a Motion to Compel EUA's Response to Discovery.

In accordance with report and order no. 19,759, oral argument on scope and procedure was held at the commission on March 19, 1990. Pursuant to leave granted by the commission at oral argument, EUA and UNITIL filed supplemental written comments on procedural matters and scope of the proceeding on March 22, 1990.

II. *Issues Presented at Oral Argument*

EUA, UNITIL, OCA and staff presented oral arguments on March 19, 1990 on scope and

procedure.

All parties appeared to agree that New Hampshire case law, statutes, and commission precedent require that in order to support a finding of "public good" the commission would have to find that the proposed EUA acquisition of UNITIL's shares is lawful and reasonable under all of the circumstances, and that said acquisition will not impair service but will provide tangible net benefits for the EUA system post-acquisition. (Tr. at 70.)

There was a substantial difference of opinion expressed, however, over the following issues:

1) Should the commission conduct a rate inquiry as advocated by UNITIL and OCA, or should the actual quantification of the expected impact on the rates of UNITIL's retail customers await a secondary proceeding as advocated by EUA;

2) relevancy of certain issues including Montaup's and EUA Power's involvement and ownership of Seabrook, and the terms of EUA's tender offer;

3) scope of discovery and UNITIL's Motion to Compel;

4) procedural schedule.

III. *Commission Analysis*

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[1] A. The first issue to be resolved is whether the commission needs to undertake a rate inquiry to ascertain the precise effect of the acquisition on UNITIL's ratepayers; whether determination of the benefits actually to be received by UNITIL's ratepayers should be deferred until a "secondary proceeding"; or whether there is a reasonable middle ground that will allow the commission to discharge lawfully its responsibilities.

We cannot grant the application of EUA unless and until we can conclude, based upon substantial evidence, that it is consistent with the public good. The issue at hand is the degree to which it is appropriate and necessary to address the future rate implications of granting an approval for a proposed utility activity purportedly being undertaken in the public good.

We are guided in our analysis by the Supreme Court discussion in *Appeal of Conservation Law Foundation*, 127 N.H. 606 (1986). There the court reviewed a commission determination that a proposed financing was consistent with the public good as required by RSA 369:1. The Court stated:

> It follows that in an *Easton* hearing the commission's responsibility to address the rate implications of a decision approving a utility's financing request is not a responsibility to determine what these rates will actually be if the financing is allowed. (To this conclusion there is one exception, which we will mention below.) Rather, the commission's responsibility is to determine whether at a later ratemaking proceeding a reasonable rate can be set that will allow the company to support the capitalization that will result from use of the proceeds of the proposed financing.

Appeal of Conservation Law Foundation, 127 N.H. at 640-641.

In its companion case, *Appeal of McCool*, 128 N.H. 124 (1986), the court further elaborated

on this standard:

> As we explained in some detail in *Appeal of CLF*, 127 N.H. at 640, 507 A.2d at 675-76, a proceeding to evaluate a proposed financing plan under RSA chapter 369 is distinctly different from a proceeding to set rates under RSA 378:27 and 378:28. If, however, the commission acts favorably on a financing proposal, the utility may be expected to request that the resulting capitalization be supported entirely by customer rates, a request that customers may oppose on the ground that the expenditures for the objects of the financing should not be charged to them. Although these issues of rate support may be resolved only at the later proceeding to set rates, at a financing proceeding the commission cannot ignore the potential effect of its decision on the interests that must be considered when rates are finally set.

Appeal of McCool, 128 N.H. at 140.

In view of the foregoing, our decision is that the commission must ensure that an appropriate portion of any overall EUA system benefits or synergies are actually obtained by UNITIL's ratepayers; nevertheless, we will not embark on a futile venture in search of what may be specious precision as to UNITIL's future rate levels. Moreover, we have also been admonished by the Court that "any attempt to judge reasonableness [of rates] apart from [the rate case] process would entail redundancy and risk both illegality and unconstitutionality." *Appeal of C.L.F.* 127 N.H. at 639.

In this regard we also note that in a concurrent proceeding before the commission involving Northeast Utilities' request for approval of its acquisition of PSNH (Docket No. DR 89-244), a matter that is also to be analyzed under a public good standard, RSA 362-C:3, NU has provided extensive testimony and documentation regarding the expected level of net benefits or "synergies" that will flow to PSNH's ratepayers. Certain synergies are directly attributable and accountable to PSNH and no allocation between PSNH and NU's customers and/or investors is required. Other synergies, such as load diversity and join dispatch are common in nature and thus need to be allocated among NU's subsidiaries and investors. NU has explicitly proposed how joint synergies will be allocated. EUA must do likewise, if it is to carry its burden of proof in this proceeding in

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demonstrating, *inter alia*, that net economic benefits will flow to UNITIL's ratepayers in the form of lower rates than would otherwise be obtainable. This is particularly important given that the proposed transaction and associated benefit allocations are subject to regulatory approval in other jurisdictions.

[2] B. The second issue relating to scope is the relevance of Montaup's and EUA Power's involvement in and ownership of Seabrook; particularly, whether EUA can force UNITIL to purchase any or all of EUA Power's Seabrook entitlement, and the effect of any Montaup or EUA Power Seabrook write-off on EUA's overall financial capability and its downstream effect on their operating subsidiaries. Additionally, EUA has argued that the commission should avoid a searching examination of the terms of EUA's tender offer.

A review of EUA's case filed on March 12, 1990 reveals that at least the following issues

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may be relevant to our determination of the public interest:

a) The effect of the merger on EUA's and UNITIL's operations.

b) EUA's reasons for the acquisition of UNITIL, with particular emphasis on strategic and geographic fit.

c) Public good considerations, including but not limited to the following:

1. Whether UNITIL's rates will be reduced and stabilized.
2. Whether customers and employees of UNITIL will benefit.
3. Whether the economies of UNITIL's service areas will be enhanced.
4. The allocation of common benefits and synergies between EUA and UNITIL.
5. Effect of the acquisition on competition.
6. Effect of EUA Power's 12 percent, ownership share of Seabrook on UNITIL's ratepayers and EUA's shareholders.
7. The future role of Montaup Electric Company as a wholesale provider to UNITIL.
8. Effect of an EUA power write-off on EUA's shareholders.
9. Effect of an EUA power write-off on EUA's operating affiliates.

d) The terms of EUA's tender offer to UNITIL's stockholders.

e) Whether there would be any "negative synergies" associated with the acquisition.

f) A comparative analysis of the strengths and weaknesses of the management of UNITIL and EUA.

The necessity to examine these issues is reinforced by the Arthur D. Little studies and conclusions regarding overall benefits sponsored by EUA and submitted for the commission as a part of EUA's direct presentation as summarized by EUA:

> "... greater access to capital markets at more favorable terms; better ability to compete for energy sources; reduced capital requirements for future additions to generating capacity; savings and efficiencies resulting from the utilization of EUA service which, through a centralized staff, provides engineering, financial, accounting, purchasing, management, insurance, customer billing, systems and data processing, customer and planning services; increased stability of load due to greater diversity in seasonable peak periods; increased stability of industrial loads due to the greater number and diversity of the combined industrial customers of the company; improved ability of EUA and UNITIL's subsidiaries to utilize developing technology and comply with environmental regulations; and improved ability to compete for new industrial and commercial customers by emphasizing the economic potential of EUA's broader marketing program."

Prefiled Testimony of John R. Stevens at 33.

In order to test these representations, the issues set forth above must be fully explored. For example, the issue of whether EUA's tender offer for UNITIL is accurately priced may have a significant effect on whether EUA will have "greater access to capital markets at more favorable terms..."

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We also find, based upon oral argument and a review of the record that these issues are unquestionably within the scope of discovery as will be explained further herein. The extent to which these issues are ultimately deemed relevant to the discharge of the commission's responsibilities in this proceeding and the weight accorded by the commission to any evidence to enter the record on these matters will be addressed as the proceeding unfolds, as the record develops, and in our deliberations. While some latitude must be allowed in discovery, we will not allow searching examinations to be conducted into matters that have no probative value or dubious relevancy in the context of the evidentiary record.

[3-5] C. The third issue that must be resolved is the proper scope of discovery, UNITIL's Motion to Compel, and how "discovery problems" will be resolved. As noted during oral argument by staff and UNITIL, the scope of discovery is broader than information and data that would be relevant and admissible in evidence during a proceeding.

The commission's authority, powers, and policies with regard to discovery are set out in *Re Public Service Company of New Hampshire*, 72 NH PUC 502, 504 (1987). Therein the commission stated that it has the ability to require discovery from utilities beyond that required by traditional discovery rules (*Id.*).

As applied to the case at hand, the parties have a duty to respond to data requests in a manner that, at a minimum, is consistent with discovery in traditional legal proceedings. To the extent that requests go beyond that duty, the Commission will, upon a motion to compel, require responses to data requests that are designed to discover relevant data, that require relatively little compliance effort, and where the requestee is clearly the party in the best position to undertake the effort to gather the information. In other situations the Commission will address motions to compel on a case by case basis, balancing the necessary effort by the requestee, the relevance of the material, the potential of the requesting party to undertake the effort of preparing the requested information, and any other relevant criteria. The commission believes it is appropriate for the moving party to make a reasonable effort to explain why the requestee should provide a response that would go beyond the response required in traditional litigation as discussed above.

In order to reduce the number of discovery problems that may arise as the proceeding unfolds so that all parties will be able to utilize fully the times allotted to them, we hereby adopt the following further guidelines:

1. Documents withheld on claims of privilege or grounds of commercial sensitivity shall be identified and itemized and the basis for any claims of privilege or competitive harm shall be specified and supported within 3 working days.

2. All documents shall be provided even if they are publicly available. Bulk material need only be provided to the requestor and the commission.

3. All data requests shall have a response within 10 working days unless otherwise authorized by the commission; any requests that are found to be objectionable shall be objected to within 3 working days.

4. All materials shall be actually filed with the commission and served on all parties on or before the date they are due, either by hand or facsimile.

5. Follow-up requests are permitted at any time. Additional data requests will be

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permitted by the commission at any time upon a showing of good cause.

Beyond this, the commission is prepared to break procedural log jams on short notice through oral motion by telephone and oral argument at the commission offices, provided that it can be done consistently with due process and fully on the record. Additionally, the commission may utilize the foregoing expedited process at the request of any party by conducting it through telephone conference calls provided that the foregoing conditions are met.

In view of the foregoing guidance and instruction, we will defer acting on UNITIL's Motion to Compel without prejudice to UNITIL on the basis that it may now be moot.

D. The remaining issue is the procedural schedule to be established for the duration of

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this proceeding. After consideration of the oral arguments and the recommendations of EUA, UNITIL and OCA, we find that the following procedural schedule is just and reasonable under all of the circumstances:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

NHPUC Order of Scope and Procedure.	March 23, 1990
UNITIL's Data Requests to EUA	April 6, 1990
EUA Responses to UNITIL	April 20, 1990
UNITIL Direct Case	May 11, 1990
Data Requests to UNITIL	May 25, 1990
UNITIL Responses	June 8, 1990
Staff, OCA, and Intervenor Testimony	June 15, 1990
Data Requests to Staff, OCA and Intervenors	June 22, 1990
Staff, OCA and Intervenor Responses	July 6, 1990
Hearings	July 16, 1990 and thereafter as scheduled by further order of commission
Briefs	August 30, 1990
Commission Decision	September 30, 1990

The commission appreciates the interest of the parties in concluding the proceedings by September of 1990 and, in this light, adopts the foregoing schedule by the order attached hereto. We recognize that it is ambitious and will require the best efforts of all parties. As the case progresses, we may find it necessary to amend the schedule or to allow an opportunity for rebuttal upon appropriate motion of any party. (Tr. at 7).

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein by reference; it is hereby

ORDERED, that the scope of this proceeding shall be as set forth in the foregoing report; and it is

FURTHER ORDERED, that the motions and recommendations of the parties regarding

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scope and procedural schedule are granted insofar as they are consonant with the foregoing report and are otherwise denied; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report shall govern these proceedings until further ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 1990.

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NH.PUC*03/26/90*[50944]*75 NH PUC 193*Coombs/Mores, et al. v. Public Service Company of New Hampshire

[Go to End of 50944]

75 NH PUC 193

Coombs/Mores, et al.
v.
Public Service Company of New Hampshire

DC 90-025
Order No. 19,770

New Hampshire Public Utilities Commission

March 26, 1990

ORDER scheduling hearings on a complaint alleging improper termination of electric service.

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1. PAYMENT, § 34 — Enforcing payment — Denial of service — Arrearages of others — Household members — Service at different address.

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[N.H.] In response to a complaint, hearings were scheduled to determine whether commission rules, state law, and relevant tariff provisions permit a electric utility to deny or terminate service to an otherwise qualified applicant/customer on the basis of debts incurred by another household member at a prior address different from that for which service is being sought. p. 194.

2. PARTIES, § 16 — Necessary parties — Potential new management — Complaint proceeding.

[N.H.] In view of the likelihood that Northeast Utilities (NU) would assume management of Public Service Company of New Hampshire (PSNH) during the course of a complaint proceeding, NU was ordered to participate in the proceeding as a full party. p. 196.

APPEARANCES: New Hampshire Legal Assistance by Deborah Schacter, Esq.; Public Service

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Company of New Hampshire by Pierre O. Cameron, Esq.; Office of Consumer Advocate by Joseph Rogers, Esq.; Staff of New Hampshire Public Utilities Commission by James T. Rodier, Esq.

By the COMMISSION:

REPORT

I. *Background*

On February 16, 1990, a letter was issued by the Executive Director and Secretary of the commission scheduling a hearing in this proceeding for February 23, 1990. On February 22, 1990, Ms. Schacter by letter requested that the hearing on the merits scheduled for February 23, 1990 be used as a prehearing conference.

Accordingly, a pre-hearing conference was held on February 23. Pursuant to the pre-hearing conference, a letter was sent to Ms. Schacter on February 27, 1990 in an attempt to settle the outstanding issues in this proceeding. On March 1, 1990, Ms. Schacter advised the commission by letter that a formal complaint on behalf of the clients would be filed with the commission by March 14.

Ms. Schacter's complaint was filed on March 14, 1990, accompanied by a recommendation for a procedural schedule agreed to by the parties.

II. *Summary of the Complaint*

[1] In brief, complainants are New Hampshire residents who allegedly suffered illegal termination of electric service when Public Service Company of New Hampshire (PSNH) disconnected utility service to their homes without adequate notice or opportunity to dispute alleged arrearages. According to the complaint, such terminations of electricity were based on the PSNH practice of denying the right to contract for service to individuals who reside in a household where an individual within the home is alleged to owe a debt to the company from an address other than that for which service is sought. The complaint claims that such practice violates Public Utilities Commission (PUC) rules and state law and that this practice also runs contrary to public policy by denying families needed heat, refrigeration, cooking and lighting facilities, thereby threatening their health and well-being, as means to coerce payment of collateral and unverified debts.

In support thereof, the complaint recites detailed factual background regarding circumstances involving PSNH and complainants Pamela Mores, Laura Coombs, James Stoddard/Wayne Hodgdon, and Deborah Levesque.

The complaint lists six issues of fact and policy for the commission to resolve. The complaint also alleges the following statutory violations by PSNH: RSA 371:4, RSA 378:10, RSA 363-B:1, RSA 363-B:2, and the following additional courses of action at law: breach of contractual duty and breach of the common law duty to provide service. The complaint also alleges the following rule violations: Puc 303.04(a), Puc 303.04 (c), Puc 303.08 (g), Puc

303.08 (i), Puc 303.08 (k), and, lastly, claims that PSNH has failed to keep adequate and

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accurate records as required by commission rules and state law.

III. *Relief Requested*

The complaint requests the commission to grant the following relief:

A. *Interim Relief* in the form of a preliminary order:

1) prohibiting PSNH and its representatives from terminating service to a residence with existing service, based on denial of service to a customer/applicant, without providing written notice at least 10 days prior to such termination, in accordance with PUC rules and RSA 363-B:1 and 2;

2) requiring PSNH to comply fully with the provisions of Puc 303.04 and Puc 303.08 as cited herein;

3) prohibiting PSNH and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred at a prior, different address by a household member other than the individual requesting service.

B. *Permanent Relief* in the form of a permanent order:

1) prohibiting PSNH and its representatives from terminating service to a residence with existing service, based on denial of service to a customer/applicant, without providing written notice at least 10 days prior to such termination, in accordance with PUC rules and RSA 363-B:1 and 2;

2) requiring PSNH to comply fully with the provisions of Puc 303.04 and Puc 303.08 as cited herein, and to keep such records as are reasonably necessary to effectuate such compliance;

3) prohibiting PSNH and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred at a prior, different address by a household member other than the individual requesting service;

4) prohibiting PSNH and its representatives from denying an otherwise qualified customer/applicant the right to contract for electric service based on debts incurred by the customer/applicant, and his/her spouse at a prior, different address;

5) requiring PSNH to refile its Tariff within a period not to exceed 30 days from the date of the Commission's order, revised to exclude any language within Section 3 (Deposits, Payments, Refusal or Discontinuance of Service) which may be construed to allow the company to deny or terminate residential service to an otherwise qualified applicant/customer on the basis of debts incurred at a prior address different from that for which service is currently being sought;

C. *Other Relief* as follows:

1) Order PSNH to pay reparations to Complainants for the adverse consequences to them of unlawful terminations and denials of service by PSNH.

2) Impose civil penalties against PSNH, in accordance with RSA 365:41, for each violation of or failure to comply with the rules and directives of this Commission.

3) Institute rulemaking under a separate docket in accordance with RSA 541-A:3 through 3-f, as required to address the issues raised herein, including but not limited to: recordkeeping by the utility necessary to effectuate compliance with existing rules and laws; provision of a written

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notice of proposed termination to individuals with electric service not in their names; appropriate limitations on denial of service to applicants alleged to owe prior, unrelated debts to the utility, or whose co-residents are alleged to owe such prior unrelated debts.

IV. *Commission Analysis*

The complaints against PSNH involve a number of substantial issues regarding whether or not the company has complied with commission rules and state law as well at its own tariff provision. Beyond this, sensitive and important public policy issues have been raised. PSNH and complainants are entitled to and deserve to have these matters resolved expeditiously, consistent with due process.

Accordingly, we find as reasonable under all the circumstances the following procedural schedule:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

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March 14          — Complaint filed
March 28          — Answer to be filed.
March 29-April 27 — Discovery
May 1             — Final pre-hearing conference.
May 4             — Hearing on merits
May 14            — Legal briefs due
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Should discovery "problems" arise, the commission will be available upon an oral motion to the Executive Director and Secretary to hear oral arguments pertaining thereto on the record. The commission will consider conducting such a process via telephone conference if so requested by Ms. Schacter.

Additionally, oral arguments on the interim relief requested by complainants will be held on March 29, 1990, at 10:00 a.m. The commission will require any arguing party to provide the commission with citations to legal authority in support of its recommendations and arguments.

[2] Finally, we hereby take notice of Northeast Utilities' response to data request Q-Staff-248 in Docket No. DR 89-244 which has a direct bearing on the central policy issue in this proceeding. In view of the apparent likelihood that NU will assume management of PSNH during the foregoing procedural schedule, we hereby order NU to participate as a full party in these proceedings, including oral argument.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that oral argument on complainant's request for interim relief be held on Thurs., March 29, 1990, at 10:00 a.m. at the commission's offices; and it is

FURTHER ORDERED, that Northeast Utilities is made a mandatory party to these proceedings in accordance with the foregoing report, and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties and set forth in

the report accompanying this order is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1990.

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NH.PUC*03/30/90*[50945]*75 NH PUC 196*Communications Service Tax

[Go to End of 50945]

75 NH PUC 196

Re Communications Service Tax

DR 90-037
Order No. 19,772

New Hampshire Public Utilities Commission

March 30, 1990

ORDER regarding the filing by telecommunications companies of conforming tariffs to reflect the repeal of the telephone property tax and the enactment of the Communications Service Tax.

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1. TAXES, § 1 — Telephone property tax — Repeal.

[N.H.] The state legislature repealed property taxes applicable to telephone utilities effective March 31, 1990. p. 197.

2. TAXES, § 1 — Communications service tax — Collection — Telephone utilities.

[N.H.] The state legislature imposed a communications service tax on users of telephone utility services; the tax must be collected by telephone utilities as a surcharge on customer bills rendered on on after April 1, 1990, for services rendered on or after March 1, 1990. p. 197.

3. RATES, § 147 — Reasonableness — Cost of service — Taxes — Repeal of telephone utility

Page 196

property tax.

[N.H.] The dominant telephone local exchange carrier was authorized to reflect the elimination of the telephone property tax through an across-the-board rate reduction applied to all services, excluding public coin and nonrecurring charges; rate design questions were deferred for resolution in an ongoing permanent rate case. p. 198.

4. RATES, § 147 — Reasonableness — Cost of service — Taxes — Repeal of telephone utility property tax — Enactment of communications Service Tax.

[N.H.] The dominant telephone local exchange carrier was granted an additional month to effect billing changes required by the repeal of the telephone utility property tax and the

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enactment of a communications service tax. p. 198.

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i. RATES, § 147 — Reasonableness — Cost of service — Taxes — Repeal of telephone utility property tax — Enactment of Communications Service tax.

[N.H.] Discussion, by the commission, of the manner in which various nondominant and independent telecommunications carriers should be required to reflect in rates the elimination of the telephone utility property tax and the enactment of a communications services tax. p. 198.

APPEARANCES: John Reilly, Esq. and Victor Del Vecchio, Esq. for New England Telephone Company (NET); Frederick Coolbroth, Esq. of Devine, Millimet, Stahl & Branch for Granite State Telephone, Inc. (GST), Merrimack County Telephone Company (Merrimack), Dunbarton Telephone Company (Dunbarton) and Wilton Telephone Company (Wilton); Timothy Platt of Orr & Reno, P.A. for CONTEL of New Hampshire Telephone (CONTEL N.H.) and CONTEL of Maine Telephone (CONTEL Maine); Michael Roddy of TDS for Kearsarge Telephone Company (Kearsarge), Chichester (Chichester) and Meriden Telephone Companies (Meriden); Dorothy Bickford of Shaheen, Cappiello, Stein & Gordon for Union Telephone Company (Union); Donald Vashaw for Dixville Telephone Company (Dixville); and James T. Rodier, Esq., for Staff of New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

[1, 2] On February 23, 1990 House Bill 1390-FN-A 1990 N.H. Laws Ch. 9 was approved, whereby certain taxes applicable to telephone utilities effective March 31, 1990, were repealed and whereby a communications services tax was imposed on users of telephone services. The communications services tax is to be collected by telephone utilities as a surcharge on customer bills rendered on or after April 1, 1990, for services rendered on and after March 1, 1990.

Pursuant to an order of notice by the commission dated March 6, 1990, Docket DR 90-037 was opened solely for the purpose of reviewing and approving, as appropriate, revisions to tariffs to bring such tariffs into compliance with the changes in tax requirements mandated by 1990 N.H. Laws Ch. 9.

At the hearing held on March 26, 1990, the parties presented certain recommendations and testimony in support of prefiled testimony addressing the above statutory changes requiring the filing of conforming tariffs to reflect the elimination of the property tax and the corresponding changes in bill format to collect the communications services tax.

II. *Issues Presented*

NET proposed to eliminate the property tax through a decrease of roughly 7% in the usage rates for intrastate message toll service

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(utilized by both residence and business customers), WATS service and 800 service. According to NET, this proposal is consistent with the application of the new communications services tax as well as the rate design proposals made in the Info Age New Hampshire 2000 docket. NET also requested a one month extension for implementation and indicated that it would enable NET to implement a number of changes in billing, including the elimination of the property tax, implementation of permanent rates from their recent rate case and the implementation of a surcharge to recover the difference between permanent rates and temporary rates. NET filed a motion that the reduction in April, 1990, would be applied to the recoupment of the difference between temporary and permanent rates. (Tr. 9 to 11).

CONTEL Service Corporation then summarized the methodology that CONTEL New Hampshire and CONTEL Maine utilized to implement the roll back of the property tax. They utilized the 1989 personal property tax payments and calculated a rate reduction on an across the board basis, including such services as directory listing, standard telephones and non-recurring charges, but excluding pay station rates, which could not be readily reduced across the board. CONTEL N.H. presently has a rate case before this Commission, and received in February of 1990 authorization for an across the board uniform temporary rate increase.

Union Telephone summarized the submitted revised tariffs, and stated that a 1987 test year was used for the dollar amount of property tax as well as for the interstate allocator applied to the property taxes. Union Telephone's proposed rate change for eliminating the property tax was an across the board reduction to basic local service and semi-public service.

Tariff revisions pertaining to elimination of the property tax for the TDS companies, Kearsarge, Chichester and Meriden, were proposed whereby only the local service rates including semi-public were reduced.

The tariff proposals for implementing the elimination of the property tax for the remaining independents, i.e., Bretton Woods, Dixville, Dunbarton, Granite State, Merrimack County and Wilton, are contained in the record of this proceeding and are summarized as follows. Bretton Woods has requested a waiver and extension; Dixville proposed to reduce rates for basic local service; Dunbarton proposed to first eliminate charges for touch tone service with the remaining reduction applied across the board basic local services including custom calling features. Granite State's proposal was similar to those of Union and TDS except that across the board reductions were also applied to directory services, public coin, and EAS. Merrimack County's proposal was the same as Granite State except that it did not include public coin and EAS. Wilton's proposal was radically different from those of all of the other independents in that it targeted the reduction exclusively to customer calling features and touch tone.

III. *Commission Analysis*

[3-4] [i] There appears to be a substantial difference of opinion among the telephone companies regarding the manner in which to reflect the elimination of the property tax. Based on the record before us, and the substantial evidence contained therein, we make the following findings. For NET, the reduction will be applied across the board to all services excluding public coin, and non-recurring charges. The commission will resolve NET's rate design issues in the design phase of NET's ongoing permanent rate case in Docket No. DR 89-010. NET's proposal would, in effect, require the commission to pre-judge the merits of rate re-design, which we are

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not disposed to do.

The methodology proposed by TDS (Chichester, Kearsarge and Meriden Telephone Companies) and Dunbarton is approved.

Bretton Woods Telephone is presently seeking an increase in permanent rates. The commission will grant their request for a waiver and extension and review the reduction in property tax expense in the permanent rate case proceedings in (DR 89-182).

CONTEL N.H. is presently seeking an increase in permanent rates. Similar to our treatment of Bretton Woods, the commission will review the reduction in property tax expense in Docket No. DR 89-150 and thereby remove the

administrative burden of duplication of work and additional expense. Contel N.H. shall file illustrative revised tariffs reflecting a reduction applied across the board to all services excluding directory listing, miscellaneous services and non-recurring charges.

CONTEL of Maine, Granite State, Merrimack and Dixville, shall file revised tariff pages whereby the reduction will be applied across the board to all services excluding directory listing, miscellaneous services and non-recurring charges.

Union Telephone Company shall file revised tariffs reflecting their proposed across the board reduction to all basic local services and semi-public services; however, they shall utilize 1989 property tax amounts and the most current interstate factors for their allocations.

Wilton shall file revised tariff pages whereby the reduction will be applied across the board to all local basic services excluding custom calling features.

The tariff revisions filed by Dixville are accepted as filed.

All of the independent companies shall in their revised tariffs reflect the commission's foregoing decision with regard to the impact on NET's intrastate message toll service rates.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that NET's March 15, 1990, motion for Additional Time to Implement Certain Billing Changes is granted for good cause to provide NET with an additional month to effect the billing changes authorized in the foregoing report and is otherwise denied; and it is

FURTHER ORDERED, that Bretton Woods Telephone request for waiver is granted for good cause shown; and it is

FURTHER ORDERED, that New England Telephone Company, Granite State Telephone, Inc., Merrimack County Telephone Company, Dunbarton Telephone Company, Wilton Telephone Company, CONTEL of Maine Telephone, Kearsarge Telephone Company, Chichester Telephone Company, Meriden Telephone Company, Union Telephone Company and Dixville Telephone Company submit Revised Tariff Pages as directed in the foregoing commission analysis; and it is

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FURTHER ORDERED, that the Revised Tariff Pages become effective for services rendered on and after March 1, 1990, and with all billings on and after April 1, 1990; and it is

FURTHER ORDERED, that all the above named companies shall provide notice to their customers of the commencement of the Communications Services Tax, and related rate reductions, by providing informational inserts in the next feasible billing cycle subject to advance approval of commission staff; and it is

FURTHER ORDERED, that CONTEL of New Hampshire is directed to provide this commission with an analysis and calculation of the impact that the reduction would have if applied to temporary rates; and it is

FURTHER ORDERED, that all of the telephone companies provide this commission with a detailed report of proposed rate changes, identifying each rate classification separately.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of March, 1990.

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NH.PUC*04/02/90*[50946]*75 NH PUC 200*New Hampshire Electric Cooperative, Inc.

[Go to End of 50946]

75 NH PUC 200

Re New Hampshire Electric Cooperative, Inc.

Additional parties: Public Service Company of New Hampshire; Unitil System Companies

DE 89-193
Order No. 19,773

New Hampshire Public Utilities Commission

April 2, 1990

ORDER closing the docket in a proceeding to determine whether it would be appropriate to use a multi-utility collaborative process for the development of electric conservation and load management (C&LM) programs. Commission accepts the recommendation of the parties that a collaborative process would not be the most effective means of accelerating C&LM program development.

CONSERVATION, § 1 — Electric — C&LM programs — Program development — Collaborative process.

[N.H.] Based on the recommendations of the parties, the commission closed the docket in a proceeding to consider the use of a collaborative process for electric conservation and load management (C&LM) program development; the commission agreed with the parties that ongoing or pending proceedings involving individual utilities would provide the best vehicle for

C&LM development, especially in light of the expressed willingness of the individual utilities to move forward on C&LM program development.

APPEARANCES: Paul B. Dexter, Esq. for the UNITIL System Companies; Margaret H. Nelson, Esq. & Thomas B. Getz, Esq. for Public Service Company of New Hampshire; Stephen E. Merrill, Esq. for the New Hampshire Electric Cooperative, Inc; and James T. Rodier, Esq. for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

In 1989, in accordance with the commission's orders no. 19,052 (73 NH PUC 117) and no. 19,141 (73 NH PUC 285) in Docket DR 86-41, all New Hampshire electric utilities made least cost integrated resource planning filings to the commission. Each company's filing included a report assessing the potential of demand-side options as utility resources. The commission's orders on four of the five electric companies' filings[1](7)

required the companies to participate with the commission staff, the Governor's Energy Office and the Consumer Advocate's Office in a series of meetings to consider the development and implementation of a collaborative process for conservation and load management ("C&LM") program design and cost recovery issues.

By order of notice issued October 30, 1989, the commission opened this docket to consider whether a collaborative process would be appropriate for New Hampshire and, if so, the scope of such a process. Public Service Company of New Hampshire ("PSNH"), Concord Electric Company and Exeter & Hampton Electric Company (hereafter "UNITIL" or "the UNITIL companies"), the New Hampshire Electric Cooperative, Inc. ("the Coop") and Connecticut Valley Electric Company ("CVEC") were made parties to the docket.[2](8)

On November 28, 1989, CVEC requested that it be relieved of its obligation to participate in the docket in light of the participation by its parent company in a collaborative process in Vermont and its plan to implement C&LM programs in New Hampshire in the near future.

A prehearing conference was held on November 29, 1989. Following off-the-record discussion, the parties recommended, and the commission accepted, a procedural schedule establishing a series of technical sessions

among the parties to be followed by another prehearing conference. The commission also granted CVEC's request to be exempted subject to two conditions which CVEC subsequently met.

Technical sessions of the parties were held on January 3, January 25 and on February 21, 1990. Northeast Utilities ("NU") participated as an interested observer in these sessions and representatives of GSEC and CVEC attended as well.

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On March 23, 1990, a second pre-hearing conference was held and a report with the parties' recommendations regarding a collaborative process was presented to the commission.

II. POSITIONS OF THE PARTIES

The positions of the parties are outlined in their report to the commission, attached to this report and order as Exhibit I.

III. COMMISSION ANALYSIS

The commission ordered the electric utilities to participate in this docket to consider a collaborative process for C&LM as a means of accelerating utility C&LM program development and implementation in New Hampshire. As a result of the commission's review of the companies' 1989 least cost planning filings, we were concerned that four of the five major electric utilities in New Hampshire lacked the experience, expertise, commitment and/or resources to move forward aggressively with cost-effective C&LM programs. In the course of the least cost planning proceedings, the companies had expressed a willingness to participate in a collaborative process to facilitate C&LM program development and implementation. Consequently, the commission ordered them to enter into this proceeding to consider the feasibility and desirability of a multi-utility collaborative C&LM process in New Hampshire at this time.

The commission has reviewed the report of the parties on the results of their consideration of a collaborative process and concurs with the parties' conclusions. There are a few points which we will address specifically.

The parties conclude that a multi-utility collaborative process is not appropriate at this time for two general reasons. First, ongoing or pending proceedings provide an opportunity for staff, the Governor's Energy Office, the Consumer Advocate and other interested parties to raise and pursue C&LM issues for each company individually. In some cases, C&LM issues have already been raised and are being considered. Second, the utilities' expressed willingness to more forward on C&LM program development and implementation makes a multi-utility collaborative effort to accelerate C&LM implementation unnecessary at this time.

The commission acknowledges that there are several ongoing and pending proceedings where we will be considering the status of and utilities' plans for C&LM program development and implementation. In a number of these proceedings we will be reviewing the utilities' resource planning as a whole. The commission finds that it would be an inappropriate use of both staff and company resources to continue a parallel multi-utility process focusing on C&LM issues. In making this finding, the commission relies heavily on the parties' contention that pursuing C&LM on an individual basis will result in a level of program development and implementation equivalent to what is being achieved in neighboring jurisdictions where multi-utility and more formal individual utility collaborative processes have been pursued.

The commission is also relying on the utilities' expressed commitment to moving forward aggressively with C&LM program development and implementation. We note that commitments have been made not only by the formal parties to this proceeding but also by those who participated informally. We expect to see considerable progress made by each company in the remainder of 1990 with programs being offered to customers in 1991. The commission initiated this proceeding because of our concern about the lack of comprehensive C&LM program

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development and implementation in New Hampshire. Our concurrence with the parties' recommendation against a multi-utility collaborative at this time should in no way be interpreted as a lessening of this concern. Should C&LM program development and implementation not proceed at a pace satisfactory to us, we will use the

ongoing and pending proceedings discussed in the parties' report as vehicles to require the utilities to accelerate this pace. The commission notes that while we agree that a multi-utility collaborative is not appropriate at this time, we can require the utilities to participate in such a process at any future time we find to be reasonable.

Lastly, the commission notes that its concurrence with the parties' recommendation is not inconsistent with our own least cost integrated planning requirements or the state energy policy and least cost planning requirements set forth in currently pending state legislation.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the recommendation of the parties that a multi-utility collaborative process for conservation and load management is not appropriate at this time be, and hereby is, approved; and it is

FURTHER ORDERED, that docket no. DE 89-193 be closed.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1990.

FOOTNOTES

[1]*Re PSNH*, 74 NH PUC 345 (1989); *Re Concord Electric Company and Exeter & Hampton Electric Company*, 74 NH PUC 357 (1989); *Re New Hampshire Electric Cooperative, Inc.*, 74 NH PUC 375 (1989); and *Re Connecticut Valley Electric Company*, 74 NH PUC 334 (1989).

[2]Granite State Electric Company ("GSEC") was not made a party to this docket due to the comprehensive CLM program already in place for this company.

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NH.PUC*04/02/90*[50947]*75 NH PUC 202*New Hampshire Electric Cooperative, Inc.

[Go to End of 50947]

75 NH PUC 202

Re New Hampshire Electric Cooperative, Inc.

DE 90-038
Order No. 19,774

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New Hampshire Public Utilities Commission

April 2, 1990

ORDER denying a request by an electric cooperative for a waiver of its 1990 least cost integrated resource plan filing and directing the cooperative to hire a consultant to assist it with the construction of a least cost plan.

ELECTRICITY, § 4 — Least-cost planning — Filing requirements — Electric cooperative.

[N.H.] The commission denied a request by an electric cooperative for a waiver of its 1990 least cost integrated resource plan filing; however — in recognition of the fact that the cooperative lacked the staff resources to construct a least cost plan while simultaneously satisfying competing obligations with respect to power supply negotiations, financial restructuring, and the development of a rate plan — the commission extended the deadline for the least cost plan filing and directed the utility to hire a consultant to develop and file the plan.

By the COMMISSION:

REPORT

On February 28, 1990 the New Hampshire Electric Cooperative, Inc. (NHEC or Cooperative) requested a waiver of the April 30, 1990 filing of its Integrated Least Cost Resource Plan and that its next formal filing of a least cost resource plan be scheduled for April 30, 1991.

NHEC noted that it was currently engaged in negotiations with Northeast Utilities (NU) for a power supply, with the Rural Electrification

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Administration (REA) on financial restructuring, and with the New Hampshire Attorney General's Office on a rate plan. It argued that

> While NHEC expects to continue to improve its capabilities for least-cost planning, it is currently severely constrained as to the amount of resources it can devote to a report on its least-cost planning. Given the need to resolve the uncertainties associated with our power supply and financing and the importance of the rate plan, NHEC believes it would be appropriate to concentrate its limited resources on these issues. NHEC recognizes the importance of planning in dealing with uncertainties. However, to the extent that these uncertainties are reduced, planning and implementation of plans will be more coherently directed towards the goals of the Cooperative.

At its March 5, 1990 commission meeting, the commission determined that the least cost plan should have priority over the rate plan, subject to the commission receiving additional information from NHEC advising it of factors of which it may not be aware. On March 13, 1990, the Executive Director and Secretary issued a secretarial letter, informing NHEC that the commission was inclined to authorize additional time for the submission of a rate plan pursuant

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to RSA 362-c rather than granting a waiver of the least cost integrated resource planning requirements and soliciting further comments from NHEC prior to a commission decision on the waiver request.

On March 16, 1990, NHEC responded that

> We strongly believe that giving priority to the Least Cost Plan filing is not the best use of our resources at this critical juncture, and considering all the circumstances, we do not understand the basis for a contrary conclusion. At this point our key staff for a Least-Cost Plan filing are fully immersed in trying to resolve matters that will shape the future course of the Cooperative's power supply and financial health, and perhaps even its survival.

It reviewed the series of negotiations and proceedings in which its staff was involved and concluded that

> We respectfully submit that our concerns in requesting waiver are not trivial. Opportunities for satisfactory resolution of the issues we addressed above will not be available indefinitely, and in fact may come and go unnoticed if we are not fully attentive to them now.

The commission is well aware of the demands on the staff resources of NHEC, and that the outcome of those negotiations and proceedings is critical to the future of the Cooperative and its member/customers. We are concerned, however, not as much in the ability of NHEC to produce a formal least cost planning filing as with the state of NHEC's planning efforts. We are cognizant that in docket no. DR 89-079, NHEC, 1989 least cost planning filing, the commission found,

> The commission recognizes that the Coop's circumstances are particularly uncertain at this time given its own financial status and the PSNH bankruptcy. We also recognize that these uncertainties have brought to the forefront a number of resource planning issues that the Coop previously has not had to face. These issues are major ones and may be thrusting the Coop, its management and its members/customers into a planning environment that is completely new to them. Further, we recognize that the Coop has not provided us with certain details regarding the specific resources it is considering given the status of negotiations with potential power suppliers. However, our focus is not on the particulars of individual options but rather on the process the Coop is using to evaluate them ...
>
> The Coop must plan for its future resource needs despite the uncertainties in its environment. The Coop has an obligation to serve the electricity and energy service needs of its customers at the lowest possible cost. Use of a least cost integrated planning approach to resource selection, development and implementation can greatly facilitate the

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> Coop's efforts in this area ...
>
> Overall, the commission finds the Coop's initial least cost planning filing to be disappointing despite our recognition of it as a first effort. The Coop has not described a planning process that is comprehensive and integrated and whose implementation is

> feasible. The commission did not expect that the Coop would have a fully developed process at this stage; however, we had expected that it would have outlined such a process and its plans for implementing it. We are therefore concerned that the Coop's planning process is not sufficient to meet the challenges it faces.
>
> Based on the Coop's filing and testimony in the proceeding, the commission finds that its planning process is inadequate at the present time.

(citations omitted) *Re: New Hampshire Electric Cooperative Inc.*, 74 NH PUC 375 (1989).

While the uncertainties of NHEC's environment have multiplied, we have seen little evidence that the Cooperative has remedied the deficiencies in its planning processes noted in our October report and order. The planning process is not unrelated to the issues now confronting the NHEC. Indeed, such planning should be a critical ingredient in the process of negotiating with NU and the REA, participating in the proceedings at the FERC, and formulating a rate plan.

We recognize, however, the legitimacy of NHEC's assertion that it lacks the staff resources to construct its least cost plan, participate in its various negotiations and proceedings and formulate its rate plan simultaneously. In this context, the NHEC is confronted with the classical dilemma analogous to a required upgrade of the computers of the air traffic control system while aircraft are in the air. To carry this analogy further, we recognize that additional resources are necessary so that the new computer system can be installed, while the old one continues to guide the jet-liners (however imperfectly) to a safe landing. To this end, we will not require the diversion of personnel resources from the resolution of the rate issues confronting the NHEC; however, we will require the NHEC to obtain additional expert assistance by hiring by April 30, 1990 a consultant acceptable to the commission to develop and file by July 31, 1990 a least cost plan in accordance with the least cost planning requirements set forth by this commission. The Cooperative should then be able to pursue its planning efforts on a parallel track with its negotiations and the consultant will be able to contribute to NHEC's negotiating efforts the analysis of the full range of options available to the Cooperative and assist it in selecting and developing the least cost alternatives for serving the needs of its member/customers. We will direct NHEC to consult with our staff during the Request For Proposal (RFP) process for assistance in specifying the scope of the proposed work and for suggestions of competent consultants knowledgeable in utility least cost planning.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is

ORDERED, that the request by the New Hampshire Electric Cooperative, Inc. (NHEC) for a waiver of its April 30, 1990 least cost integrated resource plan filing and request that it next formally file its least cost plan on April 30, 1991 be, and hereby are, denied; and it is

FURTHER ORDERED, that the time for the filing of NHEC's 1990 least cost plan be expanded to July 31, 1991; and it is

FURTHER ORDERED, that NHEC hire by April 30, 1990 a consultant acceptable to the commission to assist it with the construction of a least cost plan and confer with our staff during the Request For Proposal (RFP) process for assistance in specifying the scope of the RFP and

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identifying competent consultants knowledgeable in utility least cost planning.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1990.

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NH.PUC*04/02/90*[50948]*75 NH PUC 205*Concord Electric Company

[Go to End of 50948]

75 NH PUC 205

Re Concord Electric Company

Additional applicants: Unitil Power Corporation; Elektrisola, Inc.

DR 90-056
Order No. 19,775

New Hampshire Public Utilities Commission

April 2, 1990

ORDER approving an amended and restated load shifting agreement between a retail electric utility and a special contract customer.

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1. RATES, § 327 — Electric rate design — Demand and load — Peak to off-peak shifts — Special contract rate.

[N.H.] The commission approved an amended and restated load shifting agreement between a retail electric utility and a special contract customer; the amendment avoids the necessity of filing a revised contract every time the customer increases its base demand. p. 206.

2. RATES, § 322 — Electric rate design — Demand and load — Peak to off-peak shifts — Special contract rate.

[N.H.] An electric utility was authorized to implement an amended load shifting agreement with a special contract customer where it demonstrated that special circumstances existed that rendered the departure from general schedules to be just and reasonable. p. 206.

By the COMMISSION:

ORDER

On March 5, 1990 Concord Electric Company ("Concord" or "Company") filed an Amended and Restated Load Shifting agreement (the "Agreement") between Concord, in cooperation with its wholesale power affiliate, UNITIL Power Corporation, and Elektrisola Inc. ("Elektrisola"), a retail customer of the Company. The Company had filed on February 7, 1990 a petition to Amend Special Contract-Electricity No. 3. Special Contract-Electricity No. 3, as filed on

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October 10, 1989 in DE 89-124 and approved by commission order no. 19,586, specifies that Elektrisola shift a portion of its on-peak load to periods when the UNITIL System has not historically established a system peak; and

WHEREAS, for providing the Company with reduced power supply costs, Elektrisola receives $4.40 per kW per month of on-peak period to off-peak period shifted load; and

WHEREAS, these payments recognize that a properly designed load management program reduces purchase power costs, which benefits all customers of Concord Electric; and

WHEREAS, presently, these payments are necessitated by the absence of a time-of-use rate in Concord's general rate schedule; and

WHEREAS, Concord's February 7th filing sought to amend the Reliability section of the Special Contract which states that:

> To provide reliable peak capacity, Elektrisola must, for the first six months of the term of the Agreement, maintain its peak period demand at or below 1700 kW during no less than 90% of the peak period hours during each billing period. Subsequent to the first six months of the contract term, Elektrisola must maintain its peak period demand at or below a base demand level of 1700 kW during all peak period hours during the months of December, January and February and during no less than 90% of the peak period hours during the months of March through November. Failure by Elektrisola to provide these prescribed reliable load reductions during the peak hours will result in forfeiture of the payment for the peak period capacity for that month. In the event Elektrisola expands its operations the peak period base demand level of 1700 kW may be renegotiated; and

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WHEREAS, Elektrisola's base demand had, by December 1989, risen above the 1700 kW level as specified in the Special Contract Electricity No. 3; and

WHEREAS, Elektrisola shifted load during the time of UNITIL Power's December and January monthly peaks and during all of the on-peak hours in those months; and

WHEREAS, under the existing contract it was entitled to no load shifting payments because Elektrisola's base demand level growth caused it to exceed the contractual peak period base demand level of 1700 kW; and

WHEREAS, Elektrisola's base demand is expected to continue to rise through the next year causing continued problems with a fixed kW threshold; and

[1, 2] WHEREAS, in order to avoid filing a revised contract every time Elektrisola's base demand increases, and in order to continue the benefits of load shifting, the parties have agreed to an Amended and Restated Load Shifting Agreement, signed by the parties on March 5, 1990, and filed with the Commission that same day which states:

> (The) amount of shifted load ("Shifted Load") shall be calculated as the difference between the monthly maximum off-peak metered 15 minute kW demand and the maximum on-peak 15 minute kW demand coincident with the hour of the Power Corp. system peak, not to exceed 500 kW;

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and

WHEREAS, Elektrisola, in order to provide reliable peak capacity, agrees to maintain during no less than 95% of the on-peak hours during each billing period, its on-peak period demand at a level at least 400 kW less than the maximum off-peak metered 15 minute kW demand, and failure to do so will result in forfeiture of payment for the peak period capacity for that month; and

WHEREAS, upon review of the Amended and Restated Load Shifting Agreement between Concord Electric Company and Elektrisola, the Commission finds that, consistent with the intent of this Commission in DE 89-123, and in accordance with RSA 378:18, special circumstances exist which render departure from the general schedules just and consistent with the public interest; it is hereby

ORDERED, that the Amended and Restated Load Shifting Agreement between Concord Electric Company and Elektrisola Inc., as filed on March 5, 1990 and further explained by Concord Electric in their February 7, 1990 petition for Approval to Amend The Special Contract — Electricity No. 3 is hereby approved; and

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 302.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that part of the state in which operations are proposed to be conducted, such publication to be no later than April 9, 1990, said publication to be documented by affidavit filed with this office on or before April 23, 1990, and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c) which requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract will be retroactively effective as of December 1, 1989 unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of this Order; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1990.

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NH.PUC*04/03/90*[50949]*75 NH PUC 207*Southern New Hampshire Water Company, Inc.

[Go to End of 50949]

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Re Southern New Hampshire Water Company, Inc.

DF 90-024
Order No. 19,777

New Hampshire Public Utilities Commission

April 3, 1990

ORDER authorizing a water utility to increase its short-term debt limit.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Water utility.

[N.H.] A water utility was authorized to increase its short-term debt limit to enable it to complete construction and expansion programs, provide required services, and obtain general working capital while pursuing additional long-term debt financing.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. is authorized to operate as a public utility with a principal place of business in Londonderry, Rockingham County, New Hampshire; and

WHEREAS, Southern New Hampshire Water Company, Inc. pursuant to R.S.A. 369:7 filed with this Commission on February 12, 1990 a Petition for Authority to Increase Short-Term Debt Limit; and

WHEREAS, Southern New Hampshire Water Company, Inc. states that the additional short term debt will be used, *inter alia*, to complete its 1989 construction and expansion program, to provide service to customers as required, and to provide general working capital; and

WHEREAS, Southern New Hampshire Water Company, Inc.'s currently authorized short-term debt limit is $5,500,000 authorized by Commission Order No. 19,692 (75 NH PUC 63) in Docket DF 89-216; and

WHEREAS, Southern New Hampshire Water Company, Inc. requests that this short-term debt limit be increased to $5,850,000 until June 30, 1990 in order for it to have sufficient time to pursue additional long-term debt financings; it is hereby

ORDERED, that the New Hampshire Public Utilities Commission, pursuant to R.S.A. 369:7, finds that the increase in short-term debt limit as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that the petition of Southern New Hampshire Water Company for authority to increase its short term debt limit be, and hereby is, approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall, on January first and July first of each year, file with this Commission a detailed statement, duly

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sworn by its Treasurer, showing the disposition of the proceeds of such notes; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this third day of April, 1990.

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NH.PUC*04/04/90*[50950]*75 NH PUC 207*Eastern Utilities Associates/Unitil Corporation

[Go to End of 50950]

75 NH PUC 207

Eastern Utilities Associates/Unitil Corporation

DF 89-085
Order No. 19,778

New Hampshire Public Utilities Commission

April 4, 1990

PROTECTIVE ORDER governing the treatment of discovery materials designated as privileged or confidential.

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PROCEDURE, § 16 — Discovery and inspections — Confidential or privileged material — Protective order.

[N.H.] To facilitate the orderly conduct of discovery without compromising any good faith claims of privilege or confidentiality, the commission issued protective order preventing disclosure of material designated as protected and establishing procedures for resolving disputes regarding the validity of claims for protected status.

By the COMMISSION:

ORDER

WHEREAS, the parties desire to conduct discovery in this docket, and

WHEREAS, certain information sought in discovery, as well as certain information which may be sought in the future during the course of discovery, may be privileged, proprietary, confidential, commercial, financial, and/or competitively sensitive, and

WHEREAS, the commission and the parties desire to facilitate the orderly conduct of discovery without compromising any good faith claims of confidentiality, it is hereby

ORDERED, that:

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1. All documents and information furnished subject to the terms of this Order shall be referred to as "PROTECTED MATERIALS." "PROTECTED MATERIALS" shall not include any information or document contained in the public files of the commission or any other federal or state agency. "PROTECTED MATERIALS" also shall not include any document or information which at, or prior to, disclosure in this Proceeding, is or was public knowledge, or which becomes public knowledge as a result of Publication or disclosure by a party, other than by release under this Order.

2. Document is used herein in its broadest sense and means without limitation any written, printed, recorded or graphic matter regardless of the medium on which it is produced, reproduced, transferred or stored, including without limitation printouts, algorithms, drawings, specifications, user's manuals, flow diagrams, magnetic disks, tapes or other storage media, electronic data transfer, data processing files and other computer readable records or programs and all other written, printed or recorded matter of any kind, and all other data compilations from which information can be obtained and translated, if necessary, and all originals, drafts and copies thereof.

3. A party may designate as "PROTECTED MATERIALS" those documents or discovery materials or portions thereof produced by it which in good faith it believes constitute "records pertaining to confidential, commercial, or financial information," as those terms are used in RSA 91-A:5(IV). The party shall submit, along with any document designated by it as being "PROTECTED MATERIALS", certification that the documents are believed to be exempt under RSA 91-A:5(IV). Designation shall be accomplished by marking the documents or other discovery materials or portions thereof with the words "PROTECTED MATERIALS" DF 89-085, DO NOT PHOTOCOPY." Any notes, memoranda, summaries, abstracts, studies, computer software, software documentation or other information derived from such "PROTECTED MATERIALS" or Portions thereof, prepared by any of the Parties, shall be similarly marked, and reasonable precautions shall be taken to ensure that any such documents are not viewed by any persons except those to whom "PROTECTED MATERIALS" may be disclosed under paragraph 5.

4. Unless and until otherwise agreed or otherwise ordered by the commission or a court of competent jurisdiction, all documents and other discovery materials or portions thereof that have been designated "PROTECTED MATERIALS" and any documents derived therefrom, shall be used only in connection with this proceeding or related appellate proceedings and may be inspected by or disclosed to only the persons described in paragraph 5 under the conditions herein established.

5. a. Except as otherwise provided, "PROTECTED MATERIALS" may be disclosed to and used by attorneys of record for the parties in this proceeding or any related appellate

proceeding resulting from this proceeding and persons who are regularly employed by the parties and engaged in or supervising the conduct of such proceedings in accordance with this Order. Prior to disclosure of such "PROTECTED MATERIALS" to such attorneys or employees, each such attorney or employee shall be given a copy of this Order and shall execute

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a certificate, in the form attached hereto as Attachment A, stating that he or she has read this Order and that he or she will not divulge any "PROTECTED MATERIALS", or any portion thereof or any information derived therefrom, except in accordance with this Order. The parties' counsel shall serve copies of all such executed certificates to counsel for each of the parties. In the event that any such attorney or employee to whom disclosure of "PROTECTED MATERIALS" has been made ceases to be engaged in the aforementioned official duties or proceedings, access to such materials by such person shall be terminated and all copies of such materials and all notes, memoranda, and other documents and information derived from these materials shall be returned to those persons continuing to be involved in this proceeding. However, any such attorney or employee who was provided with such "PROTECTED MATERIALS" shall continue to be bound by the terms of this Order even if no longer so engaged.

b. "PROTECTED MATERIALS" also may be disclosed to and used by the parties' technical experts, consultants, expert witnesses, other witnesses, and persons regularly employed in their respective offices who are involved in this proceeding in accordance with this Order. Prior to disclosure of such "PROTECTED MATERIALS", each such person shall be given a copy of this Order and counsel for such party shall secure and serve upon counsel to all of the other parties a certificate from each such person, in the form attached hereto as Attachment A, stating that he or she had read this Order, and that he or she will not divulge or use any "PROTECTED MATERIALS", or any portion thereof, or any information derived therefrom, except in accordance with this Order. In the event that any Person to whom disclosure of "PROTECTED MATERIALS" has been made ceases to be engaged by a party access to such material by such shall be terminated. However, any person who has executed the certificate in the form attached hereto shall continue to be bound by the provisions of this Order even if no longer so engaged.

c. "PROTECTED MATERIALS" shall not be disclosed to or used by any person directly involved in or having direct or supervisory responsibilities over the purchase, sale or marketing of electricity (including transmission service) at wholesale or the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities unless agreed to by the originating party or unless approved and authorized by the commission for good cause shown.

d. Any person or participant who receives "PROTECTED MATERIALS" pursuant to this Order will make no more than one copy of such "PROTECTED MATERIALS", except copies may be made of documents for marking as sealed exhibits in accordance with paragraph 6, below. In the event any Party withdraws from this proceeding, all copies of "PROTECTED MATERIALS" provided to or noted made by such party shall be immediately returned or destroyed as provided in paragraph 5(a) or (b) above.

6. a. If a party tenders for filing with the Commission or any court any written testimony, exhibit, brief or other submission that includes, incorporates or otherwise discloses "PROTECTED MATERIALS," all portions thereof disclosing such materials shall be marked "PROTECTED MATERIALS" and filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Order.

Unless confidentiality is waived by a party, or the commission otherwise orders, "PROTECTED MATERIALS" or portions thereof may be disclosed only in an *in camera*

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portion of any future proceeding, closed to all persons except those listed in Paragraph 5. Hearings in which "PROTECTED MATERIALS" are marked for identification, offered or introduced into evidence may be on the public record as long as any of the substance of such "PROTECTED MATERIALS" is disclosed.

Identification of documents need not be on a sealed record. The commission shall determine whether or to what extent the "PROTECTED MATERIALS" or portions thereof will remain *in camera*, will be made public or will be stricken or excluded from the record. Pending such determination, any submission that is served, offered, or introduced *in camera* shall be subject to the provisions of this Order. That portion of the hearing transcript relating to *in camera* proceedings conducted pursuant to the Order shall be sealed and subject to this Order, unless otherwise ordered by the commission.

7. a. In the event that a party wishes to disclose "PROTECTED MATERIALS" to any person to whom disclosure is not authorized by the Order, or wishes to object to the designation of certain information or material as "PROTECTED MATERIALS," the party will first make a good faith attempt to resolve the matter with counsel for the other parties. The parties will undertake good faith negotiations in order to resolve any disputes as to such disclosures or the validity of the claim to protection. Where these negotiators produce agreement, the parties will so notify the commission.

b. If the parties fail to reach agreement with respect to the disclosure, or the designation of information or material as "PROTECTED MATERIALS", if a party maintains that the information should continue to be classified as "PROTECTED MATERIALS," the parties shall request that the commission review the documents *in camera* and determine whether they should be protected from disclosure.

8. Unless marked as an exhibit in a commission proceeding, all "PROTECTED MATERIALS" in the possession of the parties and all copies made thereof shall be returned to the originating party on motion by the originating party within 3 months. In addition, upon further motion by the originating party, the staff shall destroy any notes, memoranda, and other documents and information derived from "PROTECTED MATERIALS" within 2 months, except those marked as an exhibit in such proceeding, and certify in writing that such destruction has been accomplished.

9. Nothing in the foregoing provisions of this Order shall be deemed to preclude any person from seeking and obtaining, on an appropriate showing, such additional protection or relief as can be available under applicable law.

10. Nothing in the foregoing provisions of this Order shall be deemed to prevent the commission or staff from meeting its legal obligations to provide access to public records, pursuant to chapter 91-A The intent of this Order is to include as "PROTECTED MATERIALS" only records which constitute "confidential, commercial, or financial information," and are thus exempt from the public disclosure requirements of RSA Chapter 91-A pursuant to RSA 91 A:5(IV). In the event that the commission receives a request for disclosure of any "PROTECTED MATERIALS" the commission will notify the parties of such request prior to

any disclosure, and the commission will provide an opportunity for a hearing on any such request. "PROTECTED MATERIALS" shall be disclosed only upon order of the Commission.

11. Each party shall maintain a cumulative list of all "PROTECTED MATERIALS" provided by it, and to it, under this Order.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1990.

Attachment A

NON-DISCLOSURE CERTIFICATE

I certify my understanding that access to the protected materials described below is provided to me pursuant to the terms and restrictions of the Protective Order in Docket DF 89-085 and that I have been given a copy of and have read that Protective Order and agree to be bound by it. I understand that the contents of the protected materials, any notes or other memoranda or any other form of information which copy or disclose protected materials shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only for the purpose of the proceeding in Docket DF 89-085. I acknowledge that a violation of this certificate constitutes a violation of an order of the New Hampshire Public Utilities Commission.

By:
Title:
Representing:
Date:

Description of Protected Materials for which access has been provided:

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NH.PUC*04/09/90*[50952]*75 NH PUC 213*Long Distance North of New Hampshire, Inc.

[Go to End of 50952]

75 NH PUC 213

Re Long Distance North of New Hampshire, Inc.

DE 87-249
Order No. 19,780

New Hampshire Public Utilities Commission

April 9, 1990

ORDER amending a protective order to include procedures for the use of proprietary information.

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1. PROCEDURE, § 16 — Discovery and inspection — Commission powers — Protection from public disclosure.

[N.H.] It is up to the commission, and ultimately the courts, to determine whether discovery material is eligible for protection from public disclosure. p. 214.

2. PROCEDURE, § 16 — Discovery and inspection — Protective order — Proprietary information.

[N.H.] The commission amended a protective order to include procedures for the use of proprietary information; the procedures require each party seeking access to proprietary information to sign an acknowledgment of confidentiality. p. 214.

By the COMMISSION:

ORDER

Long Distance North of New Hampshire, Inc. (LDN) having filed on March 13, 1990, a motion to amend protective order No. 19,724 (75 NH PUC 118) which LDN alleges is deficient in the following respects:

a. It allows the commission to amend the order and disclose the information to the public without any ability in LDN to interdict that disclosure.

b. It allows dissemination of the proprietary information to persons who are not bound by the order.

c. It does not prevent dissemination of the information to persons who do not need to know the information for the purposes of this proceeding.

d. It provides no procedures for use of the proprietary information at the hearing of this matter; and

WHEREAS, LDN's first assertion, that Order No. 19,724 allows the commission to amend the order and disclose the information to the public without any ability in LDN to

interdict that disclosure, is without merit in that:

1. Order No. 19,724 provides, *inter alia*, at 3, that the commission may issue appropriate amendments to the order only after a hearing at which LDN will have a full opportunity to argue why the information in question should not be disclosed.

[1] 2. It is not up to LDN to "interdict" disclosure. The public utilities commission has broad powers to require any public utility to make specific answers to questions upon which the commission may need information, pursuant to, *inter alia*, RSA 365:6, RSA 365:15, RSA 374:3, RSA 374:4, RSA 374:15, RSA 374:17 and RSA 374:18. It is up to the commission, and ultimately the courts, to determine which of the required information is public or proprietary pursuant to RSA 91-A; and

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WHEREAS, LDN's second assertion, that said order allows dissemination of the proprietary information to persons who are not bound by the order, is without merit in that order no. 19,724 provides that LDN shall provide the information only to commission staff and to counsel appearing for the parties to this docket and further provides that the proprietary information is to be "used by the parties only for the purpose of evaluating the merits of LDN's petition in this docket." Order no. 19,724 at 3; and

WHEREAS, LDN's third assertion, that the order does not prevent dissemination of the information to persons who do not need to know the information for the purpose of this proceeding is without merit in that order no. 19,724 provides, at 3, that the proprietary information is to be used by the parties *only* for the purpose of evaluating the merits of LDN's petition in this docket (emphasis added); and

[2] WHEREAS, LDN's assertion that the order provides no procedure for use of the proprietary information at the hearing on this matter has merit to the extent that order 19,724 addresses this concern only in general language, at 3, that the "commission, on review of the documents, or on motion by any interested party, may review the appropriateness of continued confidential treatment of the information in question and may issue appropriate amendments to this order after hearing."; and

WHEREAS, it would be consistent with commission practice in other recent dockets, including the PSNH Reorganization proceeding in docket DR 89-244, to make certain amendments to order no. 19,724 that would assuage the concerns expressed by LDN in its motion to amend the protective order; and

WHEREAS, requiring each party seeking access to the proprietary information to sign the "Acknowledgement of Confidentiality" form, a copy of which is attached to LDN's motion as Exhibit A thereto, would be consistent with the intent of order no. 19,724; it is

ORDERED, that the LDN motion to amend protective order no. 19,724 is granted insofar as it is consistent with the amendment to order no. 19,724 granted herein and otherwise is denied; and it is

FURTHER ORDERED, that order no. 19,724 is hereby amended to include the following provisions:

1. LDN shall, on receipt hereof, provide to the commission's executive director and secretary one complete response to staff request 21, staff request 34, staff request 39, staff request 60, staff request 68, staff request 70 and Dunbarton request 43.

2. That the executive director and secretary allow access to said responses only to those members of the commission staff and to counsel appearing for the parties to this docket who have executed the acknowledgement of confidentiality form submitted as Exhibit A to LDN's motion to amend protective order dated March 12, 1990.

3. That said responses may be disseminated to persons other than commission staff and counsel for the parties to this docket only upon execution by said persons of said "acknowledgement of confidentiality" and upon either written concurrence from counsel for LDN, which shall not be unreasonably withheld, or upon further order of the commission.

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4. On motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good.

5. Unless otherwise ordered, all copies of the proprietary documents, and derivatives therefrom, shall be destroyed or returned to counsel for LDN at the conclusion of these proceedings.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1990.

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NH.PUC*04/09/90*[50953]*75 NH PUC 215*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50953]

75 NH PUC 215

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,781

New Hampshire Public Utilities Commission

April 9, 1990

ORDER modifying protective orders to allow counsel to certain intervenors to review proprietary information on the same basis as counsel to full parties to the proceeding.

PROCEDURE, § 16 — Discovery and inspection — Protective order — Access to proprietary information.

[N.H.] The commission modified two protective orders to allow counsel to certain intervenors to review proprietary information on the same basis as counsel to full parties to the proceeding; no party objected to the modification.

By the COMMISSION:

ORDER

SES Concord Company, L.P., Hydro Intervenors and Biomass Intervenors (collectively

referred to hereinafter as "movants") having filed on March 23, March 12 and March 19, 1990, respectively, objections to portions of protective orders nos. 19,736 (75 NH PUC 135) and 19,742 (75 NH PUC 143) and motions for reconsideration; and

WHEREAS, in said motions, the movants request that the commission modify protective orders 19,736 and 19,742 to the extent of allowing review by counsel to the movants on the same basis as review by counsel to the other full parties in this proceeding; and

WHEREAS, the only parties to this proceeding that could potentially be prejudiced by this request, Northeast Utilities (NU) and Public Service Company of New Hampshire (PSNH), do not object to the requested relief; it is

ORDERED, that the subject motions for reconsideration are granted. Order nos. 19,736 (March 2, 1990) and 19,742 (March 7, 1990) are hereby amended to provide that the secretary of the commission shall make a copy of the proprietary information in question available on request for review at the commission offices to the commission staff, the office of the consumer advocate, the attorney general, and to counsel for the Business and Industry Association, SES Concord Company, L.P., the Hydro Intervenors and the Biomass Intervenors.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1990.

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NH.PUC*04/09/90*[50954]*75 NH PUC 215*Incentives for Conservation and Load Management

[Go to End of 50954]

75 NH PUC 215

Re Incentives for Conservation and Load Management

Petitioner: Northeast Utilities Service Company

DE 89-187
Order No. 19,782

New Hampshire Public Utilities Commission

April 9, 1990

ORDER granting a petition for intervention in a conservation and load management proceeding.

PARTIES, § 18 — Petition for intervention — Grounds for granting — Conservation and load management proceeding.

[N.H.] The commission granted a petition for intervention in a conservation and load management proceeding where the petitioner asserted that it had a substantial interest in the outcome of the proceeding and the commission found that grant of the petition would not significantly prejudice other parties.

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By the COMMISSION:

ORDER

Northeast Utilities Service Company (NUSCO) having filed a Petition for Intervention in this proceeding on March 12, 1990; and

WHEREAS, NUSCO asserts that its rights, duties, privileges, immunities and other substantial interests may be affected by this proceeding in that any outcome of this proceeding may have an impact on the commission's approval and implementation of the terms of the Rate Agreement in Docket No. DR 89-244, including the cost recovery mechanisms in effect during the term of the Rate Agreement; and

WHEREAS, NUSCO seeks to participate as a full party, and undertakes to abide by such reasonable procedural schedule and orders as the commission may adopt; and

WHEREAS, on March 21, 1990, Granite State Electric Company filed its Answer to NUSCO's Petition to Intervene and stated therein that it did not oppose NUSCO's petition, provided that the commission expressly limit NUSCO's participation in the case to that permissible under the current procedural schedule; and

WHEREAS, Granite State asserts that it will be severely prejudiced by NUSCO's participation in this proceeding if the procedural schedule is modified; and

WHEREAS, staff in its testimony filed in Docket No. DR 89-244 has recommended that the issue of financial incentives to NUSCO and PSNH for C&LM be addressed in this proceeding; and

WHEREAS, the unique and unprecedented circumstances surrounding NU's proposed acquisition may have contributed to the NUSCO's Petition to Intervene at an advanced stage in this proceeding; and

WHEREAS, the circumstances of NUSCO and PSNH may be different in degree from those of Granite State but are not believed to be different in kind; and

WHEREAS, the commission believes that NUSCO's legitimate interests can be accommodated without significant prejudice to Granite State; it is hereby

ORDERED, that NUSCO shall submit its testimony in this proceeding by April 6, 1990; and it is

FURTHER ORDERED, that leave is granted to Granite State to file by April 20, 1990, supplemental testimony solely for the purpose of distinguishing its circumstances from that of NUSCO and PSNH.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1990.

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NH.PUC*04/09/90*[50955]*75 NH PUC 216*Hampstead Water Company, Inc.

[Go to End of 50955]

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75 NH PUC 216

Re Hampstead Water Company, Inc.

DE 90-049
Order No. 19,783

New Hampshire Public Utilities Commission

April 9, 1990

ORDER authorizing a water utility to extend its service area.

CERTIFICATES, § 125 — Water — Expansion of service territory — Grounds for approval.

[N.H] A water utility was granted a franchise to provide service in an area abutting its existing service territory where no other water utility had franchise rights in the area, the utility

Page 216

had the capability to provide the service, the need for the service was demonstrated, the utility intended to charge rates equal to those charged in its existing territory, and the utility had the requisite approvals from the Department of Environmental Services.

By the COMMISSION:

ORDER

On March 19, 1990, the commission received a petition from Hampstead Area Water Co., Inc. (Hampstead) to provide water service to a limited area in the Town of Hampstead, New Hampshire, abuting Hampsteads service area known as Bricketts Mill, pursuant to RSA 374:22 and implicitly to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Hampstead intends to charge rates equal to those rates now being charged in Bricketts Mill; and

WHEREAS, service for the new area will be provided from the plant facilities at Bricketts Mill; and

WHEREAS, Hampstead has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resources Division granting approval for the proposed franchise extension; and

WHEREAS, there is a need for service in the proposed area and the applicant has the financial, managerial, administrative, legal and technical capabilities to meet that need; and

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

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WHEREAS, the public should be offered an opportunity before the commission acts on this petition; it is hereby

ORDERED, *NISI* that Hampstead be granted a franchise in the area bounded on the south and west by the Atkinson/Hampstead town line, on the east by Route 121, and on the north by Route 111; and it is

FURTHER ORDERED, *NISI* that Hampstead be allowed to charge rates pursuant to those rate schedules approved for Bricketts Mill; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Hampstead effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than April 17, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before May 9, 1990; and it is

FURTHER ORDERED, that such authority shall be effective on May 5, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of April, 1990.

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NH.PUC*04/10/90*[50956]*75 NH PUC 217*Small Power Producers and Cogenerators

[Go to End of 50956]

75 NH PUC 217

Re Small Power Producers and Cogenerators

DR 88-107
Order No. 19,784

New Hampshire Public Utilities Commission

April 10, 1990

ORDER amending a prior order regarding the peak reduction factor component of the formula used to calculate the avoided cost rates paid to qualifying cogenerators and small power producers by an electric utility.

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1. COGENERATION, § 25 — Rates — Computation — Peak reduction factor — Adjustment

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for overcharges.

[N.H.] No interest charges were included in a rate adjustment for overcharges resulting from an electric utility's delay in updating the peak reduction factor component of the formula for setting rates paid to qualifying small power producers and cogenerators (QFs); however, the commission placed the utility on notice that it would in future proceedings require the utility to make refunds to customers with interest for any overcharges related to QF power purchases, if the overcharges were due to negligence in implementing commission regulations. p. 219.

2. COGENERATION, § 25 — Rates — Computation — Peak reduction factor.

[N.H.] The commission amended a prior order regarding the peak reduction factor (PRF) component of the formula used to calculate the avoided cost rates paid to qualifying cogenerators and small power producers by an electric utility to reflect the fact that the utility had not implemented the 1989 adjustments to the PRF. p. 219.

3. COGENERATION, § 25 — Rates — Avoided costs — Peak reduction factor.

[N.H.] The commission amended a prior order regarding the peak reduction factor (PRF) component of the formula used to calculate the avoided cost rates paid to qualifying cogenerators and small power producers by an electric utility to recognize that the Dunbarton Landfill project went on line in 1988 and has received capacity payments as required. p. 219.

APPEARANCES: as previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

The commission initiated this docket by its order of notice dated August 10, 1988. A final order (no. 19,728 [75 NH PUC 124]) was issued on February 28, 1990. On March 20, 1990, Public Service Company of New Hampshire ("PSNH") and the woodburners jointly filed a motion for rehearing. This report and order responds to that motion.

II. THE ISSUES

PSNH and the woodburners raise two issues in their motion for rehearing:

1) that PSNH did not make adjustments to the peak reduction factors ("PRFs") for 1989 and consequently over and under collections have occurred, which the commission's final order did not anticipate; and

2) that the commission's order referred to the Dunbarton Landfill project as coming on line in 1989 when it has been on line and receiving capacity payments since 1988.

In the motion for rehearing PSNH and the woodburners state that PSNH refrained from implementing the updated PRFs pending resolution of this docket. They attached as an exhibit to the motion the changes in capacity payments PSNH proposes to make to correct the over and undercollections for 1989. PSNH states that the woodburners and Briar Hydro, another party to the case, have reviewed the exhibit and agree to their respective reconciliation amounts. PSNH

and the woodburners ask that the commission amend its February 28, 1990 order to recognize that the 1989 PRF adjustments had not been made and to ratify the adjustments submitted in their motion. PSNH proposes to make these adjustments in the monthly payments made to qualifying facilities ("QFs").

PSNH has been ordered to make capacity payments for 1989 to the Dunbarton Landfill project. In the motion PSNH notes that this project has been on line since 1988 and has been receiving capacity payments as required. PSNH asks that the commission amend its order to recognize this fact.

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III. COMMISSION ANALYSIS

A. *1989 Reconciliation*

[1-3] The commission's February 28, 1990 order (no. 19,728) approved "the adjustments made to the applications of the PRF in February 1989 for 1989 capacity payments". This reference was to the calculations of updated PRFs that PSNH provided to staff at approximately that time. (It appears that they may actually have been provided in March 1989 and not February.) It was our understanding that these updated PRFs had been implemented for 1989 and that the only portion of the payments in dispute in DR 88-107 was for 1988. In the motion for rehearing, PSNH and the woodburners have informed us that this is not the case. The PRFs for 1989 were not implemented and the net result is that ratepayers were overcharged by $466,793.31.

The commission notes that the docket was originally opened in August 1988 because staff discovered PSNH had not been updating the PRFs in accordance with order no. 17,104. The commission understood that in the course of discussions in 1988 and early 1989 PSNH calculated the updated PRFs for 1989. We assumed these had been implemented because PSNH's failure to implement updated PRFs in the past and how to decide who owed or was owed money was the very subject of this docket. While there may have been a question in the winter of 1989 about the PRF values for the woodburners because the three year rolling average issue had not been resolved, this did not affect the PRFs for the hydro producers. Overpayments to the all hours hydro producers came to almost $100,000 of the total net overpayment to producers, and the consequent overcharge to ratepayers, of $460,000.

It is not clear to the commission why PSNH delayed in implementing the updated PRFs for 1989; nor is it clear why neither the hydro producers nor the woodburners brought to the commission's attention that these over and underpayments were continuing to accrue. We are disturbed to think that PSNH's lack of diligence may be due to the fact that it does not pay the costs of QF power but rather passes them through directly to customers.

For the purposes of this proceeding, the commission does not find that interest charges on over and under-collections are appropriate. However, in the future the commission will require PSNH to make refunds to customers with interest for any overcharges related to QF power purchases that are due to PSNH's negligence in implementing commission regulations. Depending on the circumstances, we will allow PSNH to charge this interest to the QFs who were overpaid. The commission trusts that this will provide an incentive to both PSNH and the

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QFs to monitor payments more carefully and approach the commission for clarification as soon as any question regarding payment levels arises.

The commission reminds PSNH that the PRFs should be updated and implemented for 1990 immediately if this has not already been done.

The commission ratifies the adjustments for 1989 as filed with the motion for rehearing and approves the proposed method of reconciliation, through the monthly payments to QFs as described therein.

B. *Dunbarton Landfill Project*

The commission hereby amends its order no. 19,728 to strike the references to the Dunbarton Landfill project in recognition of the fact that it went on line in 1988 and has been receiving capacity payments as required.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the commission's order no. 19,728 be amended to recognize that Public Service Company of New Hampshire had not implemented the 1989 adjustments to the peak reduction factor and to ratify the adjustments as submitted in PSNH's and the woodburners' motion for rehearing dated March 20, 1990; and it is

FURTHER ORDERED, that order no. 19,728 be amended to recognize that the

Dunbarton Landfill project went on line in 1988 and has been receiving capacity payments as required.

By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1990.

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NH.PUC*04/10/90*[50957]*75 NH PUC 220*Northern Utilities, Inc.

[Go to End of 50957]

75 NH PUC 220

Re Northern Utilities, Inc.

DR 90-031
Order No. 19,785

New Hampshire Public Utilities Commission

April 10, 1990

ORDER adopting a stipulation governing the treatment of allegedly confidential and proprietary

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information submitted in a proceeding to review the gas supply purchasing practices of a natural gas local distribution company.

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1. PROCEDURE, § 16 — Production of evidence — Proprietary information — Exemption from public disclosure.

[N.H.] State statute RSA 91-A:5 IV exempts from public disclosure confidential, commercial, or financial information. p. 220.

2. PROCEDURE, § 16 — Production of evidence — Proprietary information — Exemption from public disclosure.

[N.H.] The commission adopted a stipulation governing the treatment of allegedly confidential and proprietary information submitted in a proceeding to review the gas supply purchasing practices of a natural gas local distribution company. p. 220.

By the COMMISSION:

ORDER

Northern Utilities, Inc. (Northern) having filed a petition with the commission for a protective order on September 12, 1989, regarding allegedly confidential information requested by the commission staff in its review of the gas supply purchasing practice of Granite State Gas Transmission, Inc. (Granite State), a subsidiary and affiliate of Northern; and

[1, 2] WHEREAS, after prolonged negotiations, the staff and Northern entered into a stipulation regarding Northern's petition for a protective order with said stipulation purporting to allow Northern to cooperate fully with the commission staff's request to provide gas supply information regarding Granite State Gas Transmission, Inc. while at the same time allowing Northern and Granite State to protect allegedly confidential and proprietary information; and

WHEREAS, the confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, RSA 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information;" and

WHEREAS, the confidential status of the information covered by this protective order may be reviewed by the commission at any time in the future on request of any interested party; and

WHEREAS, the stipulation appears to be in the public interest and is reasonable in accommodating both the staff's need for the requested information and Northern's request for confidentiality; it is

ORDERED, that the stipulation filed by Northern and staff regarding Northern's petition for a protective order is accepted by the commission. Northern shall supply one copy of the requested information to the secretary of the commission pursuant to the terms of the stipulation and the commission shall maintain the confidentiality of said protected information as provided in the stipulation.

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By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1990.

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[Go to End of 50958]

75 NH PUC 221

Re EnergyNorth Natural Gas, Inc.

DE 88-136, DR 89-181
Order No. 19,786

New Hampshire Public Utilities Commission

April 11, 1990

ORDER asserting jurisdiction to review a propane transfer and related cost allocation between a gas distributor and a propane supplier.

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1. INTERCORPORATE RELATIONS, § 7 — Jurisdiction and powers — State commission — Commodity supplies — Affiliated interests.

[N.H.] The commission had jurisdiction to review a transfer of propane and related cost allocation between a gas distributor and a propane supplier regardless of whether the supplier was an "affiliate" under state statute RSA 366:3; commission jurisdiction over the propane supplier was conclusively established by prior order in which it was agreed that the propane transfer would be subject to commission review. p. 222.

2. INTERCORPORATE RELATIONS, § 12 — Jurisdiction and powers — State commission — To disallow payments to affiliated interests.

[N.H.] The commission has broad authority to disallow payments by utilities to affiliates. p. 222.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement — Propane transfers — Transactions with affiliates — Gas distributor.

[N.H.] The scope of inquiry in a proceeding to review a transfer of propane and related cost allocation between a gas distributor and an affiliated propane supplier was limited to the cost of gas adjustment rate set by the commission and the costs incurred by the distributor during the 1989-90 winter period; more specifically, the focus of the inquiry would be whether the furnishing of propane by the distributor to the supplier contributed to increased gas costs and, if so, whether the supplier was subsidized by ratepayers. p. 222.

APPEARANCES: Jacqueline Fitzpatrick, Esq. and Thomas C. Platt III, Esq. of Orr and Reno for

EnergyNorth Natural Gas, Inc.; James T. Rodier, Esq. for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

On January 29, 1990, the commission issued an Order of Notice in Docket No. DE 88-136 establishing a hearing on the merits for February 15, 1990 for considering the following four agreements between EnergyNorth Natural Gas, Inc. (ENGI) and its affiliates:

Materials and Services
Tax Sharing
Cost Allocation
Lease

During the hearing on ENGI's cost of gas adjustment on January 26, 1990 it was determined by the commission that the circumstances regarding the transfer of propane and related cost allocation between ENGI and EnergyNorth Propane (ENPI) were an area of legitimate inquiry by staff but should be pursued by staff in a separate proceeding after due notice (TR 120-121, 126, 132-133).

On February 7, 1990, Staff filed a motion to schedule a pre-hearing conference on February 15, 1990 in lieu of the hearing on the merits scheduled for that day. In its Motion, the Staff alleged that the issue involving propane transfer and related cost allocation is one that is directly covered by and encompassed within ENGI's

proposed agreements among ENGI and its affiliates and that said issue needs to be addressed by the Company and further examined by staff before staff can go forward on the merits with the proposed agreements between ENGI and its affiliates.

Through order no. 19,718 (75 NH PUC 111) issued on February 15, 1990, the commission granted staff's motion for good cause shown and because ENGI stated that it had no objection, "provided that at the procedural hearing the issues to be addressed are delineated and the scope of the proceedings is defined". Pursuant to the understanding reached at the pre-hearing conference on February 15, staff submitted a Motion for Ruling on Scope and Procedural Schedule on February 16 which proposed that the commission's scope order include at least the five issues of fact enumerated in Staff's motion. Staff's motion also proposed a procedural schedule for the proceedings with which ENGI concurred.

On February 27, ENGI submitted an Objection to Staff's Motion for Ruling on Scope and Procedural Schedule and a Cross-Motion on Scope of Proceedings. On March 8, 1990, ENGI submitted a Memorandum of Law in Support of Its Cross-Motion on the Proper Issues and Scope of Proceedings.

II. *Issues Presented*

In its Objection to Staff's Motion and in its Cross-Motion on Scope of Proceedings, ENGI

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raised the following issues:

1. As a matter of administrative procedure, ENGI continues to be in the midst of presentation of its direct case in this docket;

2. As a matter of law, ENPI is not an "Affiliate" of ENGI as the term "Affiliate" is defined by RSA 366:1 (II).

3. There is a constitutional limitation on the commission's exercise of statutory authority.

4. The commission has waived its right to disapprove, and is estopped from disapproving, the contract and other agreements except on a prospective basis.

5. The contract or series of contracts between, ENGI and ENPI were entered into as an arm's length transaction and were just and reasonable under all the facts and circumstances.

ENGI, in its motion, urges the commission to approve the contract between ENGI and ENPI and allow the expenses or charges incurred by ENGI during the month of December 1989 on the basis that ENGI entered into the contract at arm's-length and that such action was reasonable and prudent and which provided substantial benefits to ENGI and its ratepayers.

III. *Commission Analysis*

[1-3] During the hearing on ENGI's cost of gas adjustment on January 26, 1990, it was determined by the commission that the circumstances regarding the transfer of propane and related cost allocation between ENGI and EnergyNorth Propane were an area of legitimate inquiry by Staff but should be pursued by Staff in a separate proceeding after due notice (TR 120-121, 126, 132-133).

In ruling on the Staff's and ENGI's motions, we find that it is not necessary for the commission to address the merits of ENGI's arguments regarding whether or not ENPI is an "affiliate" under RSA 366:3. In Docket No. DF 84-345, the commission approved the affiliation of EnergyNorth, Inc. (ENI) with Concord Natural Gas Corporation (CNGC) subject to strict adherence by ENI to the following conditions:

Following the Affiliation of ENI and CNGC, (1) (a) ENI shall conduct through corporate subsidiaries separate from its utility operating companies, all non-utility activities that are not operationally or functionally related to the utility activities (such kind of non-utility activities being hereinafter referred to as unrelated non-utility business); (1) (b) ENI may conduct, at the holding company level or through its utility subsidiaries, such non-utility activities as are operationally or functionally related to its utility activities, including among other things, the sale of propane gas and appliances and the owning of

real estate on which the utility operations are based (such kind of non-utility activities being hereinafter referred to as related non-utility business); (2) *ENI shall submit to this Commission for review under RSA 366 all services, materials or other contracts between*

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its utility, operating companies and either ENI or any of ENI's non-utility subsidiaries; (3) ENI shall make no use of the funds or credit of its utility operating companies for unrelated non utility business purposes ....

Re Concord Natural Gas Corporation, 70 NH PUC 632, 638 (1985) (emphasis added).

The affiliation of ENI and CNGC was expressly conditioned by the commission to authorize commission jurisdiction over situations such as the matter at hand in this proceeding. ENGI consummated the transaction with CNGC and thereby accepted the condition. Accordingly, we find that the above-cited passage conclusively establishes our jurisdiction over ENPI as an affiliate.

Consequently, RSA 366:5 governs the scope of these proceedings, standards for commission review, allocation of burden of proof, burden of production, commission authority to disapprove payments, and extent of discovery. We will also examine whether benefits have been expropriated from utility ratepayers by ENGI.

Notwithstanding, the broad grant of authority and discretion provided to the commission under RSA 366 with regard to its ability to disallow payments to affiliates, we find ENGI's exposure in this proceeding should be limited to the customary period of time applicable to the commission's oversight of cost of gas adjustments and subsequent reconciliation under the provisions of RSA 378 and ENGI's tariff. However, the scope of staff's inquiry shall not be limited to the rate set by the commission in Docket No. DR 89-181 and the costs incurred by ENGI during the 1989-90 winter period.[1(9)] More specifically, we find that the issue at hand in this proceeding is whether the furnishing of propane by ENGI to its affiliate ENPI contributed to the increased gas costs incurred by ENGI in DR 89-181 and, if so, whether ENPI has been subsidized by utility ratepayers, and whether said increased costs are appropriate for recovery from ratepayers through the cost of gas adjustment in Docket No. 89-181. The inclusion of the 1989-1990 winter period in the scope of this proceeding is particularly appropriate given the fact that the commission required the staff to forebear from pursuing this issue on January 26, 1990. At that time, the commission explicitly reserved the adjudication of the issue to a future time where all parties could be fully prepared to present their evidence and argument.

With regard to a procedural schedule for governing the remainder of this separate proceeding, we will require staff to recommend such a schedule after due consultation with ENGI. Such recommendation shall be submitted no later than ten days from the date hereof.

Upon resolution of the foregoing issues, we will expect staff and ENGI to resume the hearings under way in Docket No. DE 88-136 on the merits of the proposed agreements among ENGI and its affiliates.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is incorporated herein by reference; it is hereby

ORDERED, that the scope of this separate proceeding shall be as set forth in the foregoing report; and it is

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FURTHER ORDERED, that the motions and recommendations of the parties scope and procedural schedule are granted insofar as they are consonant with the foregoing report and are otherwise denied; and it is

FURTHER ORDERED, that staff recommend a procedural schedule to the commission after consultation with ENGI that shall govern this proceeding until further ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1990.

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FOOTNOTES

[1]The broader staff inquiry will be permitted for the purposes of discovery. At the evidentiary phase of this proceeding, facts adduced as a result of this inquiry will be admitted into evidence only to the extent that they are relevant or material to the DR 89-181 period.

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NH.PUC*04/16/90*[50959]*75 NH PUC 224*Pennichuck Water Works, Inc.

[Go to End of 50959]

75 NH PUC 224

Re Pennichuck Water Works, Inc.

DE 89-239
Order No. 19,788

New Hampshire Public Utilities Commission

April 16, 1990

ORDER authorizing a water utility to provide service in a previously unserved area and establishing a schedule for a proceeding to set rates for the new service.

CERTIFICATES, § 125 — Water — Expansion of service territory — Grounds for approval.

[N.H] A water utility was granted a franchise to provide service in a previously unserved area where the parties stipulated to the granting of the franchise area, the utility had the capability to provide the service, and the utility had the requisite approvals from the Department of Environmental Services.

APPEARANCES: Mary Ellen Kiley, Esq. on behalf of the Pennichuck Water Works, Inc.; and

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Eugene F. Sullivan, III, Esq. on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 12, 1989, the commission received a petition to provide water service to a limited area in the Town of Milford, New Hampshire situated on Old Brooklyn Road to development known as Ashley Common pursuant to RSA 374:22 and implicitly to establish rates therefore pursuant to RSA Chapter 378.

On January 18, 1990, the commission issued an order of notice setting a prehearing conference for March 21, 1990, to establish a procedural schedule and to address matters of intervention. The commission held a hearing on March 21, 1990 and no parties sought intervention.

II. *Position of the Parties*

The parties stipulated to procedural schedule, the parties further stipulated to the granting of the proposed franchise area pursuant to RSA 374:22 and 374:26. Pennichuck supplied approvals from the Department of Environmental Services pursuant to RSA 374:22 III. It supplied a letter from the Town of Milford indicating it supported the petition of Pennichuck and the staff noted that the commission has recognized the financial, managerial, technical and legal capabilities of the Pennichuck Water Works in a number of dockets (see e.g. DE 89-191). The commission will adopt the stipulation of the parties and grant the proposed franchise to Pennichuck for a development known as Ashley Commons situated in the Town of Milford, New Hampshire to be more specifically described in the attached order. The parties further stipulated to the following procedural schedule:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

April 6, 1990  Company testimony is due.
April 18, 1990 Working Conference.
May 9, 1990    Settlement Conference.
May 23, 1990   Hearing on the Merits.
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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the proposed franchise for lots 47-27-2 through 47-27-30, inclusive, located on Ashley Drive in Trevor Court in the development known as Ashley Common in the

Town of Milford as shown on a certain plan entitled "Subdivision Plan of Land, Ashley Commons, Milford, New Hampshire dated July 29, 1989, most recently revised October 25, 1988, recorded in Hillsborough Registry of Deeds as Plan #23101 is granted to Pennichuck Water Works, Inc.; and it is

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FURTHER ORDERED, that the proposed procedural schedule on the issue of rates is in the public good and it is hereby adopted.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April, 1990.

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NH.PUC*04/16/90*[50960]*75 NH PUC 225*Public Service Company of New Hampshire

[Go to End of 50960]

75 NH PUC 225

Re Public Service Company of New Hampshire

DR 89-212
Order No. 19,789

New Hampshire Public Utilities Commission

April 16, 1990

ORDER approving a settlement agreement regarding the calculation of short-term avoided energy cost rates for power purchased from qualifying facilities and rejecting a proposed coal inventory policy.

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1. COGENERATION, § 25 — Rates — Short-term avoided energy costs — Stipulation.

[N.H.] The commission approved a settlement agreement regarding the calculation of short-term avoided energy cost rates for power purchased by a retail electric utility from qualifying cogeneration and small power production facilities (QFs); it was found that the stipulated calculation methodology would result in better price signals being provided to QFs as to the value of their output; the stipulated methodology provides for the use of an average 25 MW increment and a 25 MW decrement to load in the calculation of short-term avoided energy costs. p. 226.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Energy cost recovery mechanism — Coal inventory policy — Electric utility.

[N.H.] The commission, in an energy cost recovery mechanism proceeding, rejected without prejudice a proposal by a retail electric utility to revise its coal inventory policy; it was found that the utility failed to meet its burden of production or proof with regard to expected risks and benefits of implementing the proposed policy. p. 226.

APPEARANCES: Eaton W. Tarbell, Esq., Margaret H. Nelson, Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Paul A. Savage, Esq. for Bio Mass Energy

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Producers; James T. Rodier, Esq. for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

A hearing was held on March 14, 1990 in this docket pursuant to Report and Order No. 19,659 (74 NH PUC 556), December 29, 1990, to resolve three remaining ECRM issues: the outage at Schiller No. 5, short-term avoided energy costs, and coal inventory policy.

Subsequent to the issuance of report and order no. 19,659, the issue concerning the outage at Schiller Unit No. 5 was resolved through order no. 19,723 (75 NH PUC 117), dated February 21, 1990. In that order, the commission instructed the staff to complete an audit of the disallowed replacement energy cost by May 1, 1990. PSNH agreed to submit its calculations for staff review prior to March 30 and in fact those calculations have been received by the commission.

The second issue is how to calculate the

short-term avoided energy cost rates for qualifying facilities (QFs). In this regard, a stipulation containing the recommendations of the parties was submitted on the morning of the hearing (Exhibit 34).

The third issue, which was heard on its merits on March 14, 1990, was a proposal by the company to change its coal pile inventory policy.

A. *Short-Term Avoided Energy Costs.*

II. *Issues Presented*

[1] Staff provided a summary of the stipulated recommendations on calculations of the short-term avoided energy cost rates for QFs. The methodology stipulated is identical to that recommended by staff earlier in this proceeding.

The stipulated methodology provides as follows:

1. Effective with its ECRM rate component in effect from January 1, 1990 through June 30, 1990, PSNH agrees to use an average of a 25 MW increment and a 25 MW decrement to load in the calculation of its short-term avoided energy costs. As a result, the short-term avoided energy cost rates increase from 3.166 cents per kilowatt hour to 3.32 cents per kilowatt hour (all hours value) as shown in the following attachment. QF payments will be retroactive to January 1, 1990. The estimated total increase in payments to QFs as a result of this change is approximately $4,000 in the period January 1, 1990 through June 30, 1990.

2. Use of an average of an increment and a decrement to load permits the calculation of a value appropriate for a marginal change in load or QF purchases and thus, can be appropriately utilized in the calculation of PSNH's short-term avoided energy costs. The energy requirements of short-term purchases from QFs are modeled in the base case to which the increment/decrement approach is applied.

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Application of the staff's proposal to the calculation of PSNH's short-term avoided energy costs will result in consistency among New Hampshire electric utilities in the methodology used to calculate short-term avoided energy costs and will result in better price signals being provided to QFs as to the value of their output.

B. *Coal Inventory Policy*

[2] In its testimony on December 20, 1989, (Exhibit 24) the company proposed to revise its coal inventory policy at Schiller Station based on the fact that Schiller Station is now a dual-fueled plant which, on short notice, can be switched to the lower cost, fuel oil or coal. The proposed policy would require PSNH to maintain access to at least a 30 day supply of coal for burning at Schiller Station, as compared to the existing policy of maintaining a 40 day supply of coal at Schiller for each generating unit, with access to a 40 day level of supply during winter periods and a 90 day reserve supply during periods of strike threats. Under the proposed policy, the company would not maintain any particular minimum inventory at Schiller while burning coal, but would assure that it had ready access to at least 30 days supply at Schiller, Merrimack or other storage site.

In its testimony on March 14, 1990, the company revised its proposal to provide for implementation of the foregoing policy change on a trial basis through December, 1990 and further stated that it did not assume that any increased costs incurred as a result of this policy revision would be automatically passed onto ratepayers, but would be subject to a commission prudence review.

III. *Commission Analysis*

Based upon the evidence contained in the record of the proceeding, we cannot approve the company's coal inventory proposal and therefore deny it without prejudice. While the staff, in its cross-examination, raised issues regarding the risk/reward allocation between ratepayers and investors that would result from the company's proposal, we have not addressed the merits of those issues in reaching our decision. We find that the company has not met its burden of production or proof with regard to documentation and quantification of the probability and magnitude of the expected benefits

and risks that would enable the commission to make an informed decision on the merits.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Settlement Agreement regarding calculation of short-term avoided energy costs (Exhibit 34) is approved; and it is

FURTHER ORDERED, that PSNH's proposal to revise its coal inventory policy is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April,

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1990.

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[Go to End of 50961]

75 NH PUC 227

Re Quin-Let Trust

DE 89-044
Order No. 19,791

New Hampshire Public Utilities Commission

April 16, 1990

ORDER imposing a fine on a water utility for failure to comply with a prior order requiring the refund of unauthorized collections.

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1. RATES, § 32 — Jurisdiction and powers — State commissions — To set rates and charges.

[N.H.] The public utility commission is the only authority allowed to set rates or charges for public utility services; accordingly, clauses in deeds for real property that purportedly obligated deed holders to pay a public utility for the yearly cost of water were deemed null and void. p. 228.

2. RETURN, § 50 — Confiscation — Denial of rates — Unauthorized collections — Water utility.

[N.H.] A public utility is constitutionally entitled to a return on its investment only if it obtains a franchise and rate approval from the commission; accordingly, it was not unconstitutionally confiscatory for the commission to require a water utility to refund fees collected from customers without commission approval. p. 228.

3. FINES AND PENALTIES, § 6 — Grounds for imposing — Violation of commission order.

[N.H.] A water utility was fined $1000 for failure to comply with a commission order requiring the refund on unlawfully collected fees. p. 228.

APPEARANCES: William D. Paine, II, Esquire on behalf of Quin-Let Trust; Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

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On July 27, 1989, the commission issued order no. 19,495 ordering Quin-Let Trust (Trust) and its officers appear before the commission on August 22, 1989 at 10:00 A.M. to show cause why they should not be subjected to criminal prosecution and civil penalties or other sanctions prescribed by law for failure to subject itself to the jurisdiction of the Public Utilities Commission as they were operating a public water utility without authority.

On August 22, 1989, the commission held a hearing on the subject issue. On October 25, 1989, the commission issued order no. 19,579 (74 NH PUC 415) ordering Quin-Let Trust to pay a fine of $500 pursuant to RSA 365:41 and RSA 365:42 and further ordered that Quin-Let Trust return the $200 fee they had charged for 1989 water consumption to its customers and finally that the Trust file for a franchise within

thirty days of the date of the order (October 25, 1989).

On December 21, 1989, the commission issued order no. 19,648 (74 NH PUC 490) ordering the Trust its officers, beneficiaries or trustees appear before the commission on March 6, 1990 at 10:00 A.M. in the forenoon at the commission offices to show cause why they should not be subject to criminal prosecution or civil penalties up to $25,000 pursuant to the provisions of New Hampshire statutes for failure to comply with commission's order 19,495.[1(10)]

On March 1, 1990 the Trust, through its attorneys, moved for a continuance, said continuance was granted and a hearing was held on March 7, 1990.

II. *Position of the Parties*

The Trust took the position that it could not file for a franchise as its financial exhibits were not yet prepared and that it should not be required to comply with order no. 19,495 ordering the trust to refund the $200 it had collected for 1989 water consumption by its ratepayers as it was not financially capable of doing so. The Trust further submitted a motion to stay and reconsider in support of said position.

In said motion the trust contends "that the owners of each lot by acceptance of the deed. ... [are] ... obligated to paying North Valley Development Corp., its assessors or assigns for the yearly cost [of water]", and further that the Trust has a present bank balance of $104.55 and outstanding payables of $17,000 which includes the purchase of equipment for the water system in order to meet the requirements of Water Supply and Pollution Control. The motion further asserts that the Trust received the amount of $6,551 from the individual owners as rates during the past year and that the Trust has no present ability to refund the amounts paid by the users for 1989 water usage.

The motion goes on to state that order no. 19,579 "is an infringement of the United States Constitutional prohibition of infringement of contracts and the prohibition against ex post fido (sic) laws." In reliance on said arguments the Trust moved that the commission schedule further hearings on the motion to reconsider and that the commission order other appropriate relief as it saw fit.

Staff took the position at the hearing that although fines may threaten the financial viability

of the Trust, the Trust had shown, over the course of the past six months, a habit of ignoring commission orders and a disregard for the commission's jurisdiction over their public water utility.

III. *Findings of Fact*

Commission finds that the Trust is a public utility pursuant to RSA 362:2 and 362:4 and subject to our jurisdiction. (See report and order no. 19,579) The commission further finds that the Trust has had ample opportunity to comply with commission regulations by filing a simple franchise petition which is nothing more than a request to serve, and a description of the area to be served. The Trust neglected to make such filings after numerous contacts by the staff of the commission and an explicit order by the commission that the Trust do so.

IV. *Commission Analysis*

[1-3] The Trust argues that the deeds conveying the lots to the present landowners served by the Trust provide for the right to take water from a well owned by North Valley Development Company at a reasonable fee to be determined by North Valley Development Corporation. The commission notes that RSA Chapter 378 provides that the Public Utilities Commission is the only authority in this state which is allowed to set rates or to make charges for water sold by a public utility; thus, the clause in the deed referred to by the trust, is null and void as against public policy and in direct violation of RSA Chapter 378.

It is a fundamental principle that the legislature has the right to set rates and the legislature of the State of New Hampshire has delegated such rights to the New Hampshire Public Utilities Commission. In our report and order no. 19,579 the commission found that New Hampshire RSA Chapter 378 provided the means by which a public utility could obtain its

constitutionally entitled return on its investment. The commission further found that said means are simple requirements with which a company must comply in order to ensure that the rates charged are neither confiscatory to the company nor the ratepayers. (See report and order no. 19,579 at page 4.) Thus, the commission can find no constitutional infringement upon the trust's rights by ordering it to refund the $200 collected for the year 1989.

The constitution guarantees that rates be reasonable to both the utility and the ratepayers and it is our function to set those rates. Statutorily and constitutionally the commission can neither set rates without adequate data and investigation of said data nor retroactively as requested by the company.

Finally, in regard to the Trust's statements concerning its financial condition, the commission notes from the record that the Trust was organized to develop real estate. It purchased large tracts of land to accomplish that end in which it, coincidentally, acquired the subject water supply. In light of this, the credibility of evidence of financial distress will be closely scrutinized at upcoming hearings.

The company is, therefore, fined $1,000 for its failure to comply with order no. 19,579, which specifically ordered the Trust to refund the $200 to its ratepayers said fine to be paid by June 18, 1990 or the Trust shall be subject to further fines.

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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Quin-Let Trust pay a $1,000 fine pursuant to RSA 365:41 for failure to comply with order no. 19,579 within sixty (60) days of the date of this order; and it is

FURTHER ORDERED, that Quin-Let Trust's Motion to Reconsider is denied and that the Trust shall refund the $200 per customer collected in 1989 within sixty (60) days of the date of this order as it collected said sums in violation of New Hampshire law or be subject to further fines.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April, 1990.

FOOTNOTES

[1]The Trust had not paid the $500 fine or filed for a franchise. Subsequent to December 21, 1989 the commission did receive a check for $500 from the Trust.

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NH.PUC*04/16/90*[50962]*75 NH PUC 229*New Hampshire Electric Cooperative, Inc.

[Go to End of 50962]

75 NH PUC 229

Re New Hampshire Electric Cooperative, Inc.

DR 89-245
Order No. 19,792

New Hampshire Public Utilities Commission

April 16, 1990

ORDER granting a request by an electric cooperative for an extension of time in which to file a rate plan.

RATES, § 630 — Temporary rate surcharge — Rate plan requirement — Subject-to-refund conditions — Electric cooperative.

[N.H.] The commission granted a request by an electric cooperative for an extension of time in which to file a rate plan required by state statute RSA 362:C-7, which directed the commission to establish a refundable 5.5% rate surcharge for an electric cooperative pending approval of a rate plan; however, the commission warned the cooperative that inasmuch as RSA 362:C-7 required the rate plan to be approved within 90 days following the effective date of a

bankruptcy plan for Public Service Company of New Hampshire, any further delay in filing of its rate plan would in all likelihood make compliance with the statutory requirements for rate relief impossible and require the refund of amounts collected under the rate surcharge.

By the COMMISSION:

REPORT

I. *Background*

By order of the commission, and pursuant to RSA 362-C:7, the New Hampshire Electric Cooperative, Inc. (NHEC) has been authorized to implement a temporary 5.5 percent surcharge for service rendered on or after January 1, 1990. That order also provided that NHEC would file the rate plan contemplated by RSA 362:C-7 no later than April 15, 1990. Report and Order No. 19,656 (74 NH PUC 521) (December 28, 1989) at 11.

On February 28, 1990, NHEC requested a waiver of the April 30, 1990 filing of its Integrated Least Cost Resource Plan and that its next formal filing of a least cost resource plan be scheduled for April 30, 1991.

NHEC noted that it was currently engaged in negotiations with Northeast Utilities (NU) for a power supply, with the Rural Electrification Administration (REA) on financial restructuring, and with the New Hampshire Attorney General's Office on a rate plan and should not be required to divert its limited resources to preparation of the least cost resource plan.

At its March 5, 1990, commission meeting, the commission determined that the least cost plan should have priority over the rate plan, subject to the commission receiving additional information from NHEC advising it of factors of which it may not be aware. On March 13, 1990, the Executive Director and Secretary issued a secretarial letter, informing NHEC that the commission was inclined to authorize additional time for the submission of a rate plan pursuant to RSA 362-C rather than granting a waiver of the least cost integrated resource planning requirements and soliciting further comments from NHEC prior to a commission decision on the waiver request.

On March 16, 1990, NHEC responded that preparation of the least cost resource plan was not and should not be its highest priority "at this critical junction". After due consideration, the commission responded by granting to NHEC an extension of time for preparation of its least cost resource plan until July 31, 1990 subject to the requirement that NHEC hire by April 30, 1990, a consultant acceptable to the commission to assist it with the construction of a least cost plan and confer with our staff during the Request For Proposal (RFP) process for assistance in specifying the scope of the RFP and identifying competent consultants knowledgeable in utility least cost planning. Report and order no. 19,774 (75 NH PUC 202) (April 2, 1990). The commission's stated rationale for granting the extension was that NHEC "should then be able to pursue its planning efforts on a parallel track with its negotiations and the consultant will be able to contribute to NHEC's negotiating efforts the analysis of the full range of options available to the

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Cooperative and assist it in selecting and developing the least cost alternatives for serving the needs of its member/customers". *Id* at 5.

On April 6, 1990, NHEC further requested an extension of time for the filing of its rate plan until May 31, 1990. The primary reason cited by NHEC was its inability "to secure an agreement with Northeast Utilities for implementing the power supply and transmission arrangements outlined in a December 1, 1989 agreement (amended December 6, 1989)". According to NHEC, its future cost of power will be in large part determined by the resolution of the negotiations between NU and NHEC including the possible exercise of the Sellback Contract in favor of NHEC at full cost. The Sellback Contract is part of the NHEC's current PSNH wholesale arrangement.

II. *Commission Analysis*

In view of the foregoing background and for the reasons cited by NHEC, we will grant NHEC the extension for the filing of its rate plan until May 31, 1990. In further support of this decision, we would note that there are concurrently underway at the commission three very substantial proceedings that would have left, in any event, few resources to devote to NHEC's circumstances and rate plan prior to May 31, 1990. In granting this extension we are nevertheless fully mindful of the mandate of RSA 362:C-7 that NHEC's rate plan must be

approved, if at all, "with 90 days following the date upon a bankruptcy rate plan for [PSNH] becomes effective ...".

NHEC must understand that if its rateplan is not forthcoming by May 31, 1990, it will in all likelihood foreclose to NHEC the possibility of relief offered by RSA 362:C-7. Accordingly, pursuant to RSA 362-C:7, the 5.5% rate increase effective January 1, 1990 would be subject to being fully refunded to ratepayers.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that New Hampshire Electric Cooperative, Inc.'s request for the filing of its rate plan pursuant to RSA 362:C-7 is hereby granted.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April, 1990.

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NH.PUC*04/17/90*[50963]*75 NH PUC 231*B & G Paytel, Ltd.

[Go to End of 50963]

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DE 89-190
Order No. 19,793

New Hampshire Public Utilities Commission

April 17, 1990

ORDER directing a provider of customer-owned, coin-operated telephone services to appear and show cause why it should not be fined for operating a public utility without authorization and for possible willful violation of state statute and commission rules.

SERVICE, § 456 — Telecommunications — COCOTs — Unauthorized provision.

[N.H.] A provider of customer-owned, coin-operated telephone (COCOT) services that failed to comply with commission rules governing requests for authorization to provide COCOT services was directed to appear and show cause why it should not be fined for operating a public utility without authorization and for possible willful violation of state statute and commission rules.

By the COMMISSION:

ORDER

WHEREAS, the staff of the New Hampshire Public Utilities Commission (PUC) has become aware of Customer Owned Coin Operated Telephones (COCOTS) labeled B & G Paytel; and

WHEREAS, the staff has informed the commission that on or before June 22, 1989 Mr. Bob Boucher from B & G Paytel, Ltd. (B & G) was advised of the requirement for authority to operate COCOTS in the State of New Hampshire in accordance with N.H. RSA374:22 and N.H. Admin. Code Puc part 408.02; and

WHEREAS, the staff has informed the commission that on June 22, 1989 a representative from B & G personally appeared at the offices of the PUC and received copies of the N.H. Admin. Code Puc part 408, inclusive of Form E29, and applicable New England Telephone Tariff pages; and

WHEREAS, B & G has not applied for authorization to operate COCOTs in the State of New Hampshire in accordance with N.H. Admin. Code Puc part 408.02; and

WHEREAS, the staff advised B & G of possible violations, by letter dated March 19, 1990 requiring compliance of all PUC rules and New Hampshire statutes by April 2, 1990; and

WHEREAS, B & G, through it's agent Jay E. Printzlau notified the commission, by letter, that B & G would not comply with NH Admin. Code Puc part 408.07b; and

WHEREAS, B & G has not filed the appropriate request for authorization form E29; it is hereby

ORDERED, that Pursuant to RSA 365:15

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Docket DE 89-190 entitled *Re B & G Paytel, Ltd.* is established for the purpose of determining whether B & G Paytel, Ltd. has violated the aforementioned statute and rules or its officers and agents should be fined in accordance with New Hampshire RSA 365:41 for failure to comply with or 365:42; for willful violation of the statute and rules; and it is

FURTHER ORDERED, B & G Paytel, Ltd. it's officers and agent appear before the commission in a hearing at the offices of the commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on May 10, 1990 for the purpose of showing cause why it should not be fined in accordance with RSA 365:41 or 365:42 for operating as a public utility without authorization and for the possible willful violation of the above mentioned NH statute and PUC Rules.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1990.

AFFIDAVIT OF KATHRYN M. BAILEY

NOW COMES KATHRYN M. BAILEY, and having taken the prescribed oath does hereby say as follows:

1. That I am the Telecommunications Engineer of the New Hampshire Public Utilities Commission, ("commission" or "PUC") having joined the commission in March 1989.

2. That on June 22, 1989, I received a telephone call from Mr. Bob Boucher of B&G Paytel, Ltd. who asked if Customer Owned Coin Operated Telephones (COCOTs) were required to be registered in New Hampshire.

3. That I informed Mr. Boucher each COCOT was required to be registered and that a COCOTs information package was available from the commission for a fee of $9.00, which included the New Hampshire Code of Administrative Rules (NH Admin. Code) Puc part 408, Forms E29, F29, and applicable pages from the New England Telephone (NET) tariff.

4. That I explained the approved rate for a five minute local call was 10 cents as delineated in the NH Admin. Code Puc part 408.07b.

5. That Mr. Boucher told me his company owned and was operating approximately 40 COCOTs in NH as of June 22, 1989 and that he wanted to operate lawfully.

6. That a representative from B&G Paytel, Ltd. appeared at the offices of the commission on that afternoon, June 22, 1989, and received from me a copy of the COCOTs information package described above, in exchange for a check made payable to The State of New Hampshire for $9.00.

7. That I began an investigation of COCOTs in the state on June 28, 1989 and identified 10 COCOTs owned and operated by B&G Paytel, Ltd.

8. That on June 28, 1989 there was a COCOT located at Supreme Roast Beef, on Elm Street, in Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Not properly marked

9. That on June 28, 1989 there was a COCOT located at Brother's Pizza on South Willow Street in Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Not receiving incoming calls

e. Not properly marked

10. That on October 16, 1989 there was an inoperable COCOT located at Subs and Salads, 31 Crossroads Mall, Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Improperly marked

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11. That on October 16, 1989 there was a COCOT located at LeFebyre Gulf, on West Broadway in Derry, NH, registered to Lockwood-Young Corp. c/o B&G Paytel, Ltd., on the Public Access Line subscriber list provided by NET, and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 10 cents for the first minute only

d. Improperly marked

e. Not receiving incoming calls

12. That on October 16, 1989 there was a COCOT located at Kathy's Cafe off Interstate 93, exit 5, Derry, NH, registered to B&G Paytel, Ltd., on the Public Access Line subscriber list provided by NET, and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Not receiving incoming calls

e. Not properly marked

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13. That on October 16, 1989 there was an inoperable COCOT located at The Front Runner, in the Manchester Civic Center Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Not providing toll free municipal calling

e. Not receiving incoming calls

14. That on October 16, 1989 there was a COCOT located at Konny's House of Pizza on Amory Street in Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Not properly marked

15. That on October 16, 1989 there was a COCOT located at Theo's Pizza at 102 Elm Street in Manchester, NH, labeled B&G Paytel, Ltd., and was

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Charging 25 cents for a local call

d. Improperly marked

e. Not receiving incoming calls

16. That on October 16, 1989 there were two COCOTs located at the Gateway Restaurant, 50 Phillipe Street in Manchester, NH, labeled B&G Paytel, Ltd., and were

a. Operating without commission approval

b. Improperly registered (Form E29 not filed)

c. Not providing coin free emergency access

d. Charging 35 cents for a 5 minute local call

e. Improperly marked

f. Not receiving incoming calls

g. Charging unauthorized rates for DA

17. That on March 12, 1990, a letter was sent to the Lockwood-Young Corp., in care of B&G Paytel, Ltd. and it's agent, informing them of the above mentioned violations, and allowing them time to comply.

18. That on March 21, 1990, I received a telephone call from Mr. Boucher who informed me that he could not provide a five minute local call for 10 cents.

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19. That during the March 21, 1990, telephone conversation, I told Mr. Boucher to discontinue COCOT service if he could not comply with the rules (specifically the five minute local call for 10 cents).

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20. That on April 2, 1990, the commission received a letter from Jay E. Printzlau, registered agent of B&G Paytel, Ltd., stating B&G Paytel, Ltd. would not comply with NH Admin. Code Puc part 408.07b, and that they would provide a two minute local call for 10 cents.

21. That B&G Paytel, Ltd. has not registered any COCOT with the PUC to this date.

22. That I believe B&G Paytel, Ltd. and it's agent are fully aware of the NH Admin. Code Puc 408 and have been willfully violating these rules since June 22, 1989.

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NH.PUC*04/19/90*[50965]*75 NH PUC 237*Resort Waste Services Corporation

[Go to End of 50965]

75 NH PUC 237

Re Resort Waste Services Corporation

DR 90-035
Order No. 19,796

New Hampshire Public Utilities Commission

April 19, 1990

ORDER conditionally granting a petition to extend a franchise to provide sewer service and instituting an investigation to determine whether a bank that provided financing to the capacity control member of a nonprofit, land development sewer utility is responsible for payments owed by the capacity control member to the utility.

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1. CERTIFICATES, § 125 — Franchise extension — Conditions on approval — Sewer service.

[N.H.] The commission granted a petition by a nonprofit, land development sewer utility to extend its franchise to provide sewer service, conditioned on further commission review of the financial, technical, and managerial fitness of the utility; the petition was granted in advance of findings as to the fitness of the petitioner due exigent circumstances requiring the collection of additional revenues and the fact that applicant was providing service in area in which it sought to expand its franchise. p. 238.

2. PUBLIC UTILITIES, § 122 — Sewer — Land-development utility — Capacity control member.

[N.H.] A bank that provided financing to the capacity control member of a nonprofit, land

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development sewer utility was directed to appear before the commission for a determinations as to whether it is a public utility by virtue of its relationship with the capacity control member and whether it is responsible for capacity control member payments to the utility. p. 238.

APPEARANCES: Raymond Blanchard, Esq. and Thomas Kean, Esq. for the unit owners; Gary Hicks, Esq. for Dartmouth Bank; Robert Satter and Richard Barber for Satter Companies of New England and Resort Waste Services Corporation; and Eugene F. Sullivan, III, Esq. for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Background*

Resort Waste Services Corporation (RWSC) received authorization on February 23, 1988, to construct a sewage treatment plant, sewer mains and related facilities to serve two Bretton Woods condominium developments, Mount Washington Place and Crawford Ridge in the Town of Carroll, New Hampshire. The plant began operation in December of 1988, permanent rates were approved by order no. 19,470 (74 NH PUC 243) dated July 14, 1989.

RWSC is not-for-profit corporation formed

in 1987 for the sole purpose of providing sewer service to the Bretton Woods developments. It consists of user members (UM) and capacity control members (CCM). The latter contribute the estimated difference between income from UM's and actual operation expenses as set forth in the tariff. In addition, although the sewer plant and facilities were contributed by the developer, UM's contribute an annual depreciation charge which is not charged to the CCM's. The developer, Satter Company of New England (SCNE) is the current CCM.

On November 16, 1989, RWSC petitioned the commission to extend sewer service to a third condominium development known as Fairway Village. This development is partially built out with 22 units currently occupied and being served by RWSC. These customers are not yet being billed, however, pending commission response to RWSC's petition.

On January 19, 1990, Dartmouth Bank (the Bank), which had provided financing for SCNE ventures since the early 1980's under various agreements abruptly ceased its financial participation in the project and in subsequent court action took possession of nearly all of SCNE's assets excluding those of RWSC. As a result, SCNE is now unable to fulfill its CCM obligations to RWSC. At a hearing held on March 26, 1990, Robert Satter and Richard Barber testified that RWSC's expenses in 1989 were approximately $109,000 excluding depreciation. Income from UM's was approximately $28,000 leaving a CCM obligation of approximately $81,000. Income from UM's currently authorized to be served would result in a 1990 income of approximately $35,000 at the tariff rate of $404 per customer. If the petition, filed by RWSC to service a certain area of Bretton Woods known as Fairway Village, is approved, the billing of an additional 22 customers would result in an annual revenue of $41,000 for 1990. Both Mr. Barber

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and Mr. Satter estimated that RWSC expenses for 1990 could be reduced to approximately $67,000 if certain contracts were renegotiated.

The March 26 hearing indicated that no single party was willing or capable to commit to the day to day management and financial obligations incumbent upon the CCM. In the meantime, payments to the plant operator, Metcalf and Eddy, are delinquent but are being made currently on a month-to-month basis. The possibility of termination of the operator service would result in disruption of service, the potential for legal action by the State, homeowners and others and possible environmental consequences to the Mount Washington Valley.

The homeowners have become involved but the extent of their future involvement in RWSC is unclear as yet. The Town of Carroll has expressed that it has no interest in participating in the affairs of RWSC.

The commission finds from the testimony of James Lenihan and Douglas Brogan that the plant was built with the capacity to serve not only the existing 110 condominiums but approximately 390 more units.

Finally, the commission notes from the transcript at page 21 that SCNE and the Bank were purportedly involved in a joint venture for approximately 8 years in which the Bank contributed 100 percent in unsubordinated debt or ordinary loans. It either provided or arranged all the financing. It was the abrupt withholding of funds which caused the current situation to occur.

III. *Commission Analysis*

[1, 2] Based on all of the above the commission finds that the public good requires that it investigate the relationship of the bank to SCNE to determine whether this was a joint venture or a partnership between the two entities and whether the Bank is liable for the CCM's portion of the contribution to RWSC.

It is our further finding that the petition to expand sewer service to Fairway Village should be granted *NISI*. However, this franchise extension is conditioned on further commission review after a viable entity controls RWSC to determine the financial, technical, legal, and managerial expertise of RWSC as it then exists. The commission would normally make these findings before the granting of a franchise extension. However, given the exigent circumstances, the need for revenues and the fact that Fairway Village is currently being provided with service, the commission will grant a

franchise and rates commensurate with the existing tariff on file with the commission.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Dartmouth Bank appear before the New Hampshire Public Utilities Commission at ten o'clock in the forenoon on the first day of June, 1990, in order for the commission to determine whether or not it is a public utility pursuant to RSA 362 due to its financial and managerial relationship with Satter Companies of New England and responsible for

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CCM payments; and it is

FURTHER ORDERED, *NISI*, that the petition to extend sewer service pursuant to RSA 374:22 to Fairway Village is approved subject to the conditions in the foregoing report; and it is

FURTHER ORDERED, that all persons interested in responding in support of or opposition to the petition to expand the franchise area be notified that they may submit their comments to the commission or may submit a written request for hearing in this matter no later than twenty days after publication of this order; and it is

FURTHER ORDERED, that the commission effect notification of this order by publication of attested copy of this order once in a newspaper having general circulation and that portion of the state in which operations are proposed to be conducted, such publication to be no later than May 7, 1990; and it is

FURTHER ORDERED, that such authority shall be effective on June 7, 1990, unless a request for hearing is filed with the commission as provided above or unless the commission orders otherwise prior to the effective date; and it is

FURTHER ORDERED, that Dartmouth Bank be served with a copy of this order through its attorneys Wiggin and Nourie; and it is

FURTHER ORDERED, that pursuant to RSA 541 A:22, RWSC serve a copy of this order of notice by first class mail to each affected city or town postmarked no later than May 7, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc §203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene at least three (3) days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1990.

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NH.PUC*04/19/90*[50966]*75 NH PUC 239*Southern New Hampshire Water Company, Inc.

[Go to End of 50966]

75 NH PUC 239

Re Southern New Hampshire Water Company, Inc.

DE 90-058
Order No. 19,797

New Hampshire Public Utilities Commission

April 19, 1990

ORDER rejecting a report on proposed changes in depreciation rates filed by a water utility for its meters account, but granting the utility leave to address meter depreciation rates in the context of its next rate case.

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DEPRECIATION, § 81 — Water — Meters account.

[N.H.] The commission rejected a report on proposed changes in depreciation rates filed by a water utility for its meters account, but granted the utility leave to address meter depreciation rates in the context of its next rate case.

By the COMMISSION:

ORDER

On March 29, 1990, the commission received a Report of Proposed Rate Changes in Depreciation Rates (E-25) from Southern New Hampshire Water Co., Inc. (Southern) to change

Page 239

the present rate it uses on meters; and

WHEREAS, in a Stipulation Agreement approved by the commission in docket DR 87-135, Southern was to file a depreciation study prior to the filing of its next rate case; and

WHEREAS, the matter of depreciation rates used by Southern is a matter for discussion and investigation in the context of DE 89-224, its next and recently filed rate case; it is hereby

ORDERED, that the Report of Proposed changes in Depreciation Rates (E-25), filed by Southern for its meters account, is hereby rejected; and it is

FURTHER ORDERED, that Southern has leave to address the issue of appropriate meter depreciation rates in the context of docket No. DR 89-224.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1990.

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NH.PUC*04/19/90*[50967]*75 NH PUC 240*Winter Termination Rules

[Go to End of 50967]

75 NH PUC 240

Re Winter Termination Rules

DE 89-082
Supplemental Order No. 19,798

New Hampshire Public Utilities Commission

April 19, 1990

ORDER clarifying winter termination rules.

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PAYMENT, § 33 — Denial of service — Arrearages — Winter termination rules.

[N.H.] A utility subject to winter termination rules may terminate a customer for any arrearage, subject to the commission's non-winter period termination rules, that was accrued for service rendered prior to the winter termination period.

By the COMMISSION:

ORDER

On October 4, 1989 the commission issued report and order no. 19,554 (74 NH PUC 372) in docket DE 89-082. In response to said order Public Service Company of New Hampshire (PSNH) filed a letter with the commission requesting clarification of said order. Specifically, PSNH asked for an interpretation of N.H. Admin. Rules, PUC 303.08 (K) (2). Essentially, PSNH would like to know, given the commission's order no. 19,554, whether or not the company may terminate a customer for arrears appearing on bills rendered before the winter termination period.
Commission Analysis

N.H. Admin. Rules, PUC 303.08 (K)(2) states that;

> for the duration of the winter period an accumulated arrearage of $175 or less for non-heating customers or $300 for heating customers, all of which first appears as an arrearage rendered during the winter period shall not subject a residential customer to termination of service in his/her primary resident.

The commission interprets the above section as follows: A company subject to the winter termination rules may terminate a customer for any arrearage, subject to the commission's non-winter period termination rules, that was accrued for service rendered prior to the winter termination period (12:01 a.m. December 1 through 12:01 a.m. April 1).

Our order will issue accordingly.

SUPPLEMENTAL ORDER

In consideration of the foregoing report; it is hereby

ORDERED, that the interpretation of N.H. Admin. Rules, PUC 303.08 (K)(2) applicable to all winter terminations shall be as stated in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1990.

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NH.PUC*04/19/90*[50968]*75 NH PUC 241*Leigh E. Stephenson

[Go to End of 50968]

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75 NH PUC 241

Re Leigh E. Stephenson

Additional petitioner: Patricia L. Stephenson

DE 90-045
Order No. 19,799

New Hampshire Public Utilities Commission

April 19, 1990

ORDER authorizing a utility crossing of state-owned railroad property.

CERTIFICATES, § 76 — Factors affecting grant — License to cross state-owned property.

[N.H.] The commission granted a petition seeking authorization for the construction, use, maintenance, repair and reconstruction of utility facilities across state-owned railroad property where the facilities were intended to serve the petitioners' property and would not substantially affect public rights on the state property.

By the COMMISSION:

ORDER

WHEREAS, on March 23, 1990, Leigh E. and Patricia L. Stephenson filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct utilities across state-owned railroad property in the City of Laconia; and

WHEREAS, the proposed utilities consist of overhead electric, telephone and cable TV, and underground water and sewer services, all intended to serve the petitioners' property, as shown and described on a plan filed with the petition and on a revised plan and in written revisions and clarifications to the petition also filed with the commission; and

WHEREAS, said utilities are proposed to cross the Concord-to-Lincoln Railroad at approximate Valuation Station 1504 + 90, Map V 21/64, except that the sewer service may alternately enter state land from the Opechee Bay side, approximately 50 feet north of station 1504 + 90, to make use of an existing tie-in to a sewer main located on the Opechee Bay side of the railroad property; and

WHEREAS, the actual grade crossing referred to in the petition fall under the jurisdiction of the railroad and the DOT in accordance with RSA 373:1 and :33, and so is not addressed by this order; and

WHEREAS, the commission finds the utility crossings are necessary to meet the reasonable requirements of the petitioner without substantially affecting public rights on said state land; and

WHEREAS, the only private property affected by the petition is that of the petitioner and

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that of a second party whose land contains an easement conveyed to the petitioner; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than May 21, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Laconia region, such publication to be no later than May 4, 1990 and to be documented by affidavit filed with this office on or before May 24, 1990; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:22, the petitioner serve a copy of this Order of Notice by first-class mail to the clerk of the City of Laconia postmarked no later than May 4, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is, granted, pursuant to RSA 371:17 *et seq.* to Leigh E. and Patricia L. Stephenson, R.D. 2, Box 190, Laconia, New Hampshire 03246 for the construction, use, maintenance, repair and reconstruction of the aforementioned utilities across public railroad property in Laconia, New Hampshire identified at approximate Valuation Station 1504 + 90, Map V 21/64; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of

Railroads (DOT), Water Supply and Pollution Control Division (DES), the National Electrical Safety Code and others as mandated by the City of Laconia; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1990.

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NH.PUC*04/23/90*[50969]*75 NH PUC 242*Communications Service Tax

[Go to End of 50969]

75 NH PUC 242

Re Communications Service Tax

DR 90-037
Order No. 19,800

New Hampshire Public Utilities Commission

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April 23, 1990

ORDER accepting revised message toll service rates filed by New England Telephone and Telegraph Company to reflect the imposition of the Communications Service Tax. Commission directs independent telephone companies to implement concurring toll rates.

RATES, § 534 — Telecommunications rate design — Special factors — Communications Service Tax.

[N.H.] The commission accepted revised message toll service rates filed by New England Telephone and Telegraph Company to reflect the imposition of the Communications Service Tax; independent telephone companies were directed to implement concurring toll rates.

By the COMMISSION:

ORDER

WHEREAS, by order 19,772 (75 NH PUC 196), in docket DR 90-037 dated March 30, 1990, the New Hampshire Public Utilities Commission ordered that New England Telephone (NET), Granite State Telephone Inc., Merrimack County Telephone Company, Dunbarton Telephone Company, Wilton Telephone Company, Contel of Maine, Kearsarge Telephone Company, Chichester Telephone Company, Meriden Telephone Company, Union Telephone Company and Dixville Telephone Company, submit revised tariff pages to reflect the imposition of the Communications Service Tax; and

WHEREAS, the revised tariff pages were to become effective for services rendered on and after March 1, 1990, and with all billings on or after April 1, 1990; and

WHEREAS, all the independent telephone companies were to reflect, in their revised tariffs, the impact on NET's interstate message toll service rates, of the commissions foregoing decision; and

WHEREAS, on April 17, 1990, in response to order No. 19,747 in docket 89-10/85-182 and order no. 19,772 in docket 90-037, NET submitted an effective rate design containing revised message toll rates to take effect on April 1, 1990; and

WHEREAS, NET's schedule of rate changes, Supplement No. 37, containing revised message toll rates is in compliance with order no. 19,772, dated March 30, 1990; it is hereby

ORDERED, that the NET schedule of rate changes, Supplement No. 37 be, and hereby is, approved; and it is

FURTHER ORDERED, that the independent telephone companies implement their concurring toll rates, with all billings on or after April 1, 1990 or as soon as their respective billing cycles will permit.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of April, 1990.

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75 NH PUC 243

Re Tilton and Northfield Aqueduct Company

DE 89-197
Order No. 19,801

New Hampshire Public Utilities Commission

April 24, 1990

ORDER directing a water company to appear and report on its progress toward meeting the service needs of citizens within its franchise area.

SERVICE, § 117 — Duty to serve — Water company.

[N.H.] It is the responsibility of all utilities to serve those customers within their franchise area who desire service; accordingly, a water company that had not committed to serve citizens in a portion of its franchise area that was troubled by contaminated wells was directed to appear and report on its progress toward meeting the service needs of citizens within its franchise area.

By the COMMISSION:

ORDER

On November 20, 1989, the commission held a hearing pursuant to RSA 374:4 in order to keep informed on a certain situation involving contaminated wells in that portion of Tilton, New Hampshire known as Lochmere; and

WHEREAS, on November 20, 1989, the Tilton & Northfield Aqueduct Company (Tilton & Northfield) committed to supply engineering reports and work with staff towards meeting the service needs of the citizens of Lochmere; and

WHEREAS, Tilton & Northfield has tentatively committed to serving this area; and

WHEREAS, it has been over four months since Tilton & Northfield made the commitment to supply engineering studies; and

WHEREAS, the company has not committed to serving the Lochmere area or provided a plan for meeting the service needs of the area; and

WHEREAS, it is the responsibility of all utilities to serve those customers within their franchise area who desire service; and

WHEREAS, the funds for serving the customers of Lochmere would be contributed by the State of New Hampshire, it is hereby

ORDERED, that pursuant to RSA 374:4, Tilton & Northfield Aqueduct Company appear before the Public Utilities Commission to inform it as to its progress towards serving that area in Tilton known as Lochmere, said hearing to be held on July 10, 1990 at 2:00 p.m., at the commission's office at 8 Old Suncook Road, Concord, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1990.

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NH.PUC*04/24/90*[50971]*75 NH PUC 243*Southern New Hampshire Water Company, Inc.

[Go to End of 50971]

75 NH PUC 243

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,802

New Hampshire Public Utilities Commission

April 24, 1990

ORDER modifying an order accepting a water rate settlement to remove a provision requiring a water utility to file a depreciation study prior to the filing of its next rate case.

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1. DEPRECIATION, § 1 — Depreciation study — Trade definition.

[N.H.] A document comparing the depreciation rates of a water utility with those of other New Hampshire water utilities did not fit the trade definition of a depreciation study;

accordingly, the filing of the document did not constitute compliance with a provision in a prior order requiring the utility to submit a depreciation study. p. 245.

2. PROCEDURE, § 32 — Modification of prior order — Hearing and notice.

[N.H.] The commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. p. 245.

3. PROCEDURE, § 32 — Modification of prior order — Due process.

[N.H.] The case of *Meserve, et al. v. State*, 119 N.H. 149 (1979), should not be read to limit the commission's ability to alter, modify, or amend prior orders to those situations involving a mistake of law or fact; rather, the case should be read to allow modification of prior orders so

long as the requirements of due process are met. p. 245.

4. RATES, § 651 — Procedure and practice — Settlement orders — Modifications.

[N.H.] In modifying an order accepting a water rate settlement to remove a provision requiring the utility to file a depreciation study prior to the filing of its next rate case, the commission rejected the argument that modification would render the settlement process meaningless. p. 245.

5. RATES, § 651 — Procedure and practice — Settlement orders — Modifications.

[N.H.] The commission modified an order accepting a water rate settlement to remove a provision requiring the utility to file a depreciation study in advance of its next rate case where the utility alleged that it was in need of expeditious rate relief due to its precarious financial position. p. 245.

6. RATES, § 651 — Procedure and practice — Settlement orders — Modifications.

[N.H.] Modification of an order accepting a water rate settlement to remove a provision requiring the utility to file a depreciation study prior to the filing of its next rate case, was limited to allowing that next rate proceeding to move forward; the utility remained obligated to file a depreciation study within six months of the completion of its rate case, unless and until the commission directs otherwise. p. 245.

APPEARANCES: J. Michael Love, Esquire on behalf of Southern New Hampshire Water Company, Inc.; Michael Holmes, Esquire and Joseph Rogers, Esquire of the Office of Consumer Advocate for the residential ratepayers of New Hampshire; Eugene F. Sullivan, III on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 1, 1989, the commission received a notice of intent to file rate schedules pursuant to N.H. Admin. Rules, Puc 1603.02 from Southern New Hampshire Water Company, Inc. (Southern). On January 5, 1990, the commission received prefiled testimony and exhibits, rate design schedules and workpapers, a long range facilities plan and revised tariff pages, pursuant to RSA 378:9, RSA 378:20 and RSA 378:28 and Puc 1603.03.

On February 12, 1990, the commission issued order no. 19,711 rejecting the above filings by Southern pursuant to RSA 541-A:14, II (a). The commission based the above action on the fact that Southern had not supplied written testimony requesting rate design, had not filed a complete test year and failed to file a depreciation study as stipulated and ordered in Docket DR 87-135.

On February 28, 1990, Southern filed a motion for reconsideration and rehearing of

order no. 19,711 pursuant to RSA 541:3. Said motion for rehearing included a stipulation

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between Southern and the staff of the commission reached on February 16, 1990 concerning order no. 19,711. On March 7, 1990, the Office of Consumer Advocate filed an objection to Southern's motion for rehearing. Furthermore on March 16, 1990, Southern filed a request for emergency rates pursuant to RSA 378:9. On March 13, 1990, the commission issued report and order no. 19,754 (75 NH PUC 169) accepting the stipulation between staff and Southern concerning the cost of service study and the insertion of all revised testimony, workpapers and schedules to comply with the twelve-month filing requirements. The commission further ordered that a hearing be held on April 3, 1990, pursuant to RSA 365:28 on Southern's request to modify report and order no. 19,153 in Docket DR 87-135.[1(11)] On March 19, 1990, Southern filed a document labeled as a "study of depreciation".

II. *Position of the Parties*

Southern took the position at the hearing held on April 3, 1990, that it had filed a depreciation study as stipulated in Docket DR 87-135 and thus the scheduled hearing for a waiver pursuant to RSA 365:28 was unnecessary. The Consumer Advocate took the position that the "study of depreciation" was not a depreciation study and further that the commission could not pursuant to RSA 365:28 waive the requirement of a depreciation study as the parties had stipulated to said requirement and said stipulation provided that any party could withdraw from the stipulation if any of the terms were not accepted by the commission.

Staff took the position that the March 9, 1990, "study of depreciation" was not a depreciation study, and, thus, a waiver would be required in order for Southern to file a rate case in this docket. Staff further expressed its concern that a waiver may not be possible pursuant to the New Hampshire Supreme Court decision in *Meserve, et al v. State,* 119 N.H. 149 (1979).

III. *Findings of Fact*

[1-6] The initial issue is whether the document submitted by Southern is a depreciation study. Resolution of this issue depends on how we construe the word "study". While Southern's position may possibly be supported by a broad reading of the ordinary meaning of "study", RSA 21:2, the better practice here is to apply our administrative expertise to ascertain whether the task performed by Southern is consistent with the trade definition of a depreciation study. The record consists of the testimony of Robert Lessels, the commission's water engineer, which stated that the Southern "study of depreciation" is not a depreciation study in the normal meaning of said concept, but is rather a comparison of depreciation rates between Southern and other New Hampshire water utilities. Additionally, Southern itself implicitly conceded that the document submitted was not a depreciation study as the term is used in the trade. Southern's attorney represented that Southern had intended to comply with the commission's requirement until it concluded that: 1) such a study would be more costly than anticipated; and 2) such a study would be of little value. Based on that evidence, the commission finds that a depreciation study is based on the historical data of the company on the life of its assets. Thus, the document submitted by Southern is not consistent with the trade definition of a depreciation study.

Having determined that Southern did not satisfy the terms of the commission's order adopting the stipulation, we must next address the question of a waiver. Pursuant to RSA 365:28, entitled "Altering Orders" the commission may "[a]t anytime after the making and entry thereof ... after notice and hearing alter, amend, suspend, annul, set aside or otherwise modify any order made

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by it." In the case at hand, Southern has requested a waiver of the condition that it file a depreciation study prior to the filing of its next rate case. The staff stipulated to such a waiver based on the fact that historical data provided by other similar water utilities shows that a depreciation study would merely increase the rates requested by Southern in this case. Furthermore, staff did not believe that it was of pressing importance that a depreciation study be done when balanced against

Southern's allegations that it is in need of emergency rates due to its precarious financial position.

The staff raised a concern that the *Meserve* case may limit the commission's ability to alter, modify or amend previous orders to only those situations where there has been a mistake of law or fact. We do not read the case that narrowly; although the *Meserve* facts involved the modification of an *ultra vires* order (a mistake of law or fact), the holding was based on a due process rationale. The court held that "the legislature has directed the . ... [commission] ... to exercise continuous jurisdiction by authorizing the power to `alter, amend, suspend, annul, set aside or otherwise modify', any of its previous orders ..." 119 N.H. at 154-55. "The commission's statutory power to reconsider and modify an existing order is not unlimited. [citations omitted]. The amendment or rescission must still meet the requirement of due process and must be legally correct." 119 N.H. at 152. Here, due process was satisfied in that the modification came after notice and hearing. Thus, the commission concludes that *Meserve* does not bar the modification of our previous order.

We also reject the Consumer Advocate's argument that a modification will render the settlement process meaningless. The order accepting the settlement agreement was applicable to the same extent as all commission orders with the consequence that Southern could not initiate the instant rate case unless and until it had filed a depreciation study or initiated a proceeding to modify the filing requirement after all stipulation parties were provided with notice and an opportunity to be heard.

Accordingly, the commission will modify order no. 19,153 in Docket DR 87-135 requiring Southern to file a depreciation study prior to the filing of a rate case. The modification has been granted in reliance on the allegation that Southern is in need of expeditious relief due to its precarious financial position. Our modification of the depreciation study filing requirement only allows the instant rate proceeding to move forward; the allegation of financial emergency may not withstand evidentiary scrutiny. Thus, our order is without prejudice to the Consumer Advocate or any other party to advance any position on any issue on the merits. As this is a new rate case all issues addressed in the previous rate case can be readdressed.[2(12)]

Finally, we limit our modification so that it only allows the instant rate proceeding to move forward. Southern will continue to be obliged to file a depreciation study within six months of completion of this rate proceeding unless the commission directs otherwise. All parties are free to revisit this requirement in the context of the instant proceeding.

Our order will issue accordingly.

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ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that report and order no. 19,153 in Docket No. DR 87-135 is modified, in that Southern New Hampshire Water Company, Inc. will not be required to file a depreciation study prior to the filing of the rate case in this docket; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall file a depreciation study within six (6) months of completion of this rate case unless the commission rules otherwise in the course of the instant rate proceeding; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall follow the stipulations reached between itself and staff as delineated in report and order no. 19,754.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1990.

FOOTNOTES

[1]Order No. 19,153 ordered Southern to file a depreciation study prior to filing its next rate case.

[2]This result is not inconsistent with the stipulation term that allows any party to withdraw from the agreement if it is not adopted in its entirety by the commission.

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NH.PUC*04/25/90*[50972]*75 NH PUC 247*Northeast Hydrodevelopment Corporation

[Go to End of 50972]

75 NH PUC 247

Re Northeast Hydrodevelopment Corporation

DE 89-257
Order No. 19,803

New Hampshire Public Utilities Commission

April 25, 1990

ORDER defining the scope and establishing the schedule for a proceeding to review a petition to require an electric utility to wheel to an ultimate consumer qualifying facility power produced by a limited electrical energy producer.

COGENERATION, § 14 — Utility service to QFs — Wheeling — To ultimate consumers.

[N.H.] The scope a proceeding to review a petition to require an electric utility to wheel to an ultimate consumer qualifying facility (QF) power produced by a limited electrical energy

producer was limited to determinations of whether the performance of the proposed wheeling service would entail substantial cost or risk to the electric utility and whether the proposed wheeling transaction would be inconsistent with the public good; however, the utility was authorized to create a record through an offer of proof to support its position that the commission should expand the scope of the proceeding to examine the total effect of allowing such wheeling transactions.

APPEARANCES: Howard Moffett, Esq. on behalf of Northeast Hydrodevelopment Corporation; Thomas Getz, Esq. on behalf of Public Service Company of New Hampshire; Lee F. Mayhew, Town Administrator, Town of Milford; and Eugene F. Sullivan, III, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 18, 1989, Northeast Hydrodevelopment Corporation (NHC) filed a power purchase agreement between McLane Dam Hydroelectric Project (McLane) a limited producer of electrical energy in the Town of Milford, New Hampshire for commission approval pursuant to RSA 362-A:2-a requiring Public Service Company of New Hampshire (PSNH) to wheel power to an ultimate consumer, the Town of Milford.

On March 6, 1990, the commission issued order no. 19,740 setting a prehearing conference for March 22, 1990 at 2:00 p.m. and a hearing on the merits for May 17, 1990. On March 22, 1990, the parties met and agreed to a procedural schedule for the submission of and responses to initial data requests and a hearing on the issue of scope and PSNH's motion to dismiss.

On April 2, 1990, the commission issued report and order no. 19,776 adopting the agreed upon procedural schedule. At the hearing held on April 5, 1990, the parties agreed to argue and submit memoranda on the motion to dismiss at the time of the hearing on the merits. The commission orally agreed to postpone arguments on the motion to dismiss until said time.

II. *Position of the Parties*

On the issue of scope, NHC took the position that it was an individual petitioner and the scope of the proceeding should be whether its petition to require wheeling by PSNH is not inconsistent with the public good, does not entail substantial cost or risk to PSNH and does not fail to protect the parties to the contract.

PSNH took the position that the scope of the docket should be what the effect would be of RSA 362-A:2-a on the public good and the risk to PSNH if any number of wheeling arrangements were entered into by limited electrical energy producers, i.e., qualifying facilities (QFs) under 5 megawatts.

Staff supported the position of NHC.

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III. *Commission Analysis*

The commission adopts the position of NHC and staff and will address only the issue presented by NHC in this case, that is, whether or not the 400 kilowatts proposed to be wheeled from McLane Dam to the Town of Milford will entail substantial cost or risk to PSNH and whether the proposed wheeling transaction is inconsistent with the public good. However, the commission will allow PSNH to create a record through an offer of proof to support its position that the commission must look at the total effect of allowing such wheeling contracts.

Appropriately the commission adopts the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

April 26, 1990	PSNH direct testimony prefiled.
May 3, 1990	NHC and staff data requests are due.
May 10, 1990	PSNH responses to NHC and staff data requests are due.
May 17, 1990	NHC and staff direct testimony are due.
June 4, 1990	Hearing on the merits.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the procedural schedule set forth in the foregoing report is hereby adopted; and it is

FURTHER ORDERED, that the scope of the docket shall be limited to whether or not Northeast Hydrodevelopment Corporation's proposal for wheeling is consistent with the standards set forth in RSA 362-A:2-a; and it is

FURTHER ORDERED, that PSNH be allowed to create a record through an offer of proof that such contracts must be examined generically, without constraining itself to this particular contract.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1990.

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NH.PUC*04/30/90*[50973]*75 NH PUC 248*EnergyNorth Natural Gas, Inc.

[Go to End of 50973]

75 NH PUC 248

Re EnergyNorth Natural Gas, Inc.

DR 90-045
Order No. 19,804

New Hampshire Public Utilities Commission

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April 30, 1990

ORDER approving revised cost of gas adjustment rates and approving a stipulation on interruptible gas pricing.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Gas distributor.

[N.H.] A natural gas distributor's proposed summer cost of gas adjustment rate of $0.0634 per therm was approved as just and reasonable. p. 249.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment rate — Interruptible gas pricing — Gas distributor.

[N.H.] In a cost of gas adjustment rate filing, the commission approved a stipulation permitting a gas distributor to price interruptible gas based on the price of third party gas as opposed to higher cost pipeline sales gas, whenever third party restrictions are in effect. p. 249.

APPEARANCES: Thomas Platt, Esq. of Orr and Reno and Jacqueline Fitzpatrick, Esq. on behalf of EnergyNorth Natural Gas, Inc; John Rohrbach of the Consumer Advocate's Office; James T. Rodier, Esq. for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

Page 248

I. *Procedural History*

On March 28, 1990 EnergyNorth Natural Gas, Inc. (ENGI or Company) filed with this commission Sixth Revised Page 1, Tariff NHPUC No.1 — gas. Said tariff provided for a 1990 summer cost of gas adjustment (CGA) of ($0.0435)/therm, before franchise tax. On April 19, 1990 the Company submitted a revision to Sixth Revised Page 1, increasing the proposed CGA credit to ($0.0634)/therm.

II. *Positions of the Parties*

EnergyNorth Natural Gas

In addition to Sixth Revised Page 1 and supporting attachments the Company submitted the pre-filed testimony of Mrs. Huber and Mr. Fleming. The purpose of Mrs. Huber's testimony was to present and explain the CGA and to propose that base rates be reduced by an amount roughly equal to the originally filed CGA credit. In addition Mrs. Huber's testimony noted that the CGA included demand charges associated with an LNG supply from Distrigas of Massachusetts delivered during the winter months.

On April 19, 1990 the Company withdrew its proposal to roll into base rates the CGA credit

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and amended Sixth Revised Page 1 to reflect the withdrawal of $434,520 of Distrigas demand charges.

Mr. Fleming's pre-filed testimony addressed a number of gas supply issues including the restriction of third party gas by Tennessee Pipeline Company (Tennessee); the introduction by Tennessee of imbalance penalties on third party gas purchases; the changes to ENGI's 1989/90 winter gas supply mix resulting from the abnormally cold temperatures in November and December of 1989; and an update on the progress of the NOREX project.

During the hearing held April 19, 1990, Mr. Fleming testified extensively on the matter of pricing gas to interruptible customers, a matter not covered in his pre-filed testimony. Specifically, Mr. Fleming stated that the Company's interpretation and application of the commission approved stipulation in DE 88-083 ("Interruptible Gas Sales Contracts") allowed the interruptible floor price to be based on the price of third party gas (as opposed to higher cost Tennessee sales gas) whenever third party restrictions were in effect. To require the Company to price interruptible service on the basis of higher cost Tennessee gas sales would, according to Mr. Fleming, cause interruptible customers to leave the system with the consequent loss of margins for firm ratepayers.

Staff

Staff's pre-filed direct testimony addressed two issues. First, staff objected to the inclusion in a summer CGA of demand charges related to the Distrigas LNG supply delivered during the winter months. Secondly, staff was concerned that the proposal to change base rates did not take into account the seasonal variation in gas costs. As a result staff concluded that the proposal to charge base rates lacked consistency and should be revised.

In pre-filed supplemental direct testimony staff addressed the issue of third party gas restrictions and their probable impact on the pricing of gas to interruptible sales customers. In essence, staff contended that the terms of the commission approved stipulation on interruptible gas pricing are applicable under all circumstances including periods when third party gas is restricted.

During cross-examination staff testified that the principles underlying the stipulation are well grounded in economic theory and should not be amended. Moreover, staff asserted that the terms of the stipulation are not ambiguous as claimed by the Company. Staff did concede, however, that the emergence of third party restrictions combined with the introduction of imbalance penalties made interruptible sales more risky for the Company. Staff suggested that concerns of this nature should be addressed in a separate proceeding but only after each party has had a reasonable opportunity to review and consider the new issues.

III. *Stipulation on Interruptible Gas Pricing*

[1, 2] Prior to the commission's public

meeting on Monday April 23, Chairman Smukler was notified by staff and the Company that a settlement had been reached. If adopted by the commission, the settlement would preclude the need for a commission determination of this issue at this time.

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The settlement provides that ENGI be permitted to price interruptible gas in accordance with its current practice and that the Company is not at risk for the pricing of interruptible gas up to and including the month of May 1990. If staff finds reason to protest, the commission will hold a hearing on or about May 18, 1990, so action may be taken in time for the June third party gas nominations. The Company allowed staff the opportunity to talk directly with three of its interruptible customers.

IV. *Commission Analysis*

The commission finds the proposed CGA rate of ($0.0634)/therm just and reasonable and in the public interest. We also find the settlement reasonable and will approve it.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that Sixth Revised Page 1, superseding Fifth Revised Page 1, N.H.P.U.C. No. 1-Gas, providing for a 1990 Summer Cost of Gas Adjustment of ($0.0634) per therm, before the franchise tax, for effect May 1, 1990 is approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in a newspaper having general circulation in the territories served.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1990.

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NH.PUC*04/30/90*[50974]*75 NH PUC 250*Northern Utilities, Inc. — New Hampshire Division

[Go to End of 50974]

75 NH PUC 250

Re Northern Utilities, Inc. — New Hampshire Division

DR 90-047
Order No. 19,805

New Hampshire Public Utilities Commission

April 30, 1990

ORDER approving a revised cost of gas adjustment rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Passback of recoupment surcharge overcollection.

[N.H.] The commission approved a revised cost of gas adjustment rate consisting of a surcharge credit of $0.2176 per therm; a credit for the passback of recoupment surcharge overcollections was included in the adjustment clause rate credit despite the fact that the

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overcollection was not related to the cost of gas.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; John S. Rohrbach, Economist for the Consumer Advocate; James J. Cunningham, Jr., PUC Examiner and George McCluskey, Utility Analyst, for Staff.

By the COMMISSION:

REPORT

On March 30, 1990 Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission Eighteenth Revised Page 24, Sheet No. 1, Superseding Seventeenth Revised Page 24, N.H.P.U.C. No. 7 providing for a 1990 Summer Cost of Gas Adjustment (CGA) effective May 1, 1990. This Cost of Gas Adjustment is a surcharge credit of $(.2176) per therm.

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An Order of Notice was issued setting the date of the hearing as of April 20, 1990 at 10:00 a.m. at the commission office in Concord, New Hampshire.

During the hearing the Recoupment Surcharge Overcollection was discussed.

Recoupment Surcharge Overcollection

The overcollection resulted from the Company not reconciling the recoupment of permanent rates during the term that temporary rates were in effect. The Company made the recoupment according to dates, not dollars. As a result the amount of $9,754 was overcollected. According to commission Order No. 19,312 (74 NH PUC 54) in Docket DR 88-029 issued January 30, 1989, the Company was required to file monthly tracking reports showing the amount it had recouped over a twelve-month period effective for meters read on and after February 1, 1989. The Company did not file this monthly tracking report and will be required to do so.

The Company is including this "Recoupment Surcharge Overcollection" as a credit in the Cost of Gas Adjustment. The credit is $(.0011) per therm. The Company advised the commission that this adjustment will be accounted for "below the line." That is, the passback will not be treated as a reduction in the monthly cost of gas and hence will not contribute to an undercollection during the 1990 summer period.

The commission believes that from a technical standpoint the Recoupment Surcharge Overcollection is not a cost of gas item. Therefore, it should not be included in the cost of gas adjustment. The Company witness agreed that the Recoupment Surcharge Overcollection is not a cost of gas item. However, due to the immaterial impact that this item has on the typical monthly residential bill $(.033), the commission will allow the passback to be included in this cost of gas adjustment for the 1990 Summer period. The Company must file a monthly tracking report showing the amount it has passed back over the six-month period effective for meters read on and after May 1, 1990. In addition, the Company must file a reconciliation of the temporary rate recoupment with this commission upon completion of the Summer Cost of Gas period.

Our order will issue accordingly.

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ORDER

Upon consideration of the foregoing report which is made a part hereof; it is

ORDERED, that Eighteenth Revised Page 24, Sheet 1, Superseding Seventeenth Revised Page 24, of N.H.P.U.C. No. 7-Gas providing for a cost of gas adjustment of $(.2176) per therm, be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the Company shall file a monthly tracking report showing the amount of the temporary recoupment over the twelve-month period effective for meters read on and after February 1, 1989; and it is

FURTHER ORDERED, that the Company shall file a monthly tracking report showing the amount of the temporary recoupment over the six month period effective for meters read on and after May 1, 1990; and it is

FURTHER ORDERED, that Northern Utilities, Inc. — New Hampshire Division file a reconciliation of the temporary rate recoupment with this commission upon completion of the Summer Cost of Gas Period; and it is

FURTHER ORDERED, that the over/under collection of Northern Utilities, Inc. — New Hampshire Division adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1990.

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NH.PUC*04/30/90*[50975]*75 NH PUC 252*Northern Utilities, Inc. — Salem Division

[Go to End of 50975]

75 NH PUC 252

Re Northern Utilities, Inc. — Salem Division

DR 90-048
Order No. 19,806

New Hampshire Public Utilities Commission

April 30, 1990

ORDER revising the cost of gas adjustment rate of a propane distributor.

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AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Propane distributor.

[N.H.] A propane distributor's proposed cost of gas adjustment rate of $0.2082 per therm was approved as just and reasonable.

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i. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Propane distributor.

[N.H.] Discussion, in a cost of gas adjustment rate proceeding, of propane cost forecasts, unaccounted for gas, scheduling of propane deliveries, and cost of gas reporting requirements.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; John S. Rohrback, Economist for the Consumer Advocate; James J. Cunningham, Jr., Examiner and George McCluskey, Utility Analyst, for Staff.

By the COMMISSION:

REPORT

On March 30, 1990 Northern Utilities, Inc., Salem Division (Salem or the company), a public utility engaged in the business of supplying gas in the Towns of Salem and Pelham, New Hampshire, filed with this commission 1st Revised Page 28, Superseding Original page 28, N.H.P.U.C. (issued January 16, 1990), providing for the 1990 Summer Cost of Gas Adjustment (CGA) effective May 1, 1990. The revised filing requested a CGA rate of $0.2082 per therm excluding the state franchise tax.

March 27, 1990, this commission issued an Order of Notice setting the hearing date of April 20, 1990 at 10:00 a.m. at the commission office in Concord, New Hampshire.

Areas covered through direct testimony and cross examination included an explanation of the 1st Revised Page 28 and the following: Company Use/Unaccounted for, forecast cost of propane during Summer 1990 period, propane receipts during the pre-summer period and reporting requirements.

Company Use/Unaccounted For

The percentage company use/unaccounted for is 8.6%, more than double what it is in the New Hampshire division. The company witness, Joseph A. Ferro, testified that the meter replacement program would reduce the percent unaccounted for by producing more accurate meter readings. Of the 17 meters in Pelham, 14 have already been replaced and the remaining 3 will be replaced prior to June 1, 1990. Of the 71 meters in the Town of Salem, 15 have been added since purchasing Petrolane-Southern New Hampshire Gas Company (Petrolane-Southern) on May 1, 1989. The 56 meters associated with the former Petrolane-Southern customers will be replaced in conjunction with the planned conversion of the Salem underground propane system to natural gas. Northern expects to convert the propane system to natural gas by November 1, 1990.

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Forecast Cost of Propane

Staff noted that the cost of propane in the current filing is the same as the cost of propane in last year's summer period (i.e., $.319 per gallon). The witness testified that, based on later information, as of April 20, 1990 the forecast is

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roughly $.34 per gallon. The witness added that this increase over the forecast of $.319 per gallon is not significant enough for the company to revise its filing.

Scheduling of Propane Deliveries

Staff noted that a stretch out in the scheduling of deliveries from April to May (with an assumed $.319 per gallon forecast) would reduce propane costs during the summer period. The witness agreed that there is some flexibility in the scheduling of receipts and that the company would make every effort to take advantage of the lower summer price by stretching out the schedule of deliveries. The witness pointed out that savings could not be achieved during the Summer 1990 because the latest price is higher than the original forecast. However, the witness agreed that had the forecast remained at $.319 per gallon, the company would have attempted to stretch-out deliveries in order to generate savings for the ratepayers.

Reporting Requirements

Staff noted that certain reports for the 1989 summer period had not been filed: Analysis of Operating Revenue and Monthly Income Statement. The company witness testified that these reports as far as he could ascertain were not required to be filed.

In reviewing the transcript and stipulation agreement regarding the transfer of Petrolane-Southern New Hampshire Gas Company, Inc. ("Southern New Hampshire") to Northern (DR 88-109), the Commission finds that all operating costs associated with providing service to customers were to be merged on the books and records of Northern. Therefore, the commission will not require that these operating costs be separately reported. Regarding monthly cost of gas reports, these reports have been separately filed with the commission since the date of the transfer and the company will continue to file these monthly reports.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is

ORDERED, that 1st Revised Page 28, Superseding Original Page 28, N.H.P.U.C. tariff of Northern Utilities, Inc. — Salem Division, providing for a cost of gas adjustment of $0.2082 per therm for the period of May 1, 1990 through October 30, 1990 is approved by this Order, said rates to become effective with all billings issued on or after May 1, 1990; and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one

time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utility classification in the Franchise Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1990.

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NH.PUC*04/30/90*[50976]*75 NH PUC 253*EnergyNorth Natural Gas, Inc.

[Go to End of 50976]

75 NH PUC 253

Re EnergyNorth Natural Gas, Inc.

DE 88-136, DR 89-181
Order No. 19,807

New Hampshire Public Utilities Commission

April 30, 1990

ORDER revising the schedule for a proceeding to review a propane transfer and related cost allocation between a gas distributor and an affiliated propane supplier.

AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement — Propane transfers — Transactions with affiliates — Gas distributor.

[N.H.] The commission revised the schedule for a proceeding to review a propane transfer and related cost allocation between a gas distributor and an affiliated propane supplier.

By the COMMISSION:

ORDER

WHEREAS, the commission in report and order no. 19,786 (75 NH PUC 221) directed staff, after consultation with EnergyNorth Natural Gas (ENGI), to recommend a revised procedural schedule; and

WHEREAS, the staff and ENGI recommend by letter received April 26, 1990 that the procedural schedule governing the remainder of this separate proceeding be as follows;

[Graphic(s) below may extend beyond size of screen or contain distortions.]

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April 27, 1990  Company Testimony Due;
May 11, 1990    Staff and Consumer Advocate
                  Data Requests due;
May 25, 1990    Company Data Responses Due;
June 15, 1990   Staff and Consumer Advocate
                  Testimony Due;
June 29, 1990   Company Data Requests Due;
July 13, 1990   Staff and Consumer Advocate
                  Data Responses Due;
July 20, 27, 30 Hearings on the Merits;
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and

WHEREAS, on April 27, 1990 the Company submitted its prefiled testimony; it is

ORDERED, that the above schedule be approved and shall govern these proceedings unless otherwise ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1990.

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NH.PUC*05/01/90*[50977]*75 NH PUC 254*Keene Gas Corporation

[Go to End of 50977]

75 NH PUC 254

Re Keene Gas Corporation

DR 90-046
Supplemental Order No. 19,808

New Hampshire Public Utilities Commission

May 1, 1990

ORDER revising the cost of gas adjustment rate of a gas distributor.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Gas distributor.

[N.H.] A gas distributor's proposed cost of gas adjustment rate of $0.0875 per therm was approved as just and reasonable.

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i. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Cost of gas adjustment — Procurement practices — Gas distributor.

[N.H.] Discussion, in a cost of gas adjustment rate proceeding, of various product procurement options.

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APPEARANCES: For Keene Gas Corporation: Robert F. Egan, General Manager; for Consumer Advocate: John S. Rohrbach; for Staff: Richard B. Deres, PUC Examiner and George R. McCluskey, Utility Analyst.

By the COMMISSION:

REPORT

On March 31, 1991, Keene Gas Corporation (Keene or the Company), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with this commission certain revisions to its tariff providing for a 1990 Summer Cost of Gas Adjustment (CGA), effective May 1, 1990. The

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filing requests a CGA rate of $(0.0875) per therm, excluding the N.H. State Franchise Tax, which is a decrease from the rate of $(0.1118) per therm approved by the commission for the 1989 summer period.

A duly noticed public hearing was held at the commission's office in Concord, N.H. on April 20, 1990.

Areas covered through direct testimony of the Company witness included contracts, questions concerning supplies, and unaccounted for gas.

[i] Product procurement continues to be the responsibility of the Company President. As of the date of the hearing the Company has not obtained any contracts for the summer period. This past winter period's sharp rise in propane prices has returned to a more normal range and appears to have stabilized. For this reason the Company intends to continue to purchase product from its normal suppliers by constantly checking and obtaining the best available prices.

After this past winter's experiences with cost and supply problems, the question of securing twelve (12) month contracts is being examined. As explained by the witness, contracts of this type usually have a winter/summer ratio of 2:1. However, Keene's year round usage does not conform to this ratio. In addition, the Company has some reservations about being locked into what might turn into an unfavorable price position as time passes. It tends to prefer shorter six (6) month contracts which allows it some flexibility with suppliers as well as price. With regard to reliability, the witness indicated that the Company is still weighing the various supply options with an eye to the forthcoming winter period.

Questions concerning possible disruptions with supplies of gas were raised as a result of the explosion and temporary closing of the Texas Eastern pipeline near Selkirk, NY this past March. One of Keene's main suppliers, EIL Petroleum, sells propane from this location. The witness explained that arrangements were made with EIL which allowed Keene to draw propane from the Sea 3 facility in Newington at no additional costs while the pipeline is under repairs. Those repairs are expected to be completed on or about May 4th.

Several years ago Keene experienced a high level of unaccounted for gas. The Company installed additional equipment and took other steps to remedy this situation. Unaccounted for gas is reported to be 5.2% with 3.6% experienced during the past summer period. These amounts

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which are well within an acceptable range.

The projected costs, sales, and adjustments to the CGA filing are consistent with those approved by the commission in past CGA's. The commission finds that Keene Gas Corporation's CGA of $(0.0875) per therm is just and reasonable, therefore accepts such as filed.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the 11th Revised Page 27, Superseding 10th Revised Page 27 of Keene Gas Corporation Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $(0.0875) per therm for the period May 1, 1990 through October 31, 1990 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this order become effective with all billings issued on or after May 1, 1990; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by a one time publication in newspapers having a general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, order no. 15,624.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1990.

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NH.PUC*05/01/90*[50978]*75 NH PUC 256*Pennichuck Water Works, Inc.

[Go to End of 50978]

75 NH PUC 256

Re Pennichuck Water Works, Inc.

DR 87-244
Order No. 19,809

New Hampshire Public Utilities Commission

May 1, 1990

ORDER approving a stipulation regarding the inclusion in rate base of water utility investment associated with service to a special contract customer.

VALUATION, § 234 — Property included or excluded — Investment associated with special contract service — Water utility.

[N.H.] The commission approved a stipulation permitting a water utility to include in rate base capital investment associated with service to a special contract customer where the utility

agreed to forego the collection of revenues associated with the investment pending the completion of a rate case in which the investment would be examined under the used and useful principle.

APPEARANCES: Mary Ellen Kiley, Esquire on behalf of Pennichuck Water Works, Inc.; Joseph Rogers, Esquire of the Consumer Advocate's Office for the residential ratepayers; and Eugene F. Sullivan, III, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On October 28, 1988, the commission issued report and order no. 19,213 (73 NH PUC 443) in Docket DR 87-224. Said report and order adopted a stipulation between the parties in said case granting Pennichuck Water Works, Inc. (Pennichuck) a step adjustment for all plant additions and deletions on or before September 30, 1989, not including the rate base reflected in Exhibit B of the agreement, related depreciation expenses and property taxes, deferred taxes and depreciation reserve related to the rate base adjustment, revenues derived from customers on or between October 1, 1988 and September 30, 1989 and contributions in aid of construction and balances for deferred assets in rate base as of September 30, 1989.

On September 22, 1989, Pennichuck filed a notice of intent to file for a step adjustment pursuant to said report and order. On October 10, 1989, Pennichuck filed revised tariffs in support of proposed changes and supporting financial exhibits for a 9.12% increase in its present rates. On October 31, 1989, the commission issued order no. 19,593 (74 NH PUC 427) suspending the proposed tariffs and set a hearing date for December 1, 1989. On November 17, 1989, Pennichuck filed revised tariff pages, a revised report of proposed changes and supplemental financial exhibits reflecting changes agreed to by the staff, Pennichuck and the Consumer Advocate. The revision reflected a 5.06% increase in rates. On November 17, 1989, the commission issued order no. 19,615 (74 NH PUC 455) accepting the revised tariff pages effective for service rendered on or after November 1, 1989. The revised tariffs reflected a step increase for all improvements excluding the Milford line.

On March 7, 1988, the commission issued report and order no. 19,213 in Docket DR 87-224 providing for a special contract between the Town of Milford and Pennichuck wherein Pennichuck would provide wholesale water to the Town of Milford pursuant to a yearly contract. In its order the commission noted that any stranded investment that may result in the event that Milford cannot fulfill its contractual obligations will be borne by the company. On November 17, 1989, the commission issued order no. 19,615 (74 NH PUC 455) in this docket setting a hearing for December 1, 1989 in order for the commission to clarify report and order no. 19,027 (73 NH PUC 88) in Docket

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DR 87-224. In reliance on its motion for rehearing the Consumer Advocate requested that the December 1, 1989, date be used as a prehearing conference. In response to the Consumer Advocate's argument and motion, the parties met and discussed a procedural schedule in order for testimony to be submitted on whether the Milford line should be included in rate base, leaving open to the company the argument that the commission had provided for such in Docket DR 87-167, Order No. 19,027. The parties submitted a stipulated procedural schedule to the commission which was adopted by order no. 19,649 issued on December 21, 1989. A duly noticed hearing on the merits was held on March 8, 1990.

II. *Position of the Parties*

Staff, the Consumer Advocate and Pennichuck agreed that the Milford line and Merrimack Vault would be included in rate base, however, Pennichuck would forego collecting revenues which would be earned as a result of the inclusion of these items in rate base. The parties indicated that they entered into the above stipulation due to the fact that inclusion of the Milford line and the Merrimack Vault would have no effect on rates at this time, and any possible effect on revenues would occur with the next rate case.

III. *Commission Analysis*

In Docket DR 87-167, Report and Order No. 19,027 (73 NH PUC 88) the commission approved a special contract between the Town of Milford and Pennichuck regarding the Milford line at which time the commission could analyze any outstanding issues concerning the Milford line. The commission's concern then and now relates to stranded investments if Milford does not meet its contractual obligations. The Commission does not consider that any risk incurred by the Milford line should be borne by Pennichuck's other ratepayers. The agreement reached by staff, the Consumer Advocate and Pennichuck does not affect any of the ratepayers as the inclusion of the Milford line and the Merrimack Vault will have no effect on revenues. However, at such time as the company applies for a rate increase the Milford line will be examined under the used and useful principle to determine whether it should be included as a part of rate base. Furthermore, the commission's order on stranded investments remains intact.

The commission finds that including the Milford line and the Merrimack Vault in rate base with Pennichuck foregoing any related revenues through this inclusion is just and reasonable. Therefore, we accept the stipulation of the parties until such time as Pennichuck files a rate case which includes the Milford line.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the stipulation set forth in the foregoing report between the parties be and hereby is adopted; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file tariff pages in compliance with the foregoing order.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1990.

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NH.PUC*05/01/90*[50980]*75 NH PUC 260*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50980]

75 NH PUC 260

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,811

New Hampshire Public Utilities Commission

May 1, 1990

ORDER making the managing agent for the construction and operation of the Seabrook nuclear plant a mandatory party to a proceeding involving the proposed merger of Public Service Company of New Hampshire with Northeast Utilities.

CONSOLIDATION, MERGER, AND SALE, § 65 — Procedure — Parties — Electric utility merger.

[N.H.] The New Hampshire Yankee division of Public Service Company of New Hampshire — the managing agent for the construction and operation of the Seabrook nuclear plant — was made a mandatory party to a proceeding involving the proposed merger of Public Service Company of New Hampshire with Northeast Utilities; it was found the participation of New Hampshire Yankee would assist the commission in making required determinations as to the probable post-merger operating costs of the Seabrook plant.

By the COMMISSION:

ORDER

WHEREAS, the New Hampshire Yankee division of the Public Service Company of New Hampshire (NHY) is the managing agent for the construction and operation of the Seabrook Nuclear Power Plant; and

WHEREAS, PSNH owns a 35.56942%

share of said Seabrook Nuclear Power Station (Seabrook); and

WHEREAS, docket DR 89-244 involves, *inter alia*, the proposed merger of PSNH with Northeast Utilities (NU) and the transfer of PSNH ownership in Seabrook to North Atlantic Energy Corporation as a wholly owned subsidiary of NU; and

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WHEREAS, in the docket, the commission must determine whether or not it is reasonable to assume that Seabrook can be operated under NU management for approximately $95 million dollars, as opposed to the substantially higher cost projections reflected in the current NHY Seabrook operating budget; and

WHEREAS, the commission must also determine whether Seabrook operating and maintenance expense savings resulting from the Joint Plan of Reorganization will result in a projected capitalized value of $277,507,000 allocable to PSNH over the 40 year life of the Seabrook plant; and

WHEREAS, NHY, as managing agent for Seabrook, is in a unique position to address the reasonableness of said Seabrook cost projections; and

WHEREAS, Consumer Advocate, on April 6, 1990, filed a motion with the commission to subpoena the NHY President Edward Brown; and

WHEREAS, in response to said motion of the Consumer Advocate, NHY agreed, and the commission so ordered from the bench, that said Edward Brown appear at the commission to testify on April 25, 1990, concerning the operating costs of the Seabrook Nuclear power plant; and

WHEREAS, the commission finds that Mr. Brown's testimony on April 25, 1990, contributed to the record on the issue of Seabrook costs and projected savings attributable to NU management and the commission further finds that NHY's continuing participation in these proceedings would be in the public good; and

WHEREAS, the commission has previously required NHY to be a party to other related proceedings currently before the commission in docket DR 90-019, regarding the Seabrook Nuclear Decommissioning Charge, and docket DR 90-059, concerning the energy cost recovery mechanism for PSNH; and

WHEREAS, NU objects to joinder of NHY to these proceedings on the grounds that NHY is a division of PSNH and PSNH is already a party to the proceedings; and

WHEREAS, the record shows that NHY President Brown reports not only to PSNH management but also to the Seabrook joint owners and NHY is in fact a distinct entity from PSNH despite its equal status as a division of PSNH; it is

ORDERED, that NHY is hereby made a mandatory party to docket DR 89-244 so far as its interests may appear.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1990.

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NH.PUC*05/02/90*[50979]*75 NH PUC 257*Claremont Gas Corporation

[Go to End of 50979]

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Re Claremont Gas Corporation

DR 90-044
Order No. 19,810

New Hampshire Public Utilities Commission

May 2, 1990

ORDER revising the cost of gas adjustment rate of a gas distributor.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Rate revision — Gas distributor.

[N.H.] The cost of gas adjustment rate for

Page 257

a gas distributor was set as a surcharge credit of $0.0358 per therm. p. 258.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Cost of gas adjustment — Procurement practices — Competitive bidding — Gas distributor.

[N.H.] A gas distributor was directed to submit to the commission letters containing responses to bids from potential suppliers. p. 259.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Cost of gas adjustment — Storage charges — Payments to affiliate — Gas distributor.

[N.H.] A gas distributor was directed to file monthly retail throughput reports in gallons for use in determining storage charges provided to an affiliated, nonregulated propane retailer. p. 259.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 65 — Cost of gas adjustment — Administrative review — Gas distributor.

[N.H.] A gas distributor was directed to submit its 1989 general ledger for examination by commission staff. p. 259.

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i. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Supply interruption — Gas distributor.

[N.H.] Discussion, in a proceeding to revise the cost of gas adjustment rate of a gas distributor, of a propane supply interruption associated with a pipeline explosion. p. 258.

APPEARANCES: For Claremont Gas, Joseph Broomell; Consumer Advocates Office, John Rohrbach; Staff, Stuart Hodgdon and Mary Jean Newell.

By the COMMISSION:

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REPORT

PROCEDURAL HISTORY

[1] On March 30, 1990, Claremont Gas Corporation, (Claremont or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission 128th Revision, Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit 1). Said tariff provided for a 1990 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1990. The proposed Cost of Gas Adjustment is a surcharge credit of ($0.0358) per therm, before the franchise tax. This is a decrease of ($0.3108) per therm over the current effective rate of $0.2750.

An Order of Notice was issued setting hearings for April 19, 1990. It was further ordered that a copy of the Order of Notice be published in a local newspaper.

ISSUES

During the hearing the following issues were addressed: a.) the Selkirk N.Y. supply interruption; b.) competitive bidding; c.) retail through-put report; d.) lost and unaccounted for gas; e.) Claremont's general ledger; and f.) computation errors.

SELKIRK, N.Y. SUPPLY INTERRUPTION

[i] Claremont is an affiliate of Synergy Corporation, a non-regulated propane retailer. All propane purchased by Claremont is obtained from Synergy which in turn obtains the product from the Texas Eastern terminal at Selkirk, New York. A pipeline explosion at Selkirk in March caused a supply interruption.

The Company witness, Mr. Joseph Broomell, was questioned by staff on how this has affected Claremont's source of supply and its costs. The witness explained that Selkirk has been down for a couple of months and is supposed to reopen next month. In the interim Selkirk has honored its commitments with supply and pick up in Rhode Island. Mr. Broomell

stated that this has had little effect on Claremont's cost for product and freight. The Summer CGA is not affected because the terminal in New York is expected to be operational shortly after May 1st.

COMPETITIVE BIDS

[2] On the Report and Order from the Mid-Winter CGA there was a requirement made that Claremont was to institute a competitive bidding process and to include the details of each bid in its next CGA filing. These bids were not filed with this Summer CGA.

Staff questioned the witness about these requirements. He stated that bids were sought, however, no companies would give them a fixed bid or fixed price contract. After contacting several propane suppliers, the witness's opinion was that these companies were very reluctant to get into supply contracts especially after the supply and price escalation problems of the winter period. The witness believed that any bids whether fixed or not would result in higher prices for Claremont and its customers. He stated that Synergy offers Claremont a dependable supply with

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a fixed price and this is most beneficial to Claremont's customers.

Staff's position was that these bids are required and under the recently signed Claremont Compensation for Propane Storage Service Agreement, bids will have to be filed if Synergy expects the lower rate for through-put for retail. The Agreement states "... the Company shall charge Synergy 2.1¢ per through-put gallon if, and only if, it can establish to the satisfaction of the staff and the commission that the liquified petroleum gas it receives from its parent company, Synergy, at cost is .75¢ or more less in price than the cost to Claremont to obtain said liquified petroleum gas on the open market on its own." Therefore, staff has requested that the commission order these bids to be submitted and filed as Exhibit #2.

RETAIL THROUGH-PUT REPORT

[3] The recently signed Claremont Compensation for Propane Storage Service Agreement charges Synergy the sum of 2.6¢ or 2.1¢, per through-put gallon for storage provided to Synergy for its retail operations at Claremont. It is, therefore, important that a report of the retail through-put be submitted monthly. This will provide staff with the proper information to determine that the Agreement is being honored.

LOST AND UNACCOUNTED FOR GAS

Claremont has been providing monthly reports on its lost and unaccounted for gas which at one time showed a 16% loss factor. This ongoing study is to determine the correct level of unaccounted for gas. In Order No. 19,632 the commission accepted the eight percent (8%) factor of estimated demand until the study is completed.

Mr. Broomell testified that upgrading and repairs to the gas system are being made. Claremont has purchased 825 new gas meters, most of which have been installed. The remainder will be installed in the very near future. Claremont also has purchased and installed a new calorimeter. These two items have led to the drop in the loss and unaccounted for rate which is now around 10%. Further improvements are being studied to reduce this rate to an acceptable level.

CLAREMONT'S GENERAL LEDGER

[4] During its examination of the filed Summer CGA for Claremont, Staff requested an examination of the utility's General Ledger. Claremont's response was that Synergy would mail this information. Upon staff's arrival at Claremont, the General Ledger was not there. The witness stated that he has recently been on vacation and because of this he was unaware of the request. He testified that upon his return to New York, he would have the General Ledger sent to Claremont for staff inspection.

COMPUTATION ERRORS

On Schedule E of the Summer CGA there were several minor errors found from staff's audit of company records. October 1 to 8, gallons received should read 18,736 not 18,421 per invoice #702271. Total cost should be

$7,007.43 not $6,890.56. Monthly gallons for October should read 37,124 not 36,809. The

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monthly cost for October should be $13,884.72 not $13,767.86. The cost per gallon does not change, therefore, this report is materially acceptable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Claremont Gas Corporation, 128th Revision, Page 12-2, NHPUC No. 9 — Gas, issued March 30, 1990 for effect May 1, 1990 through October 31, 1990, providing for a Summer Cost of Gas Adjustment of ($0.0358) per therm, before the franchise tax, is approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in a newspaper having general circulation in the territories served; and it is

FURTHER ORDERED, that Claremont Gas Corporation must submit letters containing responses to bids which are requested to be filed as Exhibit #2; and it is

FURTHER ORDERED, that Claremont file monthly retail through-put reports in gallons for use in determining storage charges provided to Synergy; and it is

FURTHER ORDERED, that Synergy provide Claremont its 1989 Utility General Ledger to be examined by staff.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1990.

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NH.PUC*05/04/90*[50981]*75 NH PUC 261*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50981]

75 NH PUC 261

Re Public Service Company of New Hampshire/Northeast Utilities

DR 89-244
Order No. 19,812

New Hampshire Public Utilities Commission

May 4, 1990

PROTECTIVE ORDER prohibiting public disclosure of proprietary personnel information submitted in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

PROCEDURE, § 16 — Proprietary information — Protective order.

[N.H.] The commission issued a protective order prohibiting public disclosure of proprietary

personnel

information submitted in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire; the proprietary personnel information consisted of a list of utility employees scheduled for termination.

By the COMMISSION:

ORDER

Northeast Utilities Service Company (NU) having filed on May 2, 1990, a motion for a protective order to afford proprietary treatment to a list of employees who are to be terminated from the Public Service Company of New Hampshire (PSNH) in conjunction with newly assumed NU management of PSNH; and

WHEREAS, in its motion, NU asserts, in pertinent part that:

1. On December 22, 1989, NU filed a petition for approval and implementation of the agreement signed between the Governor and Attorney General of New Hampshire and NU (the "Rate Agreement") pursuant to RSA 362-C;

2. On April 30, 1990, NU assumed management responsibilities for Public Service Company of New Hampshire and announced that certain PSNH employees will be leaving the Company;

3. On May 1, 1990, the commission requested that NU provide a list of such employees (the "proprietary personnel information");

4. The information requested by the commission pertains to internal personnel practices, has not been made public and NU desires to restrict dissemination and disclosure of such information to protect employee privacy; and

WHEREAS, RSA 91-A:5 IV exempts from public disclosure:

> Records pertaining to internal personnel practices; confidential, commercial, or financial information ... and personnel, medical, welfare, library user, and other files whose disclosure would constitute invasion of privacy...; and

WHEREAS, in the subject motion for protective order, NU requested that the commission take specified steps to protect the proprietary personnel information from disclosure; it is

ORDERED, that the NU motion for a protective order is hereby granted and that:

1. NU shall mark the proprietary personnel information to be submitted "privileged and confidential" and shall file one copy of said information with the secretary of the commission by the close of business on May 4, 1990;

2. The proprietary personnel information shall be made available by the secretary of the commission to any party in this proceeding on request;

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3. The proprietary personnel information shall be used by each party solely for the purpose of evaluating the merits of the petition in this docket and shall not be disclosed in any form to the public unless otherwise ordered by the commission; and it is

FURTHER ORDERED, the subject proprietary personnel information will not be copied except by NU at the specific request of a reviewing party, and all such copies shall be returned to NU upon completion of this docket or upon further order of the commission, whichever shall first occur; and it is

FURTHER ORDERED, that NU promptly notify the commission when the proprietary information governed by this order is made public so that this order can be appropriately rescinded; and it is

FURTHER ORDERED, that on motion of any party, the commission will reconsider the extent to which the material protected by this order shall be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony, cross-examination and to aid the commission in determining the public good.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 1990.

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NH.PUC*05/04/90*[50982]*75 NH PUC 263*Eastern Utilities Associates/Unitil Corporation

[Go to End of 50982]

75 NH PUC 263

Re Eastern Utilities Associates/Unitil Corporation

DF 89-085
Order No. 19,813

New Hampshire Public Utilities Commission

May 4, 1990

ORDER granting a motion for an enlargement of time within which to file testimony in a proceeding to review the proposed merger of two public utility holding companies.

PROCEDURE, § 39 — Time limitations — Motion for enlargement of time.

[N.H.] The commission granted a motion for an enlargement of time within which to file testimony in a proceeding to review the proposed merger of two public utility holding companies where no party objected; all parties were directed to file a written summary of their position on the impact of the enlargement of time on the remaining portion of the procedural schedule.

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By the COMMISSION:

ORDER

WHEREAS, UNITIL Corporation (UNITIL) filed a motion for continuance dated May 2, 1990 requesting a two-week enlargement of time within which to file its direct case; and

WHEREAS, UNITIL's motion also requested that all subsequent deadlines established in the commission's procedural schedule be similarly continued for two weeks; and

WHEREAS, UNITIL's motion represents that staff counsel and the New Hampshire Office of the Consumer Advocate have been apprised of the motion and do not object to the relief sought; and

WHEREAS, UNITIL's motion represents that Eastern Utilities Associates has been apprised of the motion and does not oppose the continuance of the filing of UNITIL's testimony but reserves the right to address the impact of the extension on the remaining portion of the procedural schedule; and

WHEREAS, good cause exists to grant UNITIL a two-week enlargement of time within which to file its direct case; it is therefore

ORDERED, that the deadline for filing of UNITIL's direct case be, and hereby is, enlarged from May 11, 1990 to May 25, 1990; and it is

FURTHER ORDERED, that all parties file a written summary of their position on the impact of the above enlargement of time on the remaining portion of the procedural schedule no later than May 11, 1990.

By order of the Public Utilities Commission of New Hampshire this fourth day of May, 1990.

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NH.PUC*05/07/90*[50983]*75 NH PUC 263*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50983]

75 NH PUC 263

Re Public Service Company of New Hampshire/Northeast Utilities

Movant: Robert C. Richards

DR 89-244
Order No. 19,814

New Hampshire Public Utilities Commission

May 7, 1990

ORDER denying an untimely motion for intervention in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire.

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1. PARTIES, § 18 — Intervenors — Untimely intervention — Factors considered.

[N.H.] The commission has discretion to

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grant an untimely motion for intervention, provided that it determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. p. 265.

2. PARTIES, § 18 — Intervenors — Untimely intervention — Factors considered.

[N.H.] The commission denied an untimely motion for intervention in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire; it was found that proposed intervention would not serve the interests of justice and would impair the orderly and prompt conduct of the proceedings. p. 265.

By the COMMISSION:

REPORT

I. *Procedural Background*

This docket was opened by Order of Notice dated December 22, 1989, for commission investigation, pursuant to RSA 362-C, into whether a proposed Rate Agreement between the State of New Hampshire and Northeast Utilities regarding the bankruptcy reorganization of Public Service Company of New Hampshire (PSNH) is in the public good. In said Order of Notice, the commission established January 5, 1990, as the last day for submitting motions to intervene and scheduled a prehearing conference to address matters of intervention for January 10, 1990. Hearings on the merits began on April 9, 1990, and, except for hearings on May 21 — May 25, 1990 regarding rebuttal testimony, are scheduled to conclude on May 4, 1990.

On April 25, 1990, Robert C. Richards, a holder of 6,000 shares of common stock of PSNH, filed a petition to intervene in this docket. In his petition to intervene, Mr. Richards asserted that his only purpose for seeking intervention is to challenge the constitutionality of RSA 362-C and the rates that may be established pursuant thereto. His only stated interest in the outcome is as a PSNH shareholder.

At the request of the commission, Mr. Richards filed a supplement to his petition to intervene on April 26, 1990, in which he argued that:

1. RSA 362-C, the statute which authorizes the commission to conduct these proceedings, violates Part I, Article 23 of the New Hampshire Constitution because it retroactively changes the "long established method of setting just and reasonable rates for PSNH."

2. RSA 362-C is unconstitutional because it "denies investors in Public Service the

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right to `just and reasonable rates' based upon the cost of property used and useful in the public service."

Finally, he argues that:

3. Neither the "United States Bankruptcy Code nor confirmation of the NU plan by the Bankruptcy Court preempts the responsibility of New Hampshire to set rates for Public Service in compliance with law and constitutions of New Hampshire and the United States."

II. *POSITIONS OF THE PARTIES*

Timely objections to Mr. Richards' motion to intervene were filed on April 30, 1990, by Northeast Utilities (NU), the Business and Industry Association of New Hampshire (BIA), the Office of the Attorney General (AG), PSNH, and the Official Committee of Equity Security Holders of PSNH, all of whom are parties to this proceeding. The parties essentially concurred in their objections stating, in summary:

1. Mr. Richards did not provide substantial justification for his failure to submit a timely motion to intervene;

2. Mr. Richards' sole stated purpose for intervening is to challenge the

constitutionality of RSA 362-C and the commission does not have the authority to review the constitutionality of its enabling statutes;

3. Mr. Richards' petition does not allege any personal interest which is distinct from other shareholders of PSNH and does not allege that his interest as a shareholder are not being adequately represented in this matter by PSNH;

4. Mr. Richards' alleged interests were recently adjudicated in a manner adverse to him in a matter before the United States Bankruptcy Court for the District of New Hampshire in the matter of the on-going PSNH reorganization;

5. Mr. Richards' intervention would not serve the interests of justice and would impair the orderly and proper conduct of these proceedings.

III. *APPLICABLE LAW*

Matters of intervention are governed by RSA 541-A:17 which provides, in pertinent part:

541-A:17 Intervention.

I. The presiding officer shall grant one or more petitions for intervention if:
(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing at least three (3) days before the hearing;
(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

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II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. ...

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

IV. *COMMISSION ANALYSIS*

[1, 2] It is uncontroverted that Mr. Richards' petition to intervene is untimely and, therefore, does not meet the requirements of RSA 541-A:17 I. Therefore, whether to grant the motion is at the discretion of the commission pursuant to RSA 541-A:17 II so long as the commission determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. We are unable to reach this determination and therefore will deny Mr. Richards' petition.

Mr. Richards' petition comes 110 days after the date established by the commission for interventions in this proceeding. Mr. Richards stated at a hearing on this docket on April 25, 1990, that his reason for filing late for intervention was the lack of resources and being preoccupied with the PSNH bankruptcy proceedings. The commission does not deem these reasons to be substantial justification for the lateness of his filing and, for this reason alone, would deny the petition. However, there are also other reasons why Mr. Richards' petition should be denied.

As stated by the parties in their objections to Mr. Richards' petition to intervene, Mr. Richards has questionable standing to intervene in these proceedings as a stockholder of PSNH since any rights he may have as a stockholder are derived from PSNH, who is a full party to these proceedings. Furthermore, his interests have been adjudicated in the United States Bankruptcy Court for the District of New Hampshire in Docket BK No. 88-43, *In re: Public Service Company of New Hampshire*. Mr. Richards has had a full opportunity before that tribunal in which to litigate his interests and, in fact, on April 30, 1990, Judge Yacos

granted Mr. Richards' request for an extension of time to file a notice of appeal with regard to that Court's order confirming the third amended joint plan of reorganization entered on April 20, 1990.

Mr. Richards' assertion that the commission will not be applying the principle of "just and reasonable rates" in this proceeding is without merit. The commission orders to date in these proceedings have clearly indicated that NU has the burden of proving that the rates proposed under the rate agreement are "just and reasonable." Had Mr. Richards intervened at the commencement of the proceedings, as he had a full opportunity to do, he could have availed himself of the various opportunities afforded the parties by the commission to recommend what the scope of the proceedings should be.

Permitting Mr. Richards to intervene at this late date would impair the orderly and prompt

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conduct of these proceedings. The commission is operating under a tight time frame established by RSA 362-C which requires a final order by August 1, 1990. The commission and the parties cannot afford to address new issues at this late date, either a certification to the Supreme Court pursuant to RSA 365:22 or an appeal to the final commission order in the event the commission approves the rate agreement. Mr. Richards' request is especially egregious in that he purports to have no intent of participating in the proceedings so as to establish on the record a basis for his claims.

Neither New Hampshire law nor our state and federal constitutions guarantee to a utility a rate which assures its financial integrity. *Petition of PSNH*, 130 NH 265, 277 (January 26, 1988). Likewise, the owners of a public utility, its shareholders, are not guaranteed a risk-free investment. Relative rights of the parties to the PSNH bankruptcy proceedings relative to the Bankruptcy Estate is a matter for resolution by the Bankruptcy Court. Mr. Richards was a full participant in these proceedings. We find that Mr. Richards' intervention will not serve the interests of justice and will impair the orderly and proper conduct of these proceedings. Accordingly, for the reasons herein set forth, Mr. Richards' Petition to Intervene is denied.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, the petition of Robert C. Richards on April 25, 1990, and supplemented on April 26, 1990, is denied this seventh day of May, 1990.

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NH.PUC*05/07/90*[50984]*75 NH PUC 266*EnergyNorth Natural Gas, Inc.

[Go to End of 50984]

75 NH PUC 266

Re EnergyNorth Natural Gas, Inc.

DE 88-136, DR 89-181
Order No. 19,815

New Hampshire Public Utilities Commission

May 7, 1990

ORDER clarifying a prior order establishing the scope of a proceeding to review the reasonableness of a contract between a gas distributor and an affiliated propane supplier.

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1. INTERCORPORATE RELATIONS, § 7 — Jurisdiction and powers — State commission — Commodity supplies — Affiliated interests.

[N.H.] Commission jurisdiction over a propane transfer involving a natural gas distributor and an affiliated propane supplier was conclusively established by prior order in which the utility

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agreed that transactions such as the propane transfer would be subject to commission review. p. 268.

2. CONTRACTS, § 3 — Jurisdiction and powers — State commissions — Utility contracts — Authority to examine reasonableness.

[N.H.] The commission has plenary authority under RSA 378 to examine the reasonableness of any contracts entered into by a utility, regardless of whether or not the contract is with an affiliated company. p. 268.

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3. INTERCORPORATE RELATIONS, § 12 — Jurisdiction and powers — State commission — Contract review — Affiliated interests — Legal standard.

[N.H.] The relevant legal standard for the review of a contract between a utility and an affiliated company is whether the contract is just and reasonable under all the circumstances; if the utility fails to establish the reasonableness of the contract, the commission may disallow charges incurred by the utility under the contract. p. 268.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement — Propane transfers — Transactions with affiliates — Gas distributor.

[N.H.] The scope of inquiry in a proceeding to review a contract between a gas distributor and an affiliated propane supplier was limited to the cost of gas adjustment rate set by the commission and the costs incurred by the distributor during the 1989-90 winter period, which was the customary period of time applicable to commission oversight of cost of gas adjustments and subsequent reconciliation under the provisions of RSA 378 and the utility's tariff. p. 268.

5. INTERCORPORATE RELATIONS, § 18 — Utility contracts with affiliates — Propane supplies — Reasonableness — Gas distributor.

[N.H.] In reviewing the reasonableness of a propane supply contract between a gas distributor and an affiliated propane supplier, the commission will weigh the benefits redounding to the gas distributor under and as a result of the contract against any detriment to ratepayers resulting from the contract. p. 268.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. *Procedural Background*

The procedural history of this separate proceeding is substantially as set forth in report and order no. 19,786 (75 NH PUC 221) (April 11, 1990).

That commission report and order rejected EnergyNorth Natural Gas, Inc.'s (ENGI) position in addressing two legal issues raised by ENGI regarding the scope of this special proceeding as it pertains to the contract between ENGI and EnergyNorth Propane, Inc. (ENPI). First, the

commission ruled that it has jurisdiction with respect to the contract between ENGI and ENPI based on the commission's ruling in *Re Concord Natural Gas Corporation*, set forth in the commission's report and order no. 17,745 dated July 15, 1985, 70 NH PUC 632 (1985) (the "*Concord* order"), in which the commission placed certain conditions on its approval of the affiliation of the Company's parent company, EnergyNorth, Inc. ("ENI"), with Concord Natural Gas Corporation ("Concord"). According to the commission's report, jurisdiction over the contract in this docket stems from the second of several conditions in the *Concord* order, which reads as follows:

> ENI shall submit to this commission for review under RSA 366 all services, materials or other contracts between its utility operating companies and either ENI or any of ENI's non-utility subsidiaries.

70 NH PUC at 638 (this condition is hereinafter referred to as the "contract condition").

Second, the commission adopted legal standards governing the time period for which ENGI would be exposed to a disallowance, if any, and defining the scope of evidence which would be considered. On April 20, 1990, ENGI filed a motion for rehearing and other relief challenging the commission's rulings and asserting that application of the correct rulings of law is essential to the proper resolution of this matter, and, with respect to the jurisdictional issue, could be dispositive (Motion at 2.)

II. *ENGI's Objections*

ENGI objects to the commission's exercise of jurisdiction over the contract on two grounds. First, ENGI claims that the commission did not have jurisdiction over the affiliation between ENI and Concord nor did the commission have jurisdiction to impose any of the conditions in the *Concord* order.

Second, ENGI asserts that the contract condition imposed by the *Concord* order, even if valid, merely requires the filing of all contracts between ENGI and subsidiaries of ENI. According to ENGI, the contract condition does not purport nor can it reasonably be construed, to enlarge the commission's jurisdiction under RSA 366, which is limited to management contracts with affiliates of a public utility as that term is defined by RSA 366:1 (II). Therefore, ENGI argues that the contract condition in the *Concord* order cannot be construed as a basis of the commission's jurisdiction. ENGI asserts that it has met its limited obligations under the *Concord* order by filing the contract with ENPI with the commission.

ENGI's also interprets the standard established by the commission for governing the relevant inquiry as limited in scope and time to gas costs incurred by ENGI in the 1989-90 Winter CGA period and the effect of propane sales during such period by the ENGI to ENPI on any gas costs charged to the utility ratepayers. For the reasons set forth in the Memorandum of Law submitted on March 8, 1990 (Memorandum, at 21-30), ENGI submits that this is an incorrect legal standard for review, both under RSA Chapter 366 and Chapter 378, of whether the contract is just and reasonable and the charges incurred by ENGI thereunder.

III. *Commission Analysis*

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[1-5] After review of ENGI's motion, we will deny the motion in part and clarify it in part.

With regard to ENGI's assertion that the commission does not have jurisdiction over the contract with ENPI, we deny ENGI's motion. As we found in report and order no. 19,786, the commission's approval of the affiliation between ENI and Concord is subject to the strict adherence by ENI to certain conditions.

We repeat that the affiliation of ENI and Concord was expressly conditioned by the commission to authorize commission jurisdiction over situations such as the matter at hand in this proceeding. ENI consummated the transaction with Concord and thereby accepted the condition, in effect waiving any argument that the commission cannot conduct a full review of arrangements between an ENI utility subsidiary and any other ENI subsidiary. Accordingly, we again find that the "contract condition" conclusively establishes our jurisdiction over ENPI as an affiliate.

We note that ENGI failed to cite this condition in the *Concord* order in its Memorandum of Law regarding scope submitted to this commission on March 8, 1990. We now note upon review of the record that in fact this condition ceding jurisdiction to the commission was actually offered and proposed by ENGI (*see* Exhibit 5, DF 84-345). On this basis, and upon review of that record, we find that our express intention in approving the condition was to allow commission examination and investigation of contracts between ENGI and any of ENI's subsidiaries, and specifically to provide the commission with the ability to examine the books and records of affiliates and subsidiaries in accordance with RSA 366:5.

ENGI's motion does not raise any point of law or issue that we did not consider in an earlier decision on this point. ENGI has acceded to the contract condition, has complied with this condition, and did not appeal this condition, and is therefore bound by it.

In any event, the commission has plenary authority under RSA 378 to examine the reasonableness of any contracts entered into by a utility, whether or not those contracts are with affiliated companies. ENGI is arguing in effect that the commission can review contracts between a utility and entities that are not part of its holding company structure, but is precluded from reviewing contracts between a utility and certain entities that are part of its holding company structure by a strict reading of the RSA 366:6, II definition of affiliate. Such an interpretation would produce an illogical and absurd result which must be rejected. *State v. Kay*, 115 N.H. 696 (1975).

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With regard to ENGI's motion pertaining to the appropriate legal standard for relevant evidence, we will clarify our earlier decision.

The relevant legal standard under RSA Chapter 366 is whether the propane contract between ENGI and ENPI and the charges incurred by ENGI in connection therewith have been "just and reasonable" under all the circumstances. RSA 366:5, RSA 378:7. If ENGI does not establish the reasonableness of the contract, the commission may disallow charges incurred by ENGI thereunder. For purposes of this docket, the Commission finds that it is appropriate and reasonable in this proceeding to limit the time period during which ENGI's expenses would be

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subject to possible disallowance to the 1989-90 winter period; this is the customary period of time applicable to the commission's oversight of cost of gas adjustments and subsequent reconciliation under the provisions of RSA 378 and ENGI's tariff. This inquiry will include investigation of the following factual questions: whether the furnishing of propane by ENGI to its affiliate ENPI contributed to the increased gas costs incurred by ENGI in DR 89-111 and, if so, whether ENPI has been subsidized by utility ratepayers.

The inclusion of the 1989-90 winter period in the scope of this proceeding is particularly appropriate given the fact that the commission required the staff to forebear from pursuing this issue on January 26, 1990. At that time, the commission explicitly reserved the adjudication of the issue to a future time where all parties could be fully prepared to present their evidence and argument.

Notwithstanding this limitation of ENGI's exposure in this separate proceeding, the reasonableness of ENGI's contract with ENPI should be determined in light of all relevant conditions. In applying this test, the commission will weigh the benefits redounding to ENGI under and as the result of the existence of the propane contract with ENPI against any detriment to ENGI's ratepayers resulting therefrom.

ENGI's burden is to establish the nature and extent of the benefits of the contract to ENGI's ratepayers. Relevant evidence could include not only any particular benefits during the 1989-90 winter period, but also the historical or continuing benefits of the contract and benefits reasonably expected to be achieved in future periods. These benefits must be compared against any detriment to ENGI's ratepayers found to be incurred during the 1989-90 winter period.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is incorporated herein by reference; it is hereby

ORDERED, that ENGI's motion is granted insofar as it is consonant with the foregoing report and is otherwise denied.

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1990.

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NH.PUC*05/08/90*[50985]*75 NH PUC 269*Eastern Utilities Associates/Unitil Corporation

[Go to End of 50985]

75 NH PUC 269

Re Eastern Utilities Associates/Unitil Corporation

DF 89-085
Order No. 19,816

New Hampshire Public Utilities Commission

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May 8, 1990

ORDER clarifying a prior order governing the treatment of discovery materials designated as privileged or confidential.

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1. PROCEDURE, § 16 — Discovery and inspections — Confidential or privileged material — Protective order.

[N.H.] Procedures in a protective order that permitted responding parties to designate discovery material as protected did not unlawfully shift the burden of justifying public disclosure to other parties or the public; the commission explained that once a proper objection to a responding party's designation of materials as

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protected were raised, the responding party would be required to demonstrate that the benefits of nondisclosure outweigh the benefits of disclosure to the public. p. 271.

2. PROCEDURE, § 16 — Discovery and inspections — Confidential or privileged material — Protective order.

[N.H.] Procedures in a protective order that permitted responding parties to designate discovery material as protected did not give rise to a presumption of confidentiality since responding parties were constrained by the terms of the order to designate as protected only those materials believed in good faith to be confidential and a valid objection would place the burden of justifying nondisclosure on the responding party. p. 271.

3. PROCEDURE, § 16 — Discovery and inspections — Confidential or privileged material — Protective order.

[N.H.] The commission clarified a prior order governing the treatment of discovery materials in a proceeding to review a proposed utility merger to make it clear that a party seeking to protect material from public disclosure must specifically describe the material for which protection is sought and state a clear basis for exemption from disclosure under RSA 91-A:5 (IV). p. 271.

APPEARANCES: as previously noted.

By the COMMISSION:

REPORT

I. *Introduction*

On April 19, 1990, the Office of Consumer Advocate (OCA) filed a Motion for Rehearing pursuant to RSA 541:3 of the commission's order no. 19,778 (75 NH PUC 207) (the "protective order") (April 4, 1990) "on the grounds, *inter alia*, that the [commission] lacks jurisdiction to issue the aforesaid order ..."

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On April 25, 1990, Eastern Utilities Associates (EUA) filed an objection to OCA's Motion for Rehearing. On May 1, OCA filed a Reply to EUA's Objection to Motion for Rehearing.

In its Motion for Rehearing, OCA requests that the commission:

I. Grant rehearing of order no. 19,778;

II. Require the utility seeking non-disclosure to state with specificity the reasons therefore, the immediacy of the harm and the exact dollar amount;

III. That the commission rule on each request for non-disclosure, that it review each and every page, and on the basis of a record, and set forth its findings consistent with RSA chapter 91-A as to each and every page and item on that page;

IV. That the commission hold hearings which are at all times open to the public;

V. For such other relief as is just and proper.

OCA Motion at 6-7.

We have reviewed our protective order and the motion for rehearing of OCA, EUA's objection, and OCA's reply, and will deny OCA's motion in part and clarify our order in part.

II. *Issues Presented*

In support of its requested relief, OCA in essence raises two issues:

(1) whether order no. 19,778 shifts the burden of justification for non-disclosure away from the party producing materials designated as "PROTECTED MATERIALS" with the result that a party or person seeking disclosure must demonstrate that the benefits of disclosure to the public must outweigh the benefits of non-disclosure to the party producing the materials; and

(2) whether paragraph 6.a. is unlawful because it will result in the lack of a full public record and exclude the public from

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hearings before the commission.

IV. *Commission Analysis*

[1-3] With regard to the first issue raised by OCA in its motion, we do not find that order no. 19,778 improperly shifts the burden of justifying non-disclosure away from the respondent and the commission, and in effect, unlawfully puts the burden of justifying disclosure to the public on another party or person.

The underlying premise of our protective order is to facilitate the timely movement of large amounts of sensitive documents and materials among the parties in this proceeding, including OCA, which we expect will be extensively litigated within a relatively short time frame. (See scope and procedural order no. 19,768 [75 NH PUC 188])

In order to accomplish this important objective, the responding party is permitted by our protective order to designate as protected certain materials which it believes in good faith to be

exempted from disclosure under RSA 91-A:5 (IV) and is required to certify those materials as such.

If a party such as OCA wishes to object to designation of certain material as "PROTECTED MATERIALS" either (1) as to the validity of the claim to protection or (2) on the basis of the benefits to be gained from disclosure of materials to the public otherwise exempted under RSA 91-A:5 (IV), that party should first seek to resolve the matter informally through discussion. *Order* at 6. If the parties fail to reach agreement, the parties should request the commission to review the documents *in camera* to determine whether there is a valid claim for protection and, if so, whether non-disclosure is justified. Any objection to designation of "Protected Materials" should specifically identify the materials at issue and the basis for the objection. Thereafter, the burden of demonstrating that the benefits of non-disclosure outweigh the benefits of disclosure to the public shall be on the party seeking protection.

Additionally, on motion by any party the commission will consider and address the extent to which the material in question shall be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good.

While OCA asserts that the protective order gives rise to a presumption of confidentiality, the responding party is not relieved of its responsibility for substantiating its designation of confidential documents since it is constrained by the certification requirement to designate only those documents that it in good faith believes to be confidential. All parties have access to the designated documents, and they need only object and the burden will fall on the party to justify its designations to the commission.

The OCA has also asserted that the commission's protective order somehow improperly shifts the burden of proof to parties other than the producing party. The commission's order does not shift the burden of proof in any way, however. While RSA 91-A does not address the issue of burden of proof in a proceeding such as the present one, under the commission's protective order if a party objects to a confidentiality designation, the parties would then have the opportunity to put the designation before the commission and explain why the document in question should continue to be treated as confidential. The opposing party would merely have to rationally object to the designation. This procedure is well within the bounds of RSA Chapter 91-A, and will also provide for maximum fairness to all parties, the public interest and the efficient use of the commission's time and efforts. The commission's order is also consistent with its practice in past cases in which it has issued a protective order, but reserved the authority to review the appropriateness of continued confidentiality of specific documents and release such documents to the public at a later date if it determined that such action was appropriate. *See Pub. Serv. Co. of N.H.*, 72 NH PUC 104, 105 (1987); *Resource Elec. Corp.*, 70 NH PUC 337, 338 (1986). The commission's rulings in these cases have clearly reflected the distinction between providing access to confidential information to parties to a proceeding and the release of such information to the

general public.

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In the event that any member of the public seeks disclosure the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing.

Upon a finding by the commission that there is a valid exemption claim for the materials in question the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits of non-disclosure.

In response to OCA's motion, we will clarify order no. 19,778 to make it clear that the "certification" to be provided by the producing party seeking protection must specifically describe the materials for which protection is sought and state a clear basis for exemption from disclosure under RSA 91-A:5 (IV).

With regard to the second issue presented by OCA regarding paragraph 6.a. of the protective order, we do not agree with OCA's characterization of the purpose or likely result of such provision. However, in view of the foregoing restatement and clarification of our protective order we believe that paragraph 6.a. is not necessary, especially in light of its potential for misinterpretation, and thus we will grant that portion of OCA's motion which objects to paragraph 6.a. by modifying order no. 19,778 and deleting said paragraph from the protective order governing this proceeding.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a party hereof; it is hereby

ORDERED, that the motions of the parties regarding the protective order are granted insofar as they are consonant with the foregoing report and are otherwise denied.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1990.

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NH.PUC*05/08/90*[50986]*75 NH PUC 272*Demers Water Systems

[Go to End of 50986]

75 NH PUC 272

Re Demers Water Systems

DE 90-052
Order No. 19,817

New Hampshire Public Utilities Commission

May 8, 1990

ORDER cancelling a show cause order that would have required a water utility to appear and explain its failure to comply with provisions in a prior order adopting a stipulation that established rates for water service and required the utility to file a plan for metering its system.

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ORDERS, § 15 — Enforcement — Show cause order — Cancellation.

[N.H.] The commission cancelled a show cause order that would have required a water utility to appear and explain its failure to comply with provisions in a prior order; it was found that a show cause proceeding was not required because the utility had complied with the provisions in the prior order.

By the COMMISSION:

ORDER

On April 9, 1990 in Docket DE 90-052, the commission ordered Robert A. Demers to appear before the commission at its offices in Concord at 8 Old Suncook Road in the State of New Hampshire at 1:00 in the afternoon on the 24th day of May, 1990 to show cause why he and his water utility should not be subjected to penalties for failure to comply with the provisions in commission order no. 19,520 (74 NH PUC 291); and

WHEREAS, Robert A. Demers was required to (1) file a plan metering each system by January 1, 1990 extended to February 1, 1990, (2) file a tariff supplement setting forth

the method for calculating the revenue deficiency between the temporary and permanent rates, and (3) file a revised tariff incorporating changes specified in report and order no. 19,520; and

WHEREAS, the above filings have been made as of the date of this order; it is hereby

ORDERED, that the show cause order of April 9, 1990, is hereby cancelled.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1990.

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NH.PUC*05/08/90*[50987]*75 NH PUC 273*New Hampshire Electric Cooperative, Inc.

[Go to End of 50987]

75 NH PUC 273

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Hart's Turkey Farm Restaurant

DR 90-006
Order No. 19,818

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New Hampshire Public Utilities Commission

May 8, 1990

ORDER approving a special contract rate for electric service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 273.

2. RATES, § 322 — Electric — Special contract rate — Interruptible load program.

[N.H.] The commission approved a special contract rate for electric service where special circumstances existed that rendered departure from the general schedules of the utility just and consistent with the public interest; the special contract includes an agreement indicating the election of the parties to participate in a voluntary interruptible load program designed to reduce generating capacity requirements and costs. p. 273.

By the COMMISSION:

ORDER

On January 16, 1990, the New Hampshire Electric Cooperative, Inc. ("NHEC") filed with the Commission a special contract between NHEC and Hart's Turkey Farm Restaurant, Meredith, NH. This new special contract is intended to provide for a voluntary interruptible load program for the months of January, 1990 through February, 1990.

WHEREAS, the special incentive program conforms to an arrangement for interruptible loads between the NHEC and its wholesale supplier, Public Service Company of New Hampshire ("PSNH"); and

[1, 2] WHEREAS, the special contract includes a basic agreement indicating the election of the parties to participate in a special program in the winter period, along with the specific understandings on the workings of the special program, and a designation of 60 kilowatts of interruptible load under the terms of the program; and

WHEREAS, this program recognizes the goal of reducing immediate and future generating capacity requirements and costs which benefits all of the members of NHEC; and

WHEREAS, the commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, upon a review of the proposed contracts, the commission finds that

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special circumstances exist which render departure from the general rate schedules just and consistent with the public interest; it is hereby

ORDERED *NISI*, that the New Hampshire Electric Cooperative be, and hereby is, authorized to implement the above-described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that this special contract as filed on January 16, 1991, be and hereby is approved for effect retroactive as of the date of execution; and it is

FURTHER ORDERED, that the commission hereby waives that portion of PUC 1601.02(c) which requires Special Contracts to be filed at least 15 days in advance of the effective date, so that the Special Contract will be retroactively effective on the day of execution unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than June 4, 1990; and it is

FURTHER ORDERED, that New Hampshire Electric Cooperative effect notification by publication of an attested copy of this order in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 18, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before June 7, 1990; and it is

FURTHER ORDERED, that this Order *NISI* will be effective on June 7, 1990 unless the commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1990.

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NH.PUC*05/08/90*[50988]*75 NH PUC 274*Saco Ridge Water Company

[Go to End of 50988]

75 NH PUC 274

Re Saco Ridge Water Company

DR 87-204
Order No. 19,819

New Hampshire Public Utilities Commission

May 8, 1990

ORDER rejecting for noncompliance with prior order revised tariffs filed by a water utility.

RATES, § 245 — Tariff filing — Rejection by commission — Noncompliance with prior order — Water utility.

[N.H.] Revised tariffs filed by a water utility were rejected for failure to comply with prior order; the revised tariffs provided for recoupment despite the fact that the utility's rate order contained no recoupment provision.

By the COMMISSION:

ORDER

On April 6, 1990, Saco Ridge Water Company filed with the commission NHPUC No. 1 in Docket DR 87-204; and

WHEREAS, Saco Ridge Water Company Inc., tariff NHPUC No. 1, first revised page 6, failed to comply with commission Order No. 19,292 (74 NH PUC 32) in DR 87-204; and

WHEREAS, first revised page 6 provides for a recoupment between rates that were currently in effect and permanent rates established in Order No. 19,292; and

WHEREAS, Order No. 19,292 contains no recoupment provision; it is hereby

ORDERED, that Saco Ridge Water Company Inc., NHPUC No. 1, first revised page 6, filed with the commission on April 6, 1990 is hereby rejected.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1990.

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NH.PUC*05/14/90*[50990]*75 NH PUC 276*Public Service Company of New Hampshire

[Go to End of 50990]

75 NH PUC 276

Re Public Service Company of New Hampshire

DR 90-059
Order No. 19,822

New Hampshire Public Utilities Commission

May 14, 1990

ORDER granting a request by an electric utility for protective orders prohibiting public disclosure of certain responses to discovery requests.

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PROCEDURE, § 16 — Discovery and inspection — Protective orders — Exemptions from public disclosure.

[N.H.] The commission granted a request by an electric utility for protective orders prohibiting public disclosure of certain responses to discovery requests where the utility asserted that disclosure of the responses would adversely affect its ability to obtain favorable fuel handling and fuel supply contracts; the protected status of the material would be reconsidered upon the motion of any party or any member of the public.

By the COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), having filed a Motion for Protective Order on April 26, 1990, which, in pertinent part, requested authority to decline to produce a document, identified as requests by the staff of the Public Utilities Commission in data request set 1, numbers 1 and 2; and

WHEREAS, PSNH asserts that disclosure of the aforesaid information would adversely affect the ability of PSNH to obtain the most favorable terms and conditions available in the market place in negotiating new contracts for

fuel handling and fuel supply with others in the future; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ..."; it is

ORDERED, that PSNH shall, upon receipt hereof, provide the commission, the commission staff and parties to these proceedings the data requested in requests 1 and 2 of Staff data requests set no. 1 and, until otherwise ordered, it is to be viewed only by the commission, the commission staff and parties to these proceedings. Until such further order of the commission, said data and the information contained therein shall not be copied or reproduced, nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, on motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA Chapter 9, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claim by PSNH for the materials in question the commission will apply a balancing

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test by weighing the benefits of disclosure to the public versus the benefits on non-disclosure to PSNH.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

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NH.PUC*05/14/90*[50991]*75 NH PUC 277*Robert A. Demers dba Demers Water Systems

[Go to End of 50991]

75 NH PUC 277

Re Robert A. Demers dba Demers Water Systems

DE 90-029
Order No. 19,823

New Hampshire Public Utilities Commission

May 14, 1990

ORDER authorizing a water utility to extend service to a limited area adjacent to its existing service area.

SERVICE, § 210 — Extensions — Water — New service area.

[N.H.] A water utility was authorized to extend service to a limited area adjacent to its existing service area where no other water utility had franchise rights in the area sought, the need for the service was demonstrated, the utility had the requisite ability to provide the service, rates for the service would be the same as those charged in its existing service area, and the utility had obtained the approval of the Department of Environmental Services, Water Supply and Pollution Control Division.

By the COMMISSION:

ORDER

On February 26, 1990, the commission received a petition from Robert A. Demers d/b/a Demers Water Systems (Demers) to provide water service to a limited area in the Town of Conway, New Hampshire adjacent to Demers service area known as Woodland Grove, pursuant to RSA 374:22 and implicitly to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Demers intends to charge rates equal to those rates now being charged in

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Woodland Grove; and

WHEREAS, service to the new area will

be provided from the plant at Woodland Grove; and

WHEREAS, Demers has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution Control Division granting approval for the proposed franchise extension; and

WHEREAS, there is a need for service in the proposed area and the applicant has the financial, managerial, administrative, legal and technical capabilities to meet that need; and

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity before the commission acts on this petition; it is hereby

ORDERED, *NISI* that Demers be granted a franchise for the new service area; and it is

FURTHER ORDERED, *NISI* that Demers be allowed to charge rates pursuant to those rate schedules approved for Woodland Grove; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Demers effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 24, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before June 18, 1990, and it is

FURTHER ORDERED, that such authority shall be effective on June 18, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

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NH.PUC*05/14/90*[50992]*75 NH PUC 278*Robert A. Demers dba Demers Water Systems

[Go to End of 50992]

75 NH PUC 278

Re Robert A. Demers dba Demers Water Systems

DE 90-030

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Order No. 19,824

New Hampshire Public Utilities Commission

May 14, 1990

ORDER authorizing a water utility to extend service to a limited area adjacent to its existing service area.

SERVICE, § 210 — Extensions — Water — New service area.

[N.H.] A water utility was authorized to extend service to a limited area adjacent to its existing service area where no other water utility had franchise rights in the area sought, the need for the service was demonstrated, the utility had the requisite ability to provide the service, rates for the service would be the same as those charged in its existing service area, and the utility had obtained the approval of the Department of Environmental Services, Water Supply and Pollution Control Division.

By the COMMISSION:

ORDER

On February 26, 1990, the commission received a petition from Robert A. Demers d/b/a Demers Water Systems (Demers) to provide water service to a limited area in the Town of No. Conway, New Hampshire adjacent to and interconnected to the Echo Lake Woods system, pursuant to RSA 374:22 and implicitly to establish rates therefore pursuant to RSA Chapter 378; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Demers intends to charge rates equal to those rates now being charged in Echo Lake Woods; and

WHEREAS, service to the new area will

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be provided from the plant at Echo Lake Woods; and

WHEREAS, Demers has supplied letters pursuant to RSA 374:22, III from the Department of Environmental Services, Water Supply and Pollution Control Division granting approval for the proposed franchise extension;

WHEREAS, there is a need for service in the proposed area and the applicant has the financial, managerial, administrative, legal and technical capabilities to meet that need; and

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

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WHEREAS, the public should be offered an opportunity before the commission acts on this petition; it is hereby

ORDERED, *NISI* that Demers be granted a franchise for the new service area; and it is

FURTHER ORDERED, *NISI* that Demers be allowed to charge rates pursuant to those rate schedules approved for Echo Lake Woods; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Demers effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 24, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before June 18, 1990; and it is

FURTHER ORDERED, that such authority shall be effective on June 18, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

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NH.PUC*05/14/90*[50993]*75 NH PUC 279*Northeast Hydrodevelopment Corporation

[Go to End of 50993]

75 NH PUC 279

Re Northeast Hydrodevelopment Corporation

DE 89-257
Order No. 19,825

New Hampshire Public Utilities Commission

May 14, 1990

ORDER denying a motion by a retail electric utility to amend the schedule in a proceeding to determine whether the utility should be required to wheel to an ultimate consumer qualifying facility power produced by a limited electric energy producer.

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1. PROCEDURE, § 39 — Time limitations — Procedural schedule.

[N.H.] The commission denied a motion by a retail electric utility to amend the schedule in a proceeding to determine whether the utility should be required to wheel to an ultimate consumer qualifying facility power produced by a limited electrical energy producer; nevertheless, it

amended the schedule to accommodate the time elapsed in reviewing the motion. p. 281.

2. COGENERATION, § 14 — Utility service obligations — Wheeling — To ultimate consumers

[N.H.] In denying a motion by a retail electric utility to amend the schedule in a proceeding to determine whether the utility should be required to wheel to an ultimate consumer qualifying facility power produced by a limited electrical energy producer, the commission clarified that in allowing the utility to make an offer of proof to support its position that the commission should expand the scope of the proceeding to examine the total effect of allowing such wheeling transactions, it did not intend to broaden the scope of the proceeding beyond the limited issues of whether the wheeling request would entail substantial cost or risk to

Page 279

the utility and whether the proposed wheeling transaction would be inconsistent with the public good. p. 281.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On December 18, 1989, Northeast Hydrodevelopment Corporation (NHC) filed a power purchase agreement between McLane Dam Hydroelectric Project (McLane) a limited producer of electrical energy in the Town of Milford, New Hampshire for commission approval pursuant to RSA 362-A;2-a requiring Public Service Company of New Hampshire (PSNH) to wheel power to an ultimate consumer, the Town of Milford.

On March 6, 1990, the commission issued order no. 19,740 setting a prehearing conference for March 22, 1990 at 2:00 p.m. and a hearing on the merits for May 17, 1990. On March 22, 1990, the parties met and agreed to a procedural schedule for the submission of and responses to initial data requests and a hearing on the issue of scope and PSNH's motion to dismiss.

On April 2, 1990, the commission issued report and order no. 19,776 adopting the agreed upon procedural schedule. At the hearing held on April 5, 1990, the parties agreed to argue and submit memoranda on the motion to dismiss at the time of the hearing on the merits and the commission orally agreed to postpone arguments on the motion to dismiss until said time. The parties argued the issue of scope.

On April 25, 1990, the commission issued order no. 19,803 (75 NH PUC 247) limiting the scope of the docket to whether NHC's request for wheeling is consistent with the standards set forth in RSA 362-A:2-a but allowing PSNH to create a record through an offer of proof that such contracts must be examined generically. The commission set a procedural schedule with a hearing on the merits on June 4, 1990.

II. *PSNH's MOTION TO AMEND THE PROCEDURAL SCHEDULE*

On April 27, 1990 PSNH filed a motion to amend the procedural schedule offering the

following reasons:

1) the complexity of the issues in the case;

2) the adverse effect on PSNH's procedural due process rights of requiring it to prepare its case based on potential commission rulings as opposed to actual rulings;

3) the timing of the effective date of the Management Service Agreement with Northeast Utilities (NU);

4) a delay of one week arising from a schedule premised on a commission order by April 19, 1990, and

5) the delay arising from the fact that PSNH did not receive timely data responses from the Town of Milford.

The PSNH-proposed procedural schedule set a hearing date for July 2, 1990.

III. *NHC's OBJECTION TO PSNH'S MOTION*

On April 30, 1990 NHC filed its objection to PSNH's motion to amend the procedural schedule. It stated that NHC did not object to giving PSNH a reasonable time to file testimony on the narrow issues involving the McLane Dam Project. NHC suggested that one way to do this and accommodate PSNH's desire for more time to produce its offer to proof would be to bifurcate PSNH's pre-filed testimony and have testimony filed on the NHC issues earlier and testimony on the larger issues later.

IV. *PSNH REPLY TO NHC OBJECTION*

On May 1, 1990 PSNH filed its reply to NHC's objection to its motion to amend the procedural schedule. PSNH addressed what it perceived to be the underlying reason for NHC's desire for a narrow scope and early hearing date. PSNH stated its view that even with an early hearing date, hearings were likely to run longer than one day; it would seek a month following the hearing date to prepare and file a brief; and it may file a motion for

rehearing and appeal the commission's decision.

In response to NHC's suggestion of bifurcation, PSNH indicated that even though the commission had ordered a narrow scope, it would need basically as much time to prepare testimony on the narrow issues as the broader issues. PSNH stated that "the scope has not really been narrowed since work must proceed on the offer of proof."

V. *COMMISSION ANALYSIS*

[1, 2] The commission finds itself in the position of weighing what appear to be compelling arguments on both sides of the issue of the procedural schedule. In its April 27th motion, PSNH sets forth a number of reasons why the schedule as ordered is not reasonable. The commission finds that PSNH's arguments with respect to expecting it to prepare testimony in advance of a commission order on scope and schedule; the fact that it had already lost one week due to the timing of the commission's order; and the lateness of the Town of Milford's data responses

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warrant consideration of an amendment to the procedural schedule. However, PSNH's argument regarding the complexity of the issues at hand appears to be an attempt to re-open the issue of scope on which we have already ruled. Likewise, PSNH's concern about the timing of the effectiveness of the Management Services Agreement with NU appears to go to the issue of scope in PSNH's characterization of the case as precedential. To the extent that PSNH's arguments go to the issue of scope, they will be rejected.

The commission finds NHC's proposal to bifurcate the issues in order to expedite the procedural schedule while at the same time providing PSNH with sufficient time to present its case to be reasonable. However it appears that adhering to the original schedule will be difficult given the *de facto* effect on the schedule of PSNH's motion, NHC's objection and PSNH's reply.

The commission cannot rely on PSNH's representations as to whether NHC continues to be concerned about and affected by an expeditious resolution of this case. We view the fact that NHC filed an objection to PSNH's motion as evidence that it remains concerned and, in its view, affected by the schedule.

Having weighed the arguments of both PSNH and NHC, the commission denies PSNH's motion to amend the procedural schedule. However, given the time that has elapsed we will amend the schedule as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

June 1, 1990          PSNH testimony
June 11, 1990         NHC and staff data requests
June 18, 1990         PSNH responses
June 29, 1990         NHC and staff rebuttal
                        testimony
July 12, 1990
  (& 16th if needed) Hearing
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We recognize that this schedule represents a compromise for both parties, but find it be reasonable given considerations on both sides.

The commission also reiterates its finding on scope in order no. 19,803 noting that in allowing PSNH the opportunity to make an offer of proof, we did not intend to broaden the scope and in effect negate our ruling. Docket No. 89-257 will address only the issue presented by NHC in this case, *i.e.*, whether the 400 kilowatts proposed to be wheeled from McLane Dam to the Town of Milford will entail substantial cost or risk to PSNH and whether the proposed wheeling transaction is inconsistent with the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Public Service Company of New Hampshire's motion to amend the procedural schedule be, and hereby is, denied; and it is

FURTHER ORDERED, that the procedural schedule be, and hereby is, amended as set forth in the foregoing report.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

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75 NH PUC 282

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,826

New Hampshire Public Utilities Commission

May 14, 1990

ORDER denying a motion for rehearing of an order that modified an order approving a water rate settlement to remove a provision requiring the utility to file a depreciation study prior to the filing of its next rate case.

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1. PROCEDURE, § 29 — Disposal of issues — Motions to dismiss — Evidentiary standard.

[N.H.] The evidentiary standard to be applied to a motion to dismiss is well settled; the factual allegations of the petitioner are assumed to be true and all reasonable inferences therefrom must be construed in favor of the petitioner. p. 283.

2. RATES, § 651 — Procedure and practice — Evidence — Modification of settlement order.

[N.H.] In denying a motion for rehearing of an order that modified an order approving a water rate settlement to remove a provision requiring the utility to file a depreciation study prior to the filing of its next rate case, the commission rejected claims that it had accepted the utility's claim of a financial emergency without evidentiary support; the commission found that the utility's pleadings, if taken to be true and construed in the light most favorable to the utility, supported a finding of financial emergency and that in any event the utility would be required to support its claim with substantial evidence in the proceeding on the merits of its claim for rate relief. p. 283.

3. PROCEDURE, § 32 — Modification of prior orders — State commissions.

[N.H.] In denying a motion for rehearing of an order that modified an order approving a water rate settlement to remove a provision requiring the utility to file a depreciation study prior to the filing of its next rate case, the commission reaffirmed its conclusion that its ability to modify prior orders is not limited to situations involving a mistake of law of fact, but rather extends to all orders so long as the requirements of due process are met. p. 284.

4. PROCEDURE, § 31 — Disposal of issues — Nonunanimous stipulations — Due process.

[N.H.] The commission staff does not represent or bind the commission when it enters a stipulation with a party to a commission proceedings; accordingly, the fact that the commission

staff entered a stipulation with one party to a commission proceeding without providing notice to other parties to the proceeding did violate the due process rights of those other parties. p. 285.

5. PROCEDURE, § 31 — Disposal of issues — Nonunanimous stipulations — Due process.

[N.H.] Commission acceptance a nonunanimous stipulation entered between a utility and its staff did not violate the due process rights of the nonsigning parties where acceptance of the settlement followed open hearings conducted under appropriate legal standards. p. 285.

APPEARANCES: J. Michael Love, Esquire on behalf of Southern New Hampshire Water Company, Inc.; Michael Holmes, Esquire and Joseph Rogers, Esquire of the Office of Consumer Advocate for the residential ratepayers of New Hampshire; Eugene F. Sullivan, III on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

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I. *PROCEDURAL HISTORY*

On December 1, 1989, Southern New Hampshire Water Company, Inc. (SNHW or Southern) filed a notice of intent to file rate schedules pursuant to N.H. Admin. Rules, Puc 1603.02. The notice was followed by the January 5, 1990 submission of Southern's full rate case. That rate case was rejected pursuant to RSA 541-A:14, II (a) (Supp.) by Order No. 19,711 (February 12, 1990) (Order 19,711) because SNHW failed to file complete test year data, rate design information and a depreciation study. On February 28, 1990, Southern filed a Motion for Reconsideration and Rehearing of Order 19,711. The Motion was served on the Office of the Consumer Advocate (OCA or Consumer Advocate). The SNHW Motion had attached a stipulation between Southern and the commission's staff, dated February 16, 1990, which stipulation reflected certain commitments of Southern to supplement its filing and the position of the staff with respect to the acceptability of those commitments. Over the March 7, 1990 objection of the OCA, the commission accepted the stipulation insofar as it provided that SNHW supplement its filing. Report and Order No. 19,754 (75 NH PUC 169) (March 13, 1990) (Order 19,754). The stipulation also deferred the requirement for the filing of a depreciation study. Since that requirement had been imposed by commission order, *Re SNHW*, 73 NH PUC 305, 314 (1988) (Order 19,153), it could not be amended or modified without providing for notice and an opportunity to be heard. RSA 365:28. Such notice was provided in Order 19,754 and a hearing was scheduled and held on April 3, 1990.

Subsequent to the issuance of Order 19,754 and prior to the April 3, 1990 hearing, Southern filed a request for emergency rates pursuant to RSA 378:9 and a document labeled as a "study of depreciation".

At the April 3, 1990 hearing, SNHW represented and the parties did not dispute that Southern had supplemented its filing to address all deficiencies specified in Order 19,711 other than Southern's failure to file a depreciation study. Southern also requested that the document labeled as a "study of depreciation" be accepted as satisfying the commission's requirement or, in

the alternative, that the commission's requirement be waived. After review of the record and of the evidence and argument taken at the April 3, 1990 hearing, the commission issued Report and Order 19,802 (75 NH PUC 243) (April 24, 1990) (Order 19,802) rejecting SNHW's claim that the document submitted satisfied the commission's requirement and granting its request that the requirement be waived.

On May 9, 1990 the OCA filed a motion for rehearing (Motion) seeking: 1) rehearing of Order 19,802; 2) dismissal of the instant docket until such time as Southern complies with Order No. 19,153 in its entirety; and 3) such other relief as is just and proper. *See,* Motion at 18-19. As a basis for such relief, the OCA claims, *inter alia*: 1) that the decision in Order 19,802 is not supported by the evidence; 2) that the commission lacks the authority to take the action provided in Order 19,802; and 3) that the procedures employed by a) the commission, and b) the commission staff were inconsistent with constitutional due process guarantees.

II. *COMMISSION ANALYSIS*

Because the OCA's arguments are based on misstatements of fact and an incorrect analysis of the law, and because the OCA has raised no matters in its Motion that were not carefully considered when we issued Order 19,802, we will deny the Motion. We will in this report address the above issues raised by the OCA. To the extent that any OCA argument is not addressed herein, it is deemed to be rejected.

A. *Evidentiary Support*

[1, 2] The OCA asserts that Order 19,802 accepts SNHW claims of a financial emergency without evidentiary support.[1(13)] To address this issue, it is necessary to provide the procedural context.

By rejecting SNHW's filing in Order 19,711, we provided, *inter alia,* that the running of the clock could not commence on Southern's request for rate relief. Once the filing is accepted, SNHW is entitled to adjudication of

its request within 12 months of the date its proposed tariffs are suspended, RSA 378:6, and it may also be entitled to earlier rate relief in the form of bonded rates, *id,* or temporary rates, RSA 378:27. Order 19,802 provided for the commencement of the running of the rate proceeding clock upon the completion of the required supplemental filing. As is more fully reflected in the order itself, the commission determined that the potential harm to SNHW from delay outweighed the potential benefit to ratepayers and/or Southern from the conduct of a depreciation study. The OCA's Motion seeks dismissal of the SNHW rate filing, Motion at 19, thereby terminating the running of the rate proceeding clock and requiring that it be started anew only after SNHW has completed the process of conducting a depreciation study.[2(14)]

In this context, it is evident that the OCA accurately characterized the relief sought as being in the nature of a motion to dismiss. *See* Motion at 19; April 3, 1990 Transcript at 81. The evidentiary standard to be applied to a motion to dismiss is well settled: the factual allegations of the petitioner are assumed to be true and all reasonable inferences therefrom must be construed in favor of the petitioner. *See e.g. Rounds v. Standex International,* 131 N.H. 71, 74 (1988); *Bell*

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v. Pike, 53 N.H. 473, 475 (1873).

In the instant matter, there can be no credible dispute that SNHW's pleadings, including *inter alia* its pre-filed testimony and exhibits, would support a finding of financial emergency if taken to be true and construed in the light most favorable to SNHW. No further evidence is necessary to defeat a motion to dismiss. In this instance, however, the fact that these pleadings would support a finding of financial emergency was not dispositive. The financial emergency had to be balanced against the requirement of a depreciation study, which, as we have previously noted *supra* at n. 2, was accorded serious weight. As discussed fully in Order 19,802 the commission concluded that the risk of financial harm outweighed the precondition of a depreciation study for the limited purpose of allowing this proceeding to move forward.

Accordingly, we reject the OCA's assertion that the record compelled dismissal. We note, however, that SNHW's pleadings were accepted as true solely for the purpose of ascertaining whether the proceeding should be dismissed. When we reach the merits, SNHW bears the burden of supporting its factual allegations by substantial evidence. RSA 378:8.

B. *Scope Of Commission's Statutory Authority To Modify Previous Orders*

[3] The OCA asserts that the commission does not have the statutory authority to modify Order 19,153 (73 NH PUC 305) in the instant situation. RSA 365:28 provides:

> *Altering orders*. At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside or otherwise modify any order made by it.

The OCA argument is that RSA 365:28 must be read to limit the commission's ability to modify previous orders to only those instances where the commission is correcting "... for mistakes of fact and of law that are discovered after the time for appealing to the Supreme Court has expired." Motion at 8, ¶15. The OCA did not and could not derive this limitation from the words of the statute; instead the OCA cites *Meserve v. State*, 119, N.H. 149, 152 (1979) as authority for its interpretation.

We have thoroughly examined the authority cited by the OCA (as well as other pertinent authority) and we can find no support for the OCA's narrow interpretation of our ability to alter orders. Indeed, on the page cited by the OCA, the Court specifically states: "Such a provision [RSA 365:28] should be liberally construed." *Meserve*, 119 N.H. at 152, *citing* 64 AM. JUR. 2d *Public Utilities* §232 (1972). Moreover, given that ratemaking is essentially a legislative act, *e.g. Appeal of Pennichuck Water Works*, 120 N.H. 562, 565 (1980), it is illogical and absurd to conclude that orders may only be modified to correct a mistake of law or fact. All ratemaking orders in effect modify all previous ratemaking orders. The legislature will not be presumed to enact a provision leading to an absurd or illogical result. *State v. Kay*, 115 N.H.

696 (1975). For these reasons, as well as those set forth in Order 19,802 (Report at 5), we reject the contention of the OCA and we will deny the Motion on this ground.

C. *Constitutional Limitations*

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[4, 5] The OCA claims that the procedures employed by the commission and the staff violated its constitutional right of due process. Initially it must be stated that the OCA did not and cannot claim that the commission did not adhere to the RSA 365:28 requirement of notice and hearing. Order 19,754 provided full notice of the issues to be adjudicated at the April 3, 1990 hearing and, indeed, the OCA accurately defined the issues in its April 3, 1990 argument to the Commission. *See* April 3, 1990 Transcript at 22 ("MR. ROGERS. The issues today for this hearings are (one) whether the Company has complied with Order No. 19,153 and the stipulation contained therein, where the Company as a precondition to filing a rate case agreed to conduct a depreciation study and, (secondly) if not, whether the Order should be modified pursuant to RSA 365:28."). Instead, the OCA is claiming that certain actions of the staff and the commission are inconsistent with due process guarantees. We shall address each claim in turn.

1. *Staff*

The OCA claims that the staff acted illegally in negotiating with SNHW the stipulation attached to SNHW's February 28, 1990 Motion for Reconsideration and Rehearing without first notifying the OCA that it was engaging in such conduct. In order to be persuasive on this point, the OCA attempts to claim that the staff was somehow representing and binding the commission when it negotiated with SNHW. Motion at 15-16. The OCA misstates the facts. The record in this and other proceedings demonstrates that the commission staff does not represent or bind the commission when it enters into discussions with parties before the commission. The staff's signature on a stipulation binds the staff to take a certain position before the commission, but it cannot bind the commission to accept that position. The commission can only act on the basis of record evidence and in a manner consistent with the law. Thus, acceptance of the staff position is not automatic. The OCA certainly is privileged to enter into bilateral settlement discussions with any party without providing notice to the remaining parties. Under the instant circumstances, the staff has the same ability.

2. *Commission*

The OCA claim is that after the staff entered into a stipulation that somehow bound the commission, the commission accepted the stipulation at "secret meetings". Motion at 11, 15. The OCA has again misstated the facts.

The record reflects that the stipulation between the staff and SNHW was attached to Southern's February 28, 1990 Motion for Reconsideration and Rehearing, which Motion was served on the OCA. The OCA filed an objection on March 7, 1990. The commission deliberated on Southern's Motion and the OCA objection at its public meetings of March 5, 1990 (Minutes of March 5, 1990 Commission Meeting at 5)[3(15)] and March 12, 1990 (Minutes of March 12, 1990 Commission Meeting at 4) culminating in Order 19,754 which was signed on March 13, 1990. Additionally, the commission discussed how to address procedurally SNHW's emergency rate petition during its public meeting of March 19, 1990 (Minutes of March 19, 1990 Commission Meeting at 3) and deliberated on the rulings to be set forth in Order 19,802 in its public meeting of April 23, 1990 (Minutes of April 23, 1990 Commission Meeting at 1). All of the above meetings were public meetings in accordance with RSA 91-A. The OCA had full notice of the date and time of each of those meetings and of the agendas thereto.[4(16)] The fact that OCA personnel may have elected not to attend the commission's public meetings does not of

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itself convert these meetings into "secret meetings".

The foregoing demonstrates that the OCA's argument rests on a mischaracterization of the process. Because the record reflects that the Consumer Advocate had full notice of the commission's proposed action, and a full

opportunity to be heard, and because we believe that our decision in Order 19,802 was a rational determination in an open process based on the record under appropriate legal standards, we will reject his constitutional claims.

III. *CONCLUSION*

Based on the foregoing, the OCA's Motion will be denied.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing which is made a part hereof; it is hereby

ORDERED, that the Office of Consumer Advocate's Motion for Rehearing dated May 9, 1990 be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

FOOTNOTES

[1]Information about SNHW's financial situation was received over the Consumer Advocate's objection that "... any testimony or arguments concerning the company's rates are really irrelevant to this hearing." April 3, 1990 Transcript at 8. The commission also has information about Southern's financial condition in the form of *inter alia* the pre-filed testimony, exhibits and work papers, which are pleadings in the instant docket.

[2]Since we assume that the Consumer Advocate was not interjecting his objection for the purpose of delay, *see* Rule 3.2 of the N.H. Rules of Professional Conduct, it follows that the Consumer Advocate believes he has a substantive need for a SNHW depreciation study prior to the commencement of this rate proceeding. Unfortunately, the Consumer Advocate declined to provide the commission with the basis of such a substantive need. Instead, he elected to rest his need solely on the fact that the precondition of a depreciation study was a part of a stipulation accepted by the commission. *See e.g.* April 3, 1990 Transcript at 79-81. We do not mean to imply that such a position was inappropriate. The fact that the parties stipulated to the depreciation study requirement in an agreement accepted by the commission is sufficient to entitle that term to serious weight.

[3]At its March 5, 1990 commission meeting the commission was not aware that the OCA wished to file an objection to the SNHW Motion. There is no commission rule providing for the filing of objections to motions for rehearing and, in any event, such objections must be expeditiously filed given the statutory requirement that the commission rule on such motions

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within 10 days. RSA 541:5. The OCA's March 7, 1990 objection was fully considered in all commission deliberations which took place subsequent to its filing.

[4]The commission's public meetings of March, 5, 1990 and March 12, 1990 were noticed in the commission's hearing lists of January 10, 1990; February 1, 1990; and March 2, 1990. The March 19, 1990 public meeting was noticed in the January 10, 1990 hearing list and on a notice posted on the bulletin boards at the commission's office and the Consumer Advocate's office on March 15, 1990. The April 23, 1990 public meeting was noticed in the hearing lists of March 2, 1990; March 16, 1990; March 30, 1990; and April 13, 1990. The hearing lists are posted and served on a number of persons including the OCA. The agendas for the commission meetings are posted at least 24 hours in advance of the meetings.

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NH.PUC*05/14/90*[50995]*75 NH PUC 286*Southern New Hampshire Water Company, Inc.

[Go to End of 50995]

75 NH PUC 286

Re Southern New Hampshire Water Company, Inc.

DE 90-081
Order No. 19,827

New Hampshire Public Utilities Commission

May 14, 1990

ORDER expanding the authorized franchise area of a water utility.

CERTIFICATES, § 125 — Water — Expansion of franchise.

[N.H.] The commission authorized a water utility to expand its franchise area to include additional territory where no other water utility had franchise rights in the area sought, the utility was currently serving customers in a portion of the area sought, and the utility had the requisite capability to provide the service; authorization was made contingent on the utility

obtaining the approval of the Department of Environmental Services and the town government of new franchise area.

By the COMMISSION:

ORDER

On May 8, 1987, the commission received a petition from Southern N.H. Water Company,

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Inc. (Southern) seeking authority to establish a water utility in the Town of Hooksett, N.H. in an area known as Smythe Woods; and

WHEREAS, docket case DE 87-087 was opened to address the matter and Order *NISI* 18696 issued to grant the authority sought; and

WHEREAS, Southern now contends that the area sought and granted in Order No. 18696 (72 NH PUC 212) does not describe the area now served nor the total area originally desired; and

WHEREAS, Southern now seeks to expand the authorized franchise area to include that area where it is currently serving 59 customers and certain addition of surrounding area; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, the applicant has the financial, managerial, administrative, legal and technical capabilities to meet that need and;

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity before the commission acts on this petition; it is hereby

ORDERED, *NISI* the franchise area granted to Southern in the Smythe Woods area of Hooksett, N.H., shall be as follows:

Beginning, a point at the intersection of East Auburn Road and the Auburn-Hooksett town line. Then heading in a southerly direction along the town line and the easternmost boundary lines of Map 36, Lots 24 and 26, Map 43, Lots 27, 57 and 29 to a point. Then turning and heading in a northwesterly direction along the southernmost boundary line of Map 43 Lot 29 to a point. Then turning and heading in a northerly direction along the westernmost boundary line of Map 43 Lot 29 to the intersection of Map 43 Lots 29, 30, 28, 25 and 54. Then turning and heading in a westerly direction along the lot lines separating lots Map 43 Lot 54 and Map 43 Lot 25. Then turning and heading in a northerly direction along the easternmost boundary line of Map 43 Lot 24 to a point. Then turning and heading in a westerly direction along the northernmost boundary line of Map 43 Lot 24 to the easternmost right-of-way line of Londonderry turnpike (By-pass 28). Then turning and heading in a northerly direction to the southwesternmost Lot corner of Map 43 Lot 21. Then turning and heading in an easterly direction along the southernmost boundary line of Map 43 Lot 21 to a point. Then turning and heading in a northerly direction along the Lot lines separating Map 43 Lots 22-1, 21, 22-2, 20, 22-3, 22-4, 19, 22-5, 22-6, 18, 22-7, 22-8, 17, 22-9, 16, 22, 15 Map 36 Lots 32-9, 32-10, 32-11, 32-12, 42-1, 32-13, 32-14, 42-2, 32-15, 32-16, 34, 32-16, 34, 32-17, 32-18, and 32-19 to a point. Then turning and heading in a southeasterly direction along the southernmost boundary line of Map 36 Lot 32-20 to a point. Then turning and heading in a northerly direction along the easternmost boundary line of Map 36 Lot 32-20 to the centerline of east Auburn Road. Then turning and heading in a southeasterly direction following the centerline of east Auburn Road back to the point of beginning; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

FURTHER ORDERED, that Southern effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than May 24, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before June 18, 1990; and it is

FURTHER ORDERED, that such authority shall be contingent upon receipt of approvals from the Department of Environmental Services and the town of Hooksett and shall be effective on June 18, 1990 unless a request for hearing is filed with this commission within twenty (20) days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1990.

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NH.PUC*05/15/90*[50989]*75 NH PUC 275*Concord Electric Company

[Go to End of 50989]

75 NH PUC 275

Re Concord Electric Company

DR 89-189
Order No. 19,821

New Hampshire Public Utilities Commission

May 15, 1990

ORDER authorizing an electric utility to implement two nonstandard rate agreements for the provision of interruptible service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] The commission has authority under NH RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 275.

2. RATES, § 322 — Electric — Special contract rate — Interruptible load program.

[N.H.] The commission authorized an electric utility to implement two nonstandard rate agreements for the provision of interruptible service where the terms of the agreement were consistent with the intent of a prior order approving interruptible load programs and special circumstances existed that rendered departure from the general schedules just and consistent with

the public interest. p. 275.

By the COMMISSION:

ORDER

On March 5, 1990, Concord Electric Company (the "Company") filed with the New Hampshire Public Utilities Commission ("Commission") two Firm Interruptible Load Agreements ("Agreements") between the Company and the City of Concord, Department of Water Resources ("Department" or "City"). The Agreements were filed pursuant to RSA 378:18 and in accordance with the provisions of the Stipulation the Commission approved December 11, 1989 in Docket DR 89-189, Report and Order No. 19,634 (74 NH PUC 472); and

WHEREAS, the stipulation provides for agreements consistent with the standard agreement become effective on the stated effective date unless suspended by the Commission within twenty days of the filing; and

[1] WHEREAS, the Commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, any agreement varying from the standard agreement necessitates that the Company request an order NISI be issued by the Commission with an effective date of the non-standard agreement specified in the order NISI; and

WHEREAS, the standard agreement used a 100 kW minimum to ensure that a program will be cost effective; and

[2] WHEREAS, of the two agreements between the Company and the City, one provides for a contracted interruptible load of 160 kW at the water treatment plant and pumping station #4, and thus meets the standard agreement program, and the other, which provides for a Contracted Interruptible load of 61 kW at pumping station #2A, varies from the standard agreement; and

WHEREAS, the Company has indicated that the Department of Water Resources will use existing back-up generation to meet its own load requirements during a called interruption period; and

WHEREAS, the Company has stated that Pumping Station #2 operates at a relatively constant level of demand and high load factor; and

WHEREAS, the Commission finds the terms of the agreement between the Company and the City of Concord, Department of Water Resources concerning Pumping Station #2 to be

consistent with the intent of the Commission in DE 89-189, and in accordance with RSA 378:18, and that special circumstances exist which render departure from the general schedules just and consistent with the public interest; it is hereby

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ORDERED, NISI, that Concord Electric Company be, and hereby is, authorized to implement the non-standard agreement with the City of Concord, Department of Water Resources, which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than May 25, 1990, said publication to be documented by affidavit filed with this office on or before June 14, 1990; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), in that the Special Contract will be retroactively effective as of March 1, 1990 unless otherwise provided by Commission Order; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than June 11, 1990; and it is

FURTHER ORDERED, that the Order *NISI* will be effective June 14, 1990 unless the Commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1990.

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NH.PUC*05/15/90*[50996]*75 NH PUC 288*James Bond

[Go to End of 50996]

75 NH PUC 288

Re James Bond

Additional petitioner: Sheryl Bond

DE 90-070
Order No. 19,828

New Hampshire Public Utilities Commission

May 15, 1990

ORDER authorizing revisions to electric service franchise boundaries.

SERVICE, § 198 — Extensions — Electric service — Franchise boundary revisions.

[N.H.] The territorial boundaries of an electric utility and an electric cooperative were

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revised to allow the cooperative to provide service to a customer located within the existing franchise area of the utility where service by the cooperative would require installation of significantly less new line than would service by the utility and both the utility and the cooperative consented to the boundary revisions.

By the COMMISSION:

ORDER

WHEREAS, James and Sheryl Bond filed a petition on April 23, 1990 to receive electric service from the New Hampshire Electric Cooperative (COOP) for property located on Ladd Road in the Town of Stewartstown, New Hampshire; and

WHEREAS, the petition states that the property is in the service territory of Public Service Company of New Hampshire (PSNH); and

WHEREAS, fulfillment by PSNH of its service obligation to the petitioner would require installation of approximately eleven hundred feet of new line, involving significant expense to the petitioner; and

WHEREAS, provision of service by the COOP requires installation of approximately 400 feet of new line, the final 70 feet or so of which would extend over the current service territory boundary; and

WHEREAS, both electric utilities are willing for the COOP to provide service to the petitioner as requested; and

WHEREAS, it appears from the commission's investigation that the proposed change in service territory is in the public good; and

WHEREAS, no other parties are affected by this order; and

WHEREAS, RSA 374:22 requires approval by the commission for any such revision of service territory boundaries; and

WHEREAS the commission finds the above evidence justifies waiver of public hearing in accordance with RSA 374:26; it is

ORDERED, that authority be, and hereby is, granted, pursuant to RSA 374:22, to New Hampshire Electric Cooperative, Inc. and Public Service Company of New Hampshire to revise the service boundary in the Town of Stewartstown, New Hampshire, as described in the subject petition, such authority to be effective immediately; and it is

FURTHER ORDERED, that COOP and PSNH file revised commission service territory maps within sixty days from the effective date of this order, reflecting the above change in service territory boundary and specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC order number.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1990.

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NH.PUC*05/16/90*[50997]*75 NH PUC 289*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 50997]

75 NH PUC 289

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,829

New Hampshire Public Utilities Commission

May 16, 1990

PROTECTIVE order prohibiting public disclosure of proprietary personnel information contained in a Seabrook nuclear plant budget study filed in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

PROCEDURE, § 16 — Proprietary information — Protective order.

[N.H.] The commission issued a protective order prohibiting public disclosure of a proprietary personnel information contained in a Seabrook nuclear plant budget study filed in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

By the COMMISSION:

ORDER

Northeast Utilities Service Company (NU) having filed on May 11, 1990, a motion for protective order to restrict dissemination and disclosure of certain materials which NU proposes to file with the commission in this proceeding; and

WHEREAS, in its motion, NU asserts, in pertinent part, that:

1. One of the issues in these proceedings is the reasonableness of NU's projections of operation and maintenance expenses for the Seabrook Nuclear Generating Station (Seabrook).

2. The information to be filed ("Seabrook Budget Study") includes preliminary itemization of staffing levels in each functional area as well as a division of cost impacts under the severance pay plans covering New Hampshire Yankee (NHY) employees and employees of Yankee Atomic Electric Company (YAEC) as Seabrook.

3. Seabrook is currently undergoing ascension to full power pursuant to the full power operating license granted to Seabrook by the Nuclear Regulatory Commission on

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March 15, 1990. This ascension to full power requires the full attention and resources of NHY.

4. Premature public dissemination and disclosure of the Seabrook budget study information may adversely affect the morale of NHY employees thereby impairing NHY's ability to bring Seabrook to commercial operation; and

WHEREAS, RSA 91-A:5 IV exempts from public disclosure:

...records pertaining to internal personnel practices, confidential, commercial, or financial information ...; and

WHEREAS, it appears for the reasons cited above that granting the requested relief would be in the public interest; it is hereby

ORDERED, that:

1. NUSCO shall mark the Seabrook Budget Study "Confidential," and one copy shall be filed with the Commission. NUSCO also shall make a copy available at the offices of its counsel, Rath, Young, Pignatelli & Oyer, Two Capital Plaza, Concord, New Hampshire, for review during regular business hours by the parties in accordance with the terms of the protective order.

2. Any parties requesting a copy of the Seabrook Budget Study shall direct such request in writing to Eve H. Oyer, counsel for

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NUSCO, at Rath, Young, Pignatelli and Oyer, P.A., Two Capital Plaza, Concord, New Hampshire 03302-0854. NUSCO shall promptly comply with any such request consistent with the terms of the protective order.

3. The Seabrook Budget Study shall be available to counsel for the following parties to this proceeding: New Hampshire Public Utilities Commission, Office of the Consumer Advocate, State of New Hampshire, PSNH, NHY, Hydro Intervenors, Business and Industry Association and New Hampshire Electric Cooperative. In addition, the Seabrook Budget Study shall be available to the Commission's Staff, Office of Consumer Advocate Staff, New Hampshire State's witness Alan M. Kessler, Mr. Brown and members of Mr. Brown's staff assisting him directly in preparing any information for presentation to the Commission, and John Victor Hilberg.

4. Each person requesting access to the Seabrook Budget Study must execute a Nondisclosure Statement prior to such access, substantially in the form attached as Exhibit A.

5. No portion of the Seabrook Budget Study will be copied except upon the written request of a reviewing party, and all such copies shall be retained and treated as confidential by such reviewing party until termination of the protective order, as provided below. No portions of the Seabrook Budget Study shall be disclosed to any person other than those specifically granted access pursuant to the protective order.

6. The effectiveness of the protective order and validity of the Nondisclosure

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Statements will terminate upon issuance by the Commission of a final order in this docket or upon the achievement of commercial operation by Seabrook whichever occurs first.

7. The parties shall provide separate sealed briefs as to any issues that refer to the contents of the Seabrook Budget Study. Any hearings conducted by the Commission directly addressing the Seabrook Budget Study shall be closed to the public, and transcripts of such hearings shall be sealed. Such transcripts and briefs shall be provided to the parties identified in (2) above on the same terms as access to the Seabrook Budget Study until termination of the protective order; and it is

FURTHER ORDERED, that on motion of any party, the commission will reconsider the extent to which the material protected by this order shall be made a part of the public record pursuant to RSA 91-A, or for the development of relevant testimony, cross-examination and to the commission in determining the public good.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of May, 1990.

EXHIBIT A

NONDISCLOSURE STATEMENT

The undersigned party (the "Reviewing Party") has requested access to the information (the "Confidential Information") which is subject to the protective order of the Public Utilities Commission (the "Commission") dated May 16, 1990.

The Confidential Information is to be provided in consideration of the reviewing Party's agreement that:

1. The Confidential Information is reviewed in confidence.

2. The Confidential Information shall not be used or disclosed by the Reviewing Party except in accordance with protective order no. 19,829 issued by the Commission on May 16, 1990.

Reviewing Party
By:
Dated:

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NH.PUC*05/17/90*[50998]*75 NH PUC 291*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50998]

75 NH PUC 291

Re Public Service Company of New Hampshire/Northeast Utilities

Movant: Robert C. Richards

DR 89-244

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Order No. 19,830

New Hampshire Public Utilities Commission

May 17, 1990

ORDER denying reconsideration of an order that denied an untimely motion for intervention in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire.

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1. PARTIES, § 18 — Intervenors — Untimely intervention — Factors considered.

[N.H.] In denying a motion for reconsideration of its denial of an untimely motion for intervention in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire, the commission reaffirmed its conclusion that intervention would not serve the interests of justice and would impair the orderly and prompt conduct of the proceedings. p. 291.

2. PROCEDURE, § 33 — Rehearings and reopenings — Grounds for denial.

[N.H.] The commission denied a motion for reconsideration of a decision to deny an untimely motion for intervention where the motion for reconsideration raised no substantive issues not previously addressed by the commission. p. 291.

By the COMMISSION:

REPORT

[1, 2] On April 25, 1990, Robert C. Richards, a holder of 6,000 shares of common stock of PSNH, filed a petition to intervene in this docket. The commission denied Mr. Richards' motion by order no. 19,814 (75 NH PUC 263), dated May 7, 1990. The commission cited as reasons for its denial that, *inter alia*, Mr. Richards' petition was untimely in that it was filed 110 days after the date established by the commission for interventions in this proceeding. Mr. Richards has questionable standing to intervene as a stockholder of PSNH and Mr. Richards' interests were previously litigated before the United States Bankruptcy Court for the District of New Hampshire in Docket BK No. 88-43, *In re: Public Service Company of New Hampshire*. The intervention, if allowed, will impair the interests of justice and the orderly and prompt conduct of the proceedings. RSA 541-A:17.

Mr. Richards filed a timely motion for rehearing of order no. 19,814 on May 11, 1990. Mr. Richards did not raise any new substantive issues, except for an allusion to Hamlet, that were not raised in his original motion for intervention, as supplemented, or by the commission in its order no. 19,814 denying Mr. Richards' petition to intervene.

The petitioner's Hamlet analogy is an eloquent pleading. Alas, without avail. We cite Macbeth to place it all in perspective[1(17)] :

"She should have died hereafter; there would have been a time for such a word. Tomorrow, and tomorrow, and tomorrow, creeps in this petty pace from day to day, to

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the last syllable of recorded time; and all our yesterdays have lighted fools the way to dusty death. Out, out, brief candle!

Life's but a walking shadow, a poor player that struts and frets his hour upon the stage, and then is heard no more; it is a tale told by an idiot, full of sound and fury, signifying nothing."

We will deny the petitioner's request for a

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rehearing.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the request for rehearing of order no. 19,814, dated May 7, 1990, is hereby denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1990.

FOOTNOTES

[1]Macbeth V, v, 17.

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NH.PUC*05/17/90*[50999]*75 NH PUC 292*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 50999]

75 NH PUC 292

Re Public Service Company of New Hampshire/Northeast Utilities

Movants: Martin Rochman and Edward Kaufman

DR 89-244
Order No. 19,831

New Hampshire Public Utilities Commission

May 17, 1990

ORDER denying a motion to intervene out of time in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire.

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PARTIES, § 18 — Intervenors — Untimely intervention — Factors considered.

[N.H.] The commission denied a motion to intervene out of time in a proceeding to review an electric rate agreement for resolving the bankruptcy reorganization of Public Service Company of New Hampshire; it was found that intervention would not serve the interests of justice and would impair the orderly and prompt conduct of the proceedings.

By the COMMISSION:

ORDER

Martin Rochman, of 3120 South Ocean Boulevard, Palm Beach, Florida and Edward Kaufman of 34 Woodshole Drive, Scarsdale, New York, (Petitioners) having petitioned to intervene in these proceedings on May 7, 1990, approximately 120 days after the date established by the commission by order of notice dated December 22, 1989, for interventions in this proceeding; and

WHEREAS, objections to the subject petitions to intervene were filed by Northeast Utilities Service Company and by Public Service Company of New Hampshire on May 8, 1990; and

WHEREAS, the petitions were submitted under cover letter of Robert C. Richards which stated that "(t)hese petitions are being filed to make it clear to the Commission that I am not acting alone in this proceeding."; and

WHEREAS, the petitioners cite essentially the same reasons in their petitions to intervene as what was previously cited in the motion to intervene out of time of Robert C. Richards which was denied by the commission by orders 19,814 (75 NH PUC 263) (May 7, 1990) and 19,830 (75 NH PUC 291) (May 16, 1990); and

WHEREAS, RSA 541-A:17 provides, in pertinent part:

541-A:17 Intervention.

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing at least three (3) days before the hearing;

(b) The petition states facts

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demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time,

upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. ...

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification; and

WHEREAS, the subject petitions to intervene are untimely regarding RSA 541-A:17 I and therefore fall within the discretion of the commission pursuant to RSA 541-A:17 II so long as the commission determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings; it is

ORDERED, that the same reasons cited in the commission's denial of Mr. Richards' motion to intervene in order no. 19,814, dated May 7, 1990, the petitions to intervene filed by the petitioners will not serve the interests of justice and will impair the orderly and proper conduct of these proceedings; and it is

FURTHER ORDERED, that the petitions to intervene filed by Martin Rochman and Edward Kaufman are hereby denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of May, 1990.

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NH.PUC*05/21/90*[51000]*75 NH PUC 293*Granite State Telephone

[Go to End of 51000]

75 NH PUC 293

Re Granite State Telephone

DF 90-085
Order No. 19,832

New Hampshire Public Utilities Commission

May 21, 1990

ORDER authorizing a telephone utility to treat an outstanding accumulated depreciation account balance resulting from the early retirement of electro-mechanical switching equipment as a deferred asset for amortization over a period of five years.

EXPENSES, § 35 — Capital amortization — Early retirements — Accumulated depreciation account balance — Electro-mechanical switching equipment — Telephone utility.

[N.H.] A telephone utility was authorized to treat an outstanding accumulated depreciation account balance resulting from the early retirement of electro-mechanical switching equipment as a deferred asset for amortization over a period of five years.

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By the COMMISSION:

ORDER

On February 21, 1990, Granite State Telephone a New Hampshire public telephone utility filed a petition to treat extraordinary retirement of electro-mechanical switching equipment as a deferred asset for amortization; and

WHEREAS, Granite State Telephone states in its petition that it replaced their remaining step offices with digital central offices in the Washington and Hillsboro Upper Village Exchanges in December of 1989; and

WHEREAS, Granite State Telephone states these replacements were part of the construction program included in the REA "P

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Loan"; and

WHEREAS, as of December 31, 1989 Granite State Telephone states they no longer have any investment in A/C 2215, Electro-Mechanical Switching; and

WHEREAS, Granite State Telephone states there is a negative reserve balance of $251,635 which resulted from the 1986 replacement of the step office in the Chester Exchange; and

WHEREAS, Granite State Telephone provided an analysis of the accumulated depreciation account for Electro-Mechanical Switching, and a proposed amortization schedule; and

WHEREAS, Granite State Telephone requested approval to transfer this balance of $251,635 to account 1438, Deferred Maintenance and Retirements, as of December 31, 1989, and amortize $50,327 per year for five years beginning January 1, 1990; and

WHEREAS, Granite State Telephone states that the negative reserve balance resulted from the 1986 replacement of the step office in the Chester Exchange, and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said requests with some modifications; it is hereby

ORDERED, that Granite State Telephone is authorized, to treat the outstanding account balance as a deferred asset for amortization for a period of five years; and it is

FURTHER ORDERED, that Granite State Telephone is authorized to transfer the balance of $251,635 to account 1438, Deferred Maintenance and Retirements; and it is

FURTHER ORDERED, that Granite State Telephone, having a negative reserve balance resulting from the 1986 replacement of the step office in Chester Exchange, is hereby authorized to amortize $50,327 per year for five years beginning January 1, 1989.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1990.

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NH.PUC*05/22/90*[51001]*75 NH PUC 294*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 51001]

75 NH PUC 294

Re Public Service Company of New Hampshire/Northeast Utilities

Movant: Hydro Intervenors

DR 89-244
Order No. 19,834

New Hampshire Public Utilities Commission

May 22, 1990

ORDER denying a motion for further discovery in a proceeding to review an electric rate agreement for resolving the Chapter 11 bankruptcy of Public Service Company of New Hampshire.

PROCEDURE, § 16 — Discovery — Production of evidence — Motion for further discovery.

[N.H.] The commission denied an untimely motion by certain intervenors for further discovery in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire; it was found that the grant of the motion, which requested production of further information concerning the valuation and amortization of an acquisition premium, would unduly burden the producing party, would have minimal value with respect to the ultimate issue of whether the rate agreement is in the public good, and would disrupt the orderly conduct of the proceeding.

By the COMMISSION:

ORDER

The Hydro Intervenors having filed on May 14, 1990, a motion for further discovery requesting that Northeast Utilities (NU) be required to submit for the commission's

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consideration financial forecasts using NU's financial model and output formats, but incorporating three alternative assumptions, namely:

Option 1. The $789 million acquisition adjustment is transferred to North Atlantic as cost of Seabrook plant and depreciated over 39 years.

Option 2. The $789 million dollar acquisition adjustment is transferred to North Atlantic as

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an acquisition adjustment and amortized by North Atlantic in the same manner proposed for PSNH.

Option 3. Consider the acquisition adjustment part of the cost of power from Seabrook, but keep the $789 million dollars on the books of new PSNH as a deferred purchase power cost. Amortize the deferred costs as proposed by NU ($425 million dollars over 7 years, ($364 million dollars over 20 years), but classify the amortization as purchased power costs; and

WHEREAS, Hydro Intervenors also requested in its motion additional related information in specified formats relating to PSNH, North Atlantic and tax benefit schedules; and

WHEREAS, Hydro Intervenors further assert that the requested information is necessary in part because there is insufficient evidence on the record to support NU's proposed valuation and amortization of the acquisition premium and the impact of such valuation and amortization on customer rates; and

WHEREAS, Northeast Utilities filed on May 17, 1990, an objection to the motion by Hydro Intervenors for the discovery stating, *inter alia*:

1. The motion requests the preparation of numerous schedules and detailed calculations which do not currently exist and which would be unduly burdensome to produce and which would have no prohibitive value with respect to the ultimate issue in this docket.

2. There is substantial evidence on the record justifying NU's proposed valuation and amortization of the acquisition premium and the benefits of such valuation and amortization to ratepayers.

3. The evidence already in the record adequately addresses the relative merits of NU's proposal and the detailed financial forecasts of alternatives to NU's proposal are not necessary. There is no alternative reorganization plan before the commission for approval and the requested information addresses modeling of purely hypothetical and unfeasible alternatives which is beyond the power of the commission to consider in this docket under RSA 362:C because they do not qualify as alternative reorganization plans.

4. The record reflects that the requested information is not available and that making it available would be extremely burdensome and of little value. 12 Tr. 117-121 (April 26, 1990). Compilation of the requested information would require approximately three to four weeks to accomplish.

5. The motion for further discovery, late in the proceedings, and compliance with their request would result in a substantial delay in this proceeding beyond the projected date established by the commission for final decision; it is

ORDERED, that for reasons cited by NU in its objection to the motion by Hydro Intervenors for further discovery cited above, the information requested by the Hydro Intervenors would be unduly burdensome to produce, would be of minimal value with respect to the ultimate issue of whether the rate agreement is in the public good, is untimely and, if granted, would disrupt the orderly proceeding of this docket. Accordingly, the motion by Hydro Intervenors for further discovery is hereby denied.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of

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May, 1990.

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NH.PUC*05/23/90*[51002]*75 NH PUC 296*Town of Derry

[Go to End of 51002]

75 NH PUC 296

Re Town of Derry

Additional party: Southern New Hampshire Water Company

DR 84-005
Supplemental Order No. 19,835

New Hampshire Public Utilities Commission

May 23, 1990

ORDER accepting revised tariffs providing for an 11.5% increase in wholesale water rates in accordance with a wholesale water rate contract.

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1. RATES, § 625 — Wholesale to distributors — Rate increase — Rate contract.

[N.H.] The commission accepted revised tariffs providing for an 11.5% increase in wholesale water rates in accordance with a wholesale water rate contract where the increase was consistent with a prior rate order and settlement agreement between the contracting parties. p. 296.

2. RATES, § 625 — Wholesale to distributors — Rate contract — Rate increase — Recoupment.

[N.H.] In accepting revised tariffs providing for an 11.5% increase in wholesale water rates, the commission ordered that no recoupment of the difference between current rates and the approved increase would be allowed without prior commission review and approval of the calculation of the recoupment amount and billing methodology. p. 296.

By the COMMISSION:

SUPPLEMENTAL ORDER

On May 16, 1990 the Town of Derry submitted a revised tariff page governing Derry's wholesale water rate as it applies to its sole wholesale customer, Southern New Hampshire Water Company; and

[1] WHEREAS, the Town of Derry purposes to increase the wholesale water rate by 11.5% in accordance with a wholesale water contract entered into between the Town of Derry and Southern New Hampshire Water Company; and

WHEREAS, the increase requested by the Town of Derry reflects an identical increase

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reflected in the Town of Manchester/Derry wholesale agreement; and

WHEREAS, the 11.5% increase in the wholesale water rate to the Town of Derry from the Town of Manchester is consistent with the commission's rate decision in DR 88-020 of March 15, 1989; and

WHEREAS, a settlement agreement entered into between the Town of Derry and Southern New Hampshire Water Company in Docket no. DR84-005, provides for such an automatic adjustment mechanism to be applied Southern New Hampshire Water Company water rates; and

WHEREAS, the amount of the increase appears to be consistent in terms of the agreement between the Town of Derry and Southern New Hampshire Water Company; it is hereby

ORDERED, that the Town of Derry Water Department, NH PUC no. 1, 2nd Revised Page 7, be and hereby is approved for effect the day of this order; and it is

[2] FURTHER ORDERED, that no recoupment between rates currently charged to Southern New Hampshire Water Company and the increase approved in this order will be allowed back to March of 1989 without prior commission review and approval of the calculations of the recoupment amount and billing methodology.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 1990.

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NH.PUC*05/23/90*[51003]*75 NH PUC 297*Telesphere Communications, Inc.

[Go to End of 51003]

75 NH PUC 297

Re Telesphere Communications, Inc.

DE 90-075
Order No. 19,836

New Hampshire Public Utilities Commission

May 23, 1990

ORDER establishing a docket to investigate whether a telecommunications company should be fined or subject to criminal prosecution for unauthorized operation of a public utility.

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1. PUBLIC UTILITIES, § 117 — Tests of public utility character — Telecommunications companies.

[N.H.] The term public utility includes every corporation or company owing, operating or managing any plant or equipment for the conveyance of telephone or telegraph messages for the public. p. 297.

2. FINES AND PENALTIES, § 7 — Grounds for imposing — Unauthorized operation —

Telephone public utility.

[N.H.] A telecommunications company was directed to appear and show cause why it should not be fined or subject to criminal prosecution for unauthorized operation of a public utility. p. 297.

By the COMMISSION:

ORDER

WHEREAS, the staff of the New Hampshire Public Utilities Commission (PUC) on information and belief, alleges Telesphere Communications, Inc. (Telesphere) is providing intrastate telecommunications service in the State of New Hampshire; and

WHEREAS, Telesphere has not applied for or been granted franchise authorization pursuant to RSA 374:22; and

[1] WHEREAS, pursuant to RSA 362:2 the term "public utility" includes, in pertinent part, every corporation or company owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone and telegraph messages for the public; and

WHEREAS, Telesphere has not filed appropriate rate schedules showing the rates, fares, charges and prices for any services rendered or to be rendered pursuant to, *inter alia*, RSA 378:1 *et seq.* and N.H. Admin. Rules Puc 1600; and

WHEREAS, the commission staff alleges, on information and belief, that Telesphere is charging customers for unauthorized intrastate telecommunications services in violation of, *inter alia*, RSA 374:22, 378:1 *et seq.*; and 374:2

WHEREAS, Telesphere Network, Inc. qualified with the New Hampshire Secretary of State on May 31, 1989, listing as its agent therein C.T. Corporation System, 9 Capital Street, Concord, New Hampshire, it is

[2] ORDERED, that docket DE 90-075 be established for the purpose of investigating whether Telesphere should be fined up to $25,000, pursuant to RSA 365:41 or any of its agents or officers should be fined up to $10,000, for each day of a continuing violation pursuant to RSA 365:42, or whether Telesphere and its officers and agents should be subjected to criminal prosecution or other appropriate sanctions pursuant to *inter alia*, RSA 365:41, 365:42, or 374:41 *et seq.* for operating as a public utility without authority and for charging rates without authority; and it is

FURTHER ORDERED, Telesphere, its officers and agents, including, without limitation, a representative of said C.T. Corporation System, appear before the commission for a prehearing conference at the offices of the commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 a.m. on June 8, 1990 for the purpose of establishing a procedural schedule in this matter.

By order of the Public Utilities

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Commission of New Hampshire this twenty-third day of May, 1990.

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[Go to End of 51004]

75 NH PUC 298

Re Claremont Gas Corporation, Inc.

DR 89-185
Order No. 19,837

New Hampshire Public Utilities Commission

May 24, 1990

ORDER approving, subject to conditions, an agreement governing compensation for propane storage services provided by regulated gas distributor to its nonregulated parent corporation.

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1. INTERCORPORATE RELATIONS, § 15 — Affiliated interests — Intercorporate payments — Utility services to nonregulated parent — Propane storage.

[N.H.] The commission approved, subject to conditions, an agreement governing compensation for propane storage services provided by regulated gas distributor to its nonregulated parent corporation. p. 299.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Cost of gas adjustment — Storage — Gas distributor.

[N.H.] The commission approved an agreement governing compensation for propane storage services provided by regulated gas distribution utility to its nonregulated parent corporation, provided that all throughput revenues received from the parent would be passed through to utility ratepayers as a per therm credit on bills until the next utility rate case. p. 299.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement practices — Competitive bidding — Gas distributor.

[N.H.] Execution of an agreement authorizing a regulated natural gas distributor to reduce the throughput rate charged to its nonregulated corporate parent for propane storage services whenever it is established that the propane supply rate charged by the parent to the distributor is at least $0.75 per gallon less than the market price was conditioned on the distributor's participation in a formal bidding process to establish the market price of propane. p. 299.

By the COMMISSION:

REPORT

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I. *Procedural Background*

In Docket DR 89-185 the commission became aware of the fact, through testimony provided by Claremont Gas Corporation (Claremont or the company), that Claremont, a regulated public gas utility, was providing propane storage service to its non-regulated parent corporation, Synergy Gas Corporation (Synergy).

In Report and Order No. 19,611 (74 NH PUC 447) dated November 15, 1989 the commission directed the company to meet with staff to determine an appropriate level of compensation for this storage service. Staff and the company met on several occasions during December of 1989 but failed to resolve their differences. In response, the commission issued order no. 19,670 (75 NH PUC 14) setting a prehearing conference for January 30, 1990 to address a procedural schedule in what was then a contested case. (See RSA 541-A:16). On February 5, 1990 the commission issued order no. 19,707 approving a procedural schedule that concluded with a hearing on April 17, 1990. Subsequent to that order, the staff and the company met and resolved all issues in this case through an agreement executed April 17, 1990.

II. *Claremont's Operations*

Page 298

Claremont owns and operates a propane facility comprised of three 30,000 gallon storage tanks, a propane production plant, and a building that houses the plant and provides storage space for parts and equipment. All are located on a 1/2 acre site in the Town of Claremont.

Two of the three storage tanks are interconnected and dedicated to utility use. The third tank however, which is physically isolated from the other two, is used solely to supply Synergy's non-regulated retail propane business. Claremont currently charges Synergy $200 per month or approximately 0.28¢ per gallon withdrawn for the use of the tank.

III. *Positions of the Parties*

Claremont Gas Corporation

Claremont contended that the $200 per month rental to the utility yielded a reasonable return on investment. Moreover, the Company believes that staff's recommended through-put rate of 2.6¢ per gallon is excessive and may result in the loss of Synergy's business.

Staff

Staff asserted that the analysis on which the company based the rental charge understates some costs and excludes others. Consequently, it was unlikely that Claremont was recovering all of the costs incurred in servicing its parent. Furthermore, staff believed that the charge should reflect market conditions. Staff asserted that the market rate for propane storage service is 2.6¢ per gallon through-put plus 0.5¢ per gallon per month of storage capacity.

In addition to propane storage service staff asserted that Claremont also allowed Synergy to: 1) store small volume propane tanks on utility property; 2) use the plant building as a base to store, fill, load and unload propane cylinders; 3) access the utility's materials and supplies inventory and 4) park its vehicles over-night on utility property.

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IV. *Proposed Agreement*

The proposed agreement between the staff and Claremont provides, in essence, as follows:

1. Synergy Gas Corporation shall pay to Claremont the sum of 2.6¢ per through-put gallon provided to Synergy.

2. Synergy Gas Corporation shall pay Claremont 0.5¢ per gallon of storage capacity per month.

3. The through put rate shall be reduced to 2.1¢ per gallon if, and only if, Claremont can establish to the satisfaction of the staff and the commission that the propane it receives from Synergy is at least 0.75¢ per gallon less in price than the price Claremont could obtain on the open market.

4. Staff would take up the issue of compensation for non-storage related services provided to Synergy at the time of Claremont's next rate case.

V. *Commission Analysis*

[1-3] The commission will approve the proposed agreement based upon our finding that it is just and reasonable, subject to the following comments. (See RSA 366:5).

While the agreement provides that Synergy pay Claremont 2.6¢ per through-put gallon it is silent on how and when the associated revenues will flow to Claremont's ratepayers. We will accept staff's recommendation as stated in the testimony of George McCluskey on this issue and require that all through-put revenues received from Synergy be passed to Claremont customers through a per therm credit on bills until the next rate case. The accounting for these revenues will begin May 1, 1990.

The agreement also provides for a reduction in the through-put rate to 2.1¢ per gallon if Claremont can establish to our satisfaction that the Synergy delivered product cost is at least 0.75¢ per gallon less than the market price. To meet this burden of proof Claremont is required to participate in a formal bidding process involving a number of recognized propane suppliers serving the State of New Hampshire to establish the discount, if any, given Claremont by its parent on the price of propane.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Agreement be, and hereby is, approved effective May 1, 1990; and it is

FURTHER ORDERED, that Claremont obtain bids from a number of recognized propane suppliers serving New Hampshire and file these with the commission no later than July 31, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of May, 1990.

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NH.PUC*05/28/90*[51005]*75 NH PUC 300*Granite State Electric Company

[Go to End of 51005]

75 NH PUC 300

Re Granite State Electric Company

DR 90-013
Order No. 19,840

New Hampshire Public Utilities Commission

May 28, 1990

ORDER establishing temporary rates for retail electric service.

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1. RATES, § 85 — State commission powers — As to schedules and rate structures — Temporary rates.

[N.H.] The commission may establish temporary rates if such rates are necessary to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation. p. 301.

2. RATES, § 630 — Temporary rates — Stipulation — Water utility.

[N.H.] The commission approved a stipulated 3.24% temporary increase in rates for retail electric service to be applied to all existing rate classes on a pro rata basis; the commission noted that its finding concerning the stipulation was made without the "appropriate investigation" required for a permanent rate increase and would not bind it during the permanent rate proceeding. p. 301.

APPEARANCES: Cynthia A. Arcate and Ralph Lumas for Granite State; Eugene F. Sullivan III, Esquire for Staff.

BY THE COMMISSION:

REPORT

I. *Procedural History*

On March 15, 1990, Granite State Electric Company (Granite State or the Company), an electric utility serving approximately 33,000 customers in New Hampshire, filed proposed permanent rate schedules and supporting documents which would result in a revenue increase of approximately $2.17 million, a 4.9 percent increase over Granite State's current revenue level. At the time, the Company filed temporary tariff pages and materials supporting their petition under N.H. RSA 378:27 for temporary rate relief in the amount of $1.66 million, a 3.6 percent increase above the current level.

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On March 26, 1990 this commission issued Order No. 19,769 suspending the revised tariff pages pending investigation and issued an Order of Notice scheduling a public hearing, on May 16, 1990, on the petitioner's request for temporary rates and a prehearing conference to address procedural matters regarding the proposed permanent rate increase.

II. *Position of the Parties*

A. Temporary Rate Petition

In its filing, Granite State submitted testimony supporting a temporary rate increase of $1,662,000. It contended that the increase was necessary to earn a reasonable return on its net plant. The Company stated that increased

Page 300

construction expenditures and increased external funding has led to increased interest expense. It stated that the temporary increase is designed to improve its financial condition to meet its financing needs pending commission action on its permanent rate application.

The commission staff presented testimony in support of a temporary rate increase but recommended a reduced amount of $1,440,000.
Staff stated that the reduced amount is sufficient to yield not less than a reasonable return on its net plant based on the records of the utility on file with the commission.

B. Permanent Rate Procedural Schedule

The Company and the staff agreed on the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

PROCEDURAL SCHEDULE FOR PERMANENT RATES

June 29, 1990	Staff and Intervenor Data Requests Due
July 20, 1990	Company responses to Data Requests
August 6, 1990	Staff and Intervenor Testimony Due
August 13, 1990	Company Data Requests on Staff and Intervenor Testimony Due
August 27, 1990	Intervenor and First Set of Staff Responses to Company Data Requests
September 10, 1990	Company Rebuttals Due
September 19, 1990	Second Set of Staff Data Responses on Rate of Return Issues only
September 24-25, 1990	Revision to Company Rebuttals, if Necessary, on Rate of Return Issues only
September 24-25, 1990	Settlement Conference
September 27-28, 1990	Hearings (10:00 AM)

III. *Stipulation of the Parties*

Based upon the records on file with the commission, as reviewed by the finance department, the parties stipulated to the following position of staff.

1. Rate of Return

The allowed return on equity is 13.0% (the last found cost of equity), the cost of long-term debt is 10.53%, and the cost of short-term debt is 9.29%. These rates, when applied to the

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Company's capital structure, produce a weighted overall rate of return of 11.36%.

2. Rate Base

The rate base for the 13-month average actual 1989 year is $26,147,000.

3. Net Utility Operating Income

The net utility operating income is $2,020,000, the actual amount earned during the test year in 1989.

The above stipulation results in the following calculations:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base	$26,147,000
Rate of Return	11.36%
Income Required	2,970,000
Net Operating Income From Annual Report	2,020,000
Deficiency	950,000
Tax Effect	490,000
Revenue Deficiency	$1,440,000

IV. *Commission Analysis*

[1, 2] Based on the testimony of commission's Finance Director, who relied on the reports of the utility on file with the commission and the filings of the Company in this case, the Commission finds that Granite State is currently experiencing a revenue deficiency.

Pursuant to RSA 378:27 the commission may establish temporary rates if such rates are necessary to,

yield not less than a reasonable return on the cost of the property of the utility used and

useful in the public service less accrued depreciation.

Based on this standard the commission will accept the stipulation of the parties and institute a 3.24% rate increase effective for service rendered on or after June l, 1990, applying to all existing rate classes on a pro rata distribution basis.

The commission notes that the testimony provided by staff in support of the stipulation and the commission's findings in this report and order were, and are, made without the "appropriate investigation" for a permanent rate increase and, therefore, will bind neither the commission nor the staff during the pendency of this proceeding. Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on the Temporary Rate Petition and the Procedural Schedule on the Permanent Rate Request, which is made a part hereof, it is hereby

ORDERED, that Granite State Electric Company shall file revised tariff pages designated in

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accordance with this commission's rate design directive setting forth rates therein designed to produce on a temporary basis, an annual increase in rates of $1,440,000; and it is

FURTHER ORDERED, that said increase will apply to all existing rate classes on a pro-rata distribution; and it is

FURTHER ORDERED, that said tariff pages be filed to become effective on all bills for service rendered on or after June 1, 1990, and it is

FURTHER ORDERED, that the procedural schedule contained in the foregoing report shall govern the permanent rate setting proceeding unless otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1990.

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NH.PUC*05/28/90*[51006]*75 NH PUC 302*Chichester Telephone Company

[Go to End of 51006]

75 NH PUC 302

Re Chichester Telephone Company

DF 90-033
Order No. 19,841

New Hampshire Public Utilities Commission

May 28, 1990

ORDER authorizing a telephone utility to treat an extraordinary retirement loss associated with the early retirement of electro-mechanical switching equipment as a deferred asset for amortization over a period of five years.

EXPENSES, § 35 — Capital amortization — Early retirements — Electro-mechanical switching equipment — Telephone utility.

[N.H.] A telephone utility was authorized to treat an extraordinary retirement loss associated with the early retirement of electro-mechanical switching equipment as a deferred asset for amortization over a period of five years.

By the COMMISSION:

ORDER

On March 1, 1990, Chichester Telephone Company a New Hampshire public telephone utility filed a petition for approval of extraordinary treatment and a three year amortization

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period for the extraordinary retirement loss associated with the 1989 retirement of the Chichester Telephone Company Electromechanical Central office; and

WHEREAS, Chichester Telephone Company states in its petition that they retired their electromechanical central office in December 1989 and replaced it with a new digital central office; and

WHEREAS, Chichester Telephone Company proposed to amortize the retirement loss of $197,351.68 over the years of 1990 through

Page 302

1992; and

WHEREAS, Chichester Telephone Company provided an analysis, as of December 31, 1989 of the extraordinary retirement loss and a proposed amortization schedule, and

WHEREAS, Chichester Telephone Company states that based on a preliminary cost study, $70,735 would be recovered through the Interstate Toll Pool and $88,008 through the Intrastate Pool; and

WHEREAS, the Commission, calling on its experience believes that the treatment of said extraordinary retirement loss as a deferred asset for amortization should be for a period of five (5) years; it is hereby

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said requests with some modifications; it is hereby

ORDERED, that Chichester Telephone Company is authorized, to treat the extraordinary retirement loss as a deferred asset for amortization for a period of five years beginning January 1, 1990; and it is

FURTHER ORDERED, that Chichester Telephone Company is authorized to transfer the balance of $197,351.68 to account 1438, Deferred Maintenance and Retirements.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1990.

==========

NH.PUC*05/28/90*[51007]*75 NH PUC 303*Chichester Telephone Company

[Go to End of 51007]

75 NH PUC 303

Re Chichester Telephone Company

DF 90-034
Order No. 19,842

New Hampshire Public Utilities Commission

May 28, 1990

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ORDER authorizing a telephone utility to depreciate a new digital central office over a period of 15 years.

DEPRECIATION, § 76 — Telephone — Digital central office — Asset life — Amortization period.

[N.H.] The commission authorized a telephone utility to depreciate a new digital central office over a period of 15 years.

By the COMMISSION:

ORDER

On March 5, 1990, Chichester Telephone Company a New Hampshire public telephone utility filed a request to depreciate a new digital central office over a period of ten years; and

WHEREAS, Chichester Telephone Company states in its petition that it, in December 1989, placed in service a new digital central office; and

WHEREAS, Chichester Telephone Company states there is a net book value of $709,198.39; and

WHEREAS, Chichester Telephone Company provided an analysis of the annual depreciation expense and a proposed amortization schedule; and

WHEREAS, Chichester Telephone Company requested approval to amortize $70,781.24 per year for ten years beginning January 1, 1990; and

WHEREAS, the commission, calling on its experience, believes that said digital central office should be depreciated over fifteen (15) years; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said requests with the above modifications; it is hereby

ORDERED, that Chichester Telephone Company is hereby authorized, to amortize the asset balance for a period of fifteen (15) years.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1990.

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NH.PUC*05/28/90*[51008]*75 NH PUC 304*Eastern Utilities Associates/Unitil Corporation

[Go to End of 51008]

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DF 89-085
Order No. 19,843

New Hampshire Public Utilities Commission

May 28, 1990

ORDER granting a motion for an extension of time in which to respond to discovery requests in a proceeding to review the proposed merger of two public utility holding companies.

PROCEDURE, § 16 — Discovery — Time limits — Motion for extension.

[N.H.] The commission, accepting the movant's claim that resource constraints prevented timely responses, granted a motion for an extension of time within which to respond to discovery requests in a proceeding to review the proposed merger of two public utility holding companies.

By the COMMISSION:

REPORT

On May 15, 1990 UNITIL Corporation (UNITIL) filed a Motion for an Extension of time within which to respond to data requests (Motion). Eastern Utilities Associates (EUA) filed a timely objection on May 19, 1990. A hearing on the Motion was held via telephone on May 23, 1990.

The Motion requests a two-week extension of time to respond to data requests. Given the service date of the EUA data requests to UNITIL, currently objections were due on May 17, 1990 and responses are due on May 28, 1990. The extension sought by UNITIL would establish May 31, 1990 as the due date for objections and June 11, 1990 as the due date for responses.

In support of its Motion, UNITIL represents, *inter alia*, that its resources have been devoted to the preparation of its direct case which was due on May 25, 1990 and, thus, it is unable to respond to the data requests in a timely fashion. UNITIL also argued that a delay should not prejudice EUA because the responses would be provided within the time period contemplated for discovery after the submission of UNITIL's direct case.

EUA disputed UNITIL's contention of resource limitations. EUA also argued that the discovery was important because it was EUA's first opportunity to review UNITIL data which heretofore had been out of the public domain.[1(18)] Such review is necessary, according to EUA, to allow it to refine its direct case. Additionally, EUA pointed to UNITIL's insistence that EUA respond to data requests in a timely manner and argued that it is entitled to impose the same requirement on UNITIL.

After review and consideration, we will grant the UNITIL motion. We are mindful of the burdens imposed by the expedited schedule in this case. All parties are better served by a thorough development of a record in an orderly manner. Thus, we will accept for the purposes of this motion UNITIL's assertion of resource constraints and allow those resources to be devoted first to the preparation of a direct case and then to discovery. This carries, however, the

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concomitant requirement that both UNITIL's direct case and subsequent responses to data requests be thorough and timely since we are allowing the additional time for precisely that purpose. EUA should not be required to propound follow-up requests that should have been answered initially.

We also accept UNITIL's argument that discovery will take place within the time-frame contemplated after the submission of UNITIL's direct case, but this too requires additional commission refinement.

First, as stated in previous orders, we expect that responses to data requests will be served as they are completed; thus, EUA may expect some responses prior to the deadline. We note that EUA constructively provided the commission and UNITIL with a priority of its requests and we expect that UNITIL will devote

its resources to responding to those requests in accordance with that priority.

Second, we noted EUA's argument that it wishes to use discovery information to refine its direct case. The current procedural schedule provides no formal opportunity for EUA to submit additional supplemental direct testimony and exhibits. Since EUA has not filed a motion to amend that procedural schedule to allow such a filing, we cannot rule here. We will state, however, that the commission and the parties are best served by the development of a thorough and accurate record. Thus, the addition of one procedural step, if requested and granted, may require the addition of other procedural steps to allow other parties to respond. Further comment on this issue here, in the absence of a request, facts and argument, would be inappropriate.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein by reference; it is hereby

ORDERED, that the May 15, 1990 UNITIL Corporation Motion for an Extension of Time be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1990.

FOOTNOTES

[1]In this context, EUA did assign priorities to certain data responses, adding that lower priority items could be served on the later due date requested by UNITIL.

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75 NH PUC 305

Re B and G Paytel, Ltd.

DE 89-190
Order No. 19,844

New Hampshire Public Utilities Commission

May 28, 1990

ORDER levying a fine on an operator of customer-owned, coin-operated telephones (COCOTs) for violations of rules governing COCOT operations.

FINES AND PENALTIES, § 6 — Grounds for imposing — Violation of commission rules — COCOTs.

[N.H.] An operator of customer-owned, coin-operated telephones (COCOTs) was fined $1,000 and ordered to pay court reporter fees where it was found to have repeatedly violated commission rules governing COCOT operations; the COCOT operator had disregarded requirements that local calls be provided for five minutes at a cost of ten cents, asserting that he did not believe such requirements were being enforced.

APPEARANCES: J. E. Printzlau, Esq., on behalf of B & G Paytel, Ltd.; and Eugene F. Sullivan, III, Esq., on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On April 17, 1990, the commission issued order no. 19,793 ordering B & G Paytel, Ltd. (B & G) to appear at a hearing to be held on May 10, 1990, in order for B & G to show cause why it should not be fined pursuant to RSA 365:41

or RSA 365:42 for failure to comply with RSA 374:22 and N.H. Admin. Rules, Puc Part 408. Said order was issued in response to correspondence between staff and B & G indicating that B & G would not comply with commission rules and New Hampshire statutes. On May 10, 1990, the commission held a duly noticed hearing.

II. *Positions of the Parties*

B & G took the position that it had violated the rules due to a lack of understanding and a failure by staff to respond to its letter dated March 19, 1990, to the commission indicating where, in the company's opinion, they had requested clarification of the commission's rules.

Staff took the position that B & G in its letter dated March 19, 1990, had indicated that it

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would only comply with the "reasonable regulations" of the commission, and that it did not intend to comply with the commission's rules.

III. *Commission Analysis*

At the hearing held on May 10, 1990, staff presented evidence of numerous violations of the COCOT rules (see N.H. Admin. Rules, Puc 408.01) by B & G.

However, the commission finds most telling the testimony of Mr. Boucher at page 116 of the transcript where he indicates that he knew that the commission required COCOT operators to provide local calls of five minutes duration for ten cents and that he chose willfully to disregard that regulation in reliance on his belief, as Mr. Boucher stated, "that it was not being enforced."

Thus, pursuant to RSA 365:41 the commission hereby imposes one fine of One Thousand Dollars ($1,000) for all violations plus an amount equal to the fee of the court reporter which portion of the fine (the court reporter's fee) will be waived upon payment of the court reporter's fee in accordance with the commission's rules. This amount is payable within thirty (30) calendar days from the date of this order.

Furthermore, the commission will order Mr. Boucher to discontinue service at all telephones that he has been informed are not in compliance with the commission rules, until they are in compliance. Finally, Mr. Boucher shall have two weeks from the date of this order, to bring COCOTs under his control into compliance with the commission's rules or be subject to further fines.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, THAT B & G Paytel, Ltd. be fined One Thousand Dollars ($1,000) payable within thirty (30) days of the date of this order pursuant to RSA 365:41 for the reasons set forth in the foregoing report; and it is

FURTHER ORDERED, that B & G Paytel, Ltd. discontinue service at all COCOTs which are not in compliance with this commission's rules; and it is

FURTHER ORDERED, that all COCOTs operated by B & G Paytel, Ltd. be brought into compliance with this commission's rules within two weeks of the date of this order or be subject to further fines.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1990.

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NH.PUC*06/06/90*[51010]*75 NH PUC 306*Granite State Electric Company

[Go to End of 51010]

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Re Granite State Electric Company

DF 90-012
Order No. 19,847

New Hampshire Public Utilities Commission

June 6, 1990

PETITION by electric utility for authority to issue long-term notes or, as an alternative, institute an interest rate protection plan for short-term debt; granted.

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SECURITY ISSUES, § 94 — Kinds and proportions — Long-term notes — Interest rate protection plan.

[N.H.] An electric utility was authorized to issue up to $5 million in long-term notes in order to pay off short-term borrowings or otherwise reimburse the treasury; as an alternative, the utility was authorized to institute an interest rate protection plan for existing short-term debt.

APPEARANCES: for the petitioner, Gregory A. Hale, Esquire and Ta-Ko Chen, Esquire.

By the COMMISSION:

REPORT

By this unopposed petition filed January 22, 1990, Granite State Electric Company (the Company), a corporation duly organized under the Laws of this State and conducting an electric public utility business therein, seeks authority pursuant to RSA 369 to issue and sell a long-term note or notes (the Note) in an aggregate principal amount not exceeding $5 million or, alternatively, to enter into one or more interest rate protection arrangements, on or before December 31, 1991. The proposed Note will mature in not exceeding 30 years and will bear interest at a fixed rate not exceeding 12% per annum. The Note will be issued pursuant to a Note Agreement, the specific terms of which will be negotiated with the purchaser. The interest rate protection arrangements will be for an aggregate fixed principal amount not to exceed $5 million and with a term of not more than 10 years and a fixed or capped rate of interest of not more than 12% per annum.

A public hearing was held on the petition on March 14, 1990.

The Company's financial statements, introduced at the hearing as exhibits, were the basis of testimony relating to the Company's capitalization. They show that on the date of the statements, September 30, 1989, the Company's authorized capital stock consisted of 60,400 shares, $100 par value, issued and outstanding. The retained earnings of the Company were $3,416,038. The Company also had outstanding, as of September 30, 1989, a $4 million long-term note with an interest rate of 12.55%, due 2000, issued pursuant to a note agreement with John Hancock

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Mutual Life Insurance Company, a $5 million long-term note with an interest rate of 8.55%, due 1996, issued pursuant to a note agreement with Teachers Insurance and Annuity Association of American, and $4,650,000 of short-term debt.

The Company also presented testimony showing the effect of the proposed note issue on its income statement and balance sheet, and stated that it is currently precluded from issuing any long-term notes because it cannot meet the interest coverage tests contained in its existing note agreements.

The Company seeks authority to enter into interest rate protection arrangements, as an alternative to the issue and sale of the Note, for an amount not to exceed $5 million before December 31, 1991. The arrangement will have a term of not more than 10 years and a fixed or capped rate of interest of not more than 12% per annum. The Company represented that the interest rate protection arrangements will allow the Company to protect a portion of its short-term debt from increasing interest rates. The Company presented testimony to the effect that the issue and sale of the Note and the interest rate protection arrangements are mutually exclusive.

The Company represented that the proceeds from the issue and sale of the proposed Note will be applied to the payment of short-term borrowings incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company.

Upon investigation and consideration for the evidence submitted, this commission is satisfied that the proceeds of the proposed issue and sale of the Note will be applied toward the payment of short-term borrowings of the Company incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company. The commission also

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finds that the interest rate protection arrangements allow the Company to protect a portion of its short-term debt from increasing interest rates, as an alternative to the issue and sale of the Note.

This commission finds that the granting of the authorizations and approvals sought herein is consistent with the public good; and accordingly authorizes and approves the proposed issue and sale by the Company of long-term notes for an aggregate principal amount not exceeding $5 million and the proposed use by the Company of interest rate protection arrangements for a principal amount not exceeding $5 million and with a term not exceeding 10 years as an alternative to the proposed issue and sale of the Note, and the purposes to which proceeds from the proposed issue and sale of long-term notes are to be applied.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is

ORDERED, that Granite State Electric Company be, and hereby is, authorized to issue and

sell for cash, its note of notes, in an aggregate principal amount not exceeding five million dollars ($5,000,000), maturing in not exceeding thirty (30) years and bearing interest at a fixed rate not exceeding twelve percent (12%) per annum; and it is

FURTHER ORDERED, that the proceeds of said note be applied to the payment of short-term borrowings of the Company incurred for or to the cost of, or to the reimbursement of the treasury for, capitalizable additions and improvements to the plant and property of the Company; and it is

FURTHER ORDERED, that, as an alternative to the issue and sale of the long-term notes, the Company be, and hereby is, authorized to enter into interest rate protection arrangements for an aggregate principal amount not exceeding $5 million and with a term not exceeding 10 years and a fixed or capped rate of interest not more than twelve percent (12%) per annum; and it is

FURTHER ORDERED, that Granite State Electric Company shall file copies of any note of interest rate protection arrangement upon its finalization; and it is

FURTHER ORDERED, that on or before January first and July first in each year until the expenditures of the whole of the proceeds of said note shall be fully accounted for, said Granite State Electric Company shall file with this commission a detailed statement, duly sworn to by its Treasurer or an Assistant Treasurer, showing the disposition of proceeds of said notes.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1990.

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NH.PUC*06/06/90*[51011]*75 NH PUC 308*Granite State Electric Company

[Go to End of 51011]

75 NH PUC 308

Re Granite State Electric Company

DF 89-214
Order No. 19,848

New Hampshire Public Utilities Commission

June 6, 1990

PETITION by electric utility for approval to increase short-term debt authorization from $7 million to $12 million; granted.

SECURITY ISSUES, § 98 — Kinds and proportions — Short-term debt — Increase.

[N.H.] An electric utility was authorized to increase its short-term debt issuances from $7 million to $12 million, in order to meet short-term financing needs.

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By the COMMISSION:

ORDER

WHEREAS, Granite State Electric Company is a subsidiary of New England Electric

System (NEES), a public utility holding company and is a New Hampshire corporation with its principal place of business in the towns of Hanover, Lebanon, Walpole, Salem, and surrounding communities, and

WHEREAS, by ORDER NO. 16,910 (69 NH PUC 129) (DF 84-32) of this Commission dated February 15, 1984, Granite State Company was authorized from time to time, to issue and renew its notes, bonds, or other evidences of indebtedness payable less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any time (not including any such indebtedness to be retired with the proceeds of any new borrowings) not in excess of $7,000,000; and

WHEREAS, Granite State Electric Company, on November 21, 1989, requested that its authorization to incur indebtedness, payable in less than twelve (12) months after the date thereof, be increased to an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any new borrowings) from not in excess of $7,000,000 to not in excess of $12,000,000; and

WHEREAS, Granite State Electric Company estimates that its construction expenditures will exceed internally generated funds and will require authorization to increase its short-term indebtedness to an aggregate amount not in excess of $12,000,000; and

WHEREAS, Granite State Electric Company provided that the 1990 short-term debt level was expected to be at $7,200,000 but yearly thereafter it was expected to increase by about $2-$3 million per year absent permanent financings and that it is asking for the $12,000,000 so that a reserve will be provided; and

WHEREAS, this Commission after investigation and consideration finds that a short-term debt level of $10,000,000 should provide Granite State Electric Company with a level that is adequate for its needs and is consistent with the public good; it is hereby

ORDERED, that Granite State Electric Company, without first obtaining the approval of the Commission, be and hereby is, authorized, from time to time, to issue and renew its notes, bonds, or other evidence of indebtedness payable in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time (not including any such indebtedness which is to be retired with the proceeds of any new borrowings) not in excess of $10,000,000; and it is

FURTHER ORDERED, that Granite State Electric Company petition the Commission for a revised short-term debt level upon any long-term debt financing; and it is

FURTHER ORDERED, that on or about January First and July First of each year, said Granite State Electric Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes, bonds, or other

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evidences of indebtedness.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1990.

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NH.PUC*06/06/90*[51012]*75 NH PUC 309*Northern Utilities, Inc.

[Go to End of 51012]

75 NH PUC 309

Re Northern Utilities, Inc.

DR 89-258
Order No. 19,849

New Hampshire Public Utilities Commission

June 6, 1990

APPLICATION by local gas distribution utility for approval of a managerial and supervisory services contract with its parent company, Bay State Gas Company; granted.

INTERCORPORATE RELATIONS, § 17 — Intercompany contracts — Management and supervisory services — Sharing of personnel — Allocation of cost savings.

[N.H.] A local gas distribution utility was authorized to enter into a managerial and supervisory services contract with its parent company, under which both personnel and resources would be shared; it was found that the arrangement would produce cost savings and enhance

efficiency, and a three-factor procedure was adopted for allocating cost savings between the two companies.

APPEARANCES: Scott Mueller, Esquire of LeBouf, Lamb, Leiby and MacRae on behalf of Northern Utilities, Inc. and George R. McClusky, Utility Analyst on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

By letter dated December 15, 1989, Northern Utilities, Inc. (Northern) filed a verified copy of a Service Contract between Northern and its affiliate Bay State Gas Company (Bay State). On December 26, 1989, the commission notified Northern that it intended to conduct an

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investigation of this matter pursuant to RSA 366:5. On February 7, 1990, Northern filed testimony in support of the Service Contract.

On February 28, 1990, the commission issued order no. 19,730 approving a procedural schedule and a hearing on the merits for May 3, 1990. On April 13, 1990, the staff submitted the pre-filed direct testimony of George R. McCluskey.

II. *The Service Contract*

The contract consists of five sections. Section 1 describes the services to be provided by Northern to the Lawrence Division of Bay State. Compensation for these services is the subject of Section 2. Central to this section is the development of the Northern Management Group Cost which includes the following:

a) salaries and/or wages of officers, managers and other administrative employees engaged in the provision of services described in Section #1;

b) applicable fringe benefits; and

c) the cost of the building space occupied by the Northern Management Group at the corporate headquarters in Portsmouth.

Section 3 describes the supervisory services provided by the Lawrence Division to Northern. Section 4 deals with compensation for these services.

Section 5 details the arrangements for the provision of, and compensation for, operational services provided by either entity for the benefit of the other.

III. *Positions of The Parties*

Northern Utilities

Northern and Bay State contended that the proposed contract will enable both companies to increase efficiency and realize savings through the sharing of management, supervisory and operational personnel. Under the terms of the contract, the local operations of both Northern and the Lawrence Division of Bay State will be managed by a team working out of Northern's headquarters in Portsmouth, N.H. The Lawrence Division will provide certain supervisory engineering services to Northern.

Compensation for the management and supervisory services provided to the Lawrence Division will be accomplished by a cost allocation procedure that uses a four-factor formula to apportion costs among the New Hampshire and Maine Divisions of Northern and the Lawrence Division of Bay State. Northern contended that the four-factor formula had been approved by the public utility commissions of New Hampshire, Maine and Massachusetts and, in addition, has been used by Northern for many years for the allocation of common costs between its two divisions.

As a result of the reorganization and the proposed contract the Company anticipated annual cost savings of approximately $387,000 of which the New Hampshire Division would receive about 22%.

Staff

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Staff asserted that after taking into account salary increases for Northern Management Group personnel and the costs of the building space occupied by Lawrence Division employees providing services to Northern, the annual saving falls to about $343,000 of which New Hampshire receives only 16%.

Staff argued that the Company's analysis of the "cost of the building space" occupied by the Northern Management Group was incomplete because it excluded the return on investment associated with the land on which the Portsmouth building is situated. In addition, staff determined that the classification of land as a building cost has implications for the treatment of land property taxes.

Regarding the allocation of Northern Management Group costs, staff contended that because of the inter-dependence of Bay State's three divisions it is questionable whether divisional gross investments is a reliable predictor of divisional business activity. Accordingly, staff recommended that costs be allocated using a three-factor as opposed to a four-factor formula.

Finally, with regard to the allocation of building costs to other users of the Portsmouth building, staff recommended that Northern file with the commission a separate contract covering all aspects of utility/non-utility transactions.

IV. *The Proposed Stipulation and Agreement*

Prior to the date of the hearing, the staff and the Company met and resolved all issues in this case through a stipulation and agreement executed and dated May 3, 1990, which is attached hereto as Appendix A.

The proposed agreement between the staff and Northern provides, in essence, as follows;

1. The cost of the building space occupied by the Northern Management Group will include the pretax return and property taxes related to the land on which the building is situated.

2. Staff is not precluded from raising any issue with respect to the allocation of costs under the Service Contract in any future proceeding.

3. Northern will make a filing with the commission before January 1, 1991 outlining its procedures for allocating costs and determining charges for transactions between utility and non-utility operations.

V. *Commission Analysis*

Under RSA 366:3, contracts between utilities and their affiliates must be filed with the commission. Under RSA 366:5, the burden of proving the reasonableness of such contracts is on the utility and its affiliate. The commission will approve the proposed stipulation and agreement based upon our finding that the proposed sharing of personnel and resources is reasonable and will result in cost savings that benefit ratepayers in all three divisions.

Regarding staff's concern about the appropriateness of the four-factor allocation formula, we note that the stipulation reserves the right to raise the issue in a future rate proceeding. Because the financial effects of the service contract on ratepayers will not be

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felt until Northern's next rate case, we find that this compromise does not adversely impact New Hampshire ratepayers.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the proposed service contract between Northern Utilities Inc., and Bay State Gas Company be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1990.

APPENDIX A

NORTHERN UTILITIES, INC.
SERVICE CONTRACT BY AND BETWEEN
NORTHERN UTILITIES, INC.
AND
BAY STATE GAS COMPANY
DR 89-258

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STIPULATION AND AGREEMENT

The Staff of the New Hampshire Public Utilities Commission ("Staff"), and Northern Utilities, Inc., New Hampshire Division ("Northern" or "the Company") hereby enter into this Stipulation and Agreement ("Stipulation"). The purpose of this Stipulation is to settle all issues having any bearing on the above-captioned proceeding. Further, it is the desire of the parties in executing this Stipulation to expedite the Public Utilities Commission's ("Commission") consideration and resolution of all issues related to this proceeding.

Background

By letter dated December 15, 1989, Northern filed a verified copy of a Service Contract between Northern Utilities, Inc. and Bay State Gas Company ("the Service Contract"), pursuant to RSA 366:3. On December 26, 1989, the Commission notified Northern that it intended to conduct an investigation of this matter, pursuant to RSA 366:5. Northern filed testimony in support of the Service Contract in February 1990 and responded to the Staff's data requests throughout March and April 1990. On April 13, 1990, the Staff filed the testimony of George R. McCluskey regarding the proposed contract.

The companies began the sharing of personnel reflected in the Service Contract on a trial basis in 1988 as an effort to optimize resources. As a result of this experiment, the companies determined that they could increase efficiency and realize savings by using some of the same personnel to perform various management, supervisory and operational

duties for both Northern and Bay State's Lawrence Division ("Bay State/Lawrence"). The Service Contract formalizes this sharing arrangement and provides for the allocation of costs between the two companies.

The Service Contract consists of five sections. Section 1 describes the services to be provided by Northern to Bay State/Lawrence. Compensation for these services is the subject of Section 2. Central to this section is the development of the Northern Management Group Cost which includes the following:

a. salaries and/or wages of officers, managers and other administrative employees engaged in the provision of services described in Section 1;

b. applicable fringe benefits; and

c. the cost of building space occupied by the Northern Management Group at the corporate headquarters in Portsmouth.

Section 3 describes the supervisory services provided by Bay State/Lawrence to Northern. Section 4 deals with compensation for these services. Section 5 details the arrangements for the provision of, and compensation for, operational services provided by either entity for the benefit of the other.

Following the filing of testimony and discovery, and extensive discussions between Staff and Northern, both parties have agreed to resolve this matter through this Stipulation. The following provisions constitute the full and complete agreement of the parties:

Terms

1. It is agreed that the record on which the Commission may base its determination whether to accept this Stipulation shall consist of all pleadings, testimony and discovery documents filed by the Company or the Staff in this proceeding.

2. It is agreed that the parties recommend that the Commission find the Service Contract filed by Northern on December 15, 1989, to be just and reasonable, and approve the Service Contract subject to the terms and conditions contained herein.

3. It is agreed that the cost of building space occupied by the Northern Management Group will include the pre-tax return and property taxes related to the land on which the building is situated.

4. It is agreed that this Stipulation does not preclude the Staff from raising issues with respect to the allocation of costs under the

Service Contract for ratemaking purposes in any future proceedings before the Commission.

5. It is agreed that Northern will make a filing with the Commission outlining its procedures for allocating costs and determining charges for transactions between its utility and non-utility operations by December 31, 1990.

6. It is agreed that this Stipulation shall not be deemed a precedent as to any matter of fact or law, nor shall it preclude any party thereto from raising any issue in any future ratemaking

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proceeding.

7. It is agreed that neither this Stipulation nor any part thereof shall be offered as evidence or otherwise in any other proceeding except for purposes of interpreting contested provisions of this Stipulation.

8. It is agreed that this Stipulation represents full agreement between all parties hereto and that rejection by the Commission of any part of this Stipulation and Agreement constitutes rejection of the whole.

9. In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

10. In the event that the Commission does not approve this Stipulation by June 1, 1990, all parties agree that the Stipulation will become null and void.

NORTHERN UTILITIES, INC.
By its attorney,
Scott J. Mueller

STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
by George R. McCluskey

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NH.PUC*06/06/90*[51013]*75 NH PUC 313*New England Telephone Company

[Go to End of 51013]

75 NH PUC 313

Re New England Telephone Company

DE 90-077
Order No. 19,850

New Hampshire Public Utilities Commission

June 6, 1990

ORDER authorizing "800 Valueflex" telephone service.

SERVICE, § 468 — Telephone — Toll service — "800 Valueflex."

[N.H.] A local exchange telephone carrier was authorized to implement its proposed "800 Valueflex" service, which would allow completion of intraLATA 800 calls on a customer's local exchange access line.

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By the COMMISSION:

ORDER

WHEREAS, on April 30, 1990, New England Telephone Company filed a petition seeking to offer 800 Valueflex, a service providing for the termination of IntraLata `800' dialed calls on a customer's local exchange access line effective May 30, 1990; and

WHEREAS, the New Hampshire Public Utilities Commission, by order No. 19,839, suspended the filing in order to provide staff with adequate time to review the petition and staff has now completed its investigation; and

WHEREAS, the commission finds that the proposed tariff pages are just and reasonable and consistent with the public good; it is hereby

ORDERED, that the following:

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NHPUC N, 75

Part A-Section 10-Third Revision of the

Table of Contents, Page 1

Original Pages 7,8, and 9

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1990.

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NH.PUC*06/07/90*[51014]*75 NH PUC 314*U.S. Sprint Communications Company of New Hampshire Inc.

[Go to End of 51014]

75 NH PUC 314

Re U.S. Sprint Communications Company of New Hampshire Inc.

DE 90-087
Order No. 19,851

New Hampshire Public Utilities Commission

June 7, 1990

ORDER approving a request by an interexchange telephone carrier to revise its tariff to reflect a change in company name.

RATES, § 234 — Schedules, formalities, and procedure relating to — Tariff revisions — Change of company name.

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[N.H.] The commission approved a request by an interexchange telephone carrier to revise its tariff to reflect a change in company name where it was found that such a change was consistent with the public good.

By the COMMISSION:

ORDER

WHEREAS, on May 23, 1990 U.S. Sprint Communications Company of New Hampshire filed a petition seeking to revise its NHPUC Tariff No. 1 effective June 25, 1990; and

WHEREAS, the revisions are filed in order to reflect U.S. Sprint Communications Company Limited Partnership and U.S. Sprint Communications Company of New Hampshire name changes to Sprint Communications Company and Sprint Communications Company of New Hampshire Inc. respectively; and

WHEREAS, the commission finds that the requested name change is not inconsistent with the public good; it is hereby

ORDERED, that the following revisions to U.S. Sprint's New Hampshire PUC Tariff No. 1

1st revised Title Page

1st revised Page 1

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1990.

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NH.PUC*06/07/90*[51015]*75 NH PUC 314*Northern Utilities, Inc.

[Go to End of 51015]

75 NH PUC 314

Re Northern Utilities, Inc.

DE 90-074
Order No. 19,852

New Hampshire Public Utilities Commission

June 7, 1990

ORDER nisi authorizing a natural gas distributor to revise its service boundary to extend service to a residential apartment complex and contiguous areas.

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SERVICE, § 199 — Extensions — Gas — Factors considered — Storage requirements — Distribution utility.

[N.H.] The commission authorized, by order nisi, a natural gas distributor to revise its service boundary to extend service to a residential apartment complex and contiguous areas where it was found that the revision would provide the residents of the proposed area with an additional choice of an energy source; in addition, the commission ordered that utility continue to comply with an earlier ruling requiring

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the provision of sufficient supplemental storage volumes for the expected peak day, including demand for the new service area.

By the COMMISSION:

ORDER

WHEREAS, on April 30, 1990 Northern Utilities, a gas public utility operating in the Town of Atkinson, New Hampshire, filed a Petition for Authorization To Serve An Expanded Area in said Town which is contiguous with its presently-existing service area, and

WHEREAS, the additional service area is intended to extend service to a residential apartment complex of Lewis Builders Development, Inc., together with public rights of way providing access thereto from the Company's existing system in Atkinson along with property immediately adjacent to the said access routes and property contiguous to the Company's service area in the Town of Plaistow; and

WHEREAS, the commission may grant such authorization under RSA 374:22 and RSA 374:26 only if such would be for the public good and not otherwise; and

WHEREAS, the Petition recites that there is need for the requested service because the proposed area is unserved by natural gas and provision of such service would provide the residents thereof with an additional choice of an energy source; and

WHEREAS, the Petition recites that the Company is ready, willing and able to extend service to the area requested and to provide service under its existing tariffs, appropriately amended to reflect the additional service area; and

WHEREAS, the Petition is accompanied by endorsement letters from Lewis Builders, Inc. and the owner of the property immediately adjacent to the access routes and the Petition recites that appropriate officials of the Town of Atkinson have been fully informed of the proposal and have voiced no objection thereto; and

WHEREAS, it appears from the Petition and the Attachments thereto that there is need for the proposed service, the applicant has the ability to provide the service and that granting the Petition is otherwise for the public good; and

WHEREAS, the commission concludes that any interested parties should be afforded an

opportunity to submit comments or to request an opportunity to be heard with respect to the Petition; it is hereby

ORDERED, *NISI* that Northern Utilities, Inc. be, and hereby is, authorized to engage in the business of a gas utility in the area described below:

> said area shall include lots 5 through 5-15 of the Lewis Builders Apartment Complex bounded on the south by the Massachusetts border on the east by the Plaistow, New Hampshire border and on the west by the border of the Lewis Builders Apartment Complex. Said area shall also include a portion of lot 35 as depicted on the Atkinson Town Property Tax Map No. 5 shall also include a portion of lot 35 and the lots immediately adjacent to streets know as Noyes Lane, Indian Ridge Road, Robie Lane, Upland Lane, Greenhill Drive, Main Street, Lewis Lane, and Hill Dale Avenue all as depicted on Atkinson's Property Tax Map No. 5 as well as lot No. 8 and the remaining portion of Lot No. 35 as depicted on Atkinson Town Property Tax Map No. 10.,

and it is;

FURTHER ORDERED, that the Company continue to comply with Order No. 15,768 (67 NH PUC 541), providing sufficient supplemental storage volumes for the expected peak day, including the anticipated demand for the new service area; and it is

FURTHER ORDERED, that Northern Utilities, Inc., shall notify all person desiring to be heard in this matter by causing an attested copy of this Order to be published once in the *Manchester Union Leader* and once in another newspaper having general circulation in the Town of Atkinson, such publication to be made no later than June 18, 1990 and documented by Affidavit to be filed with the commission within

7 days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments or request a hearing on the merits of the Petition prior to July 10, 1990; and it is

FURTHER ORDERED, that this Order *NISI* will be effective July 20, 1990 unless the commission receives a written request for a hearing or otherwise orders prior to the effective date; and it is

FURTHER ORDERED, that within 30 days after that effective date, the Company shall provide a map at a scale of 1:24,000 or an approved alternative scale which accurately depicts the area to be served; and revised tariff pages identifying the new service area by reference to this Map.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1990.

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NH.PUC*06/07/90*[51016]*75 NH PUC 316*AT&T Communications of New Hampshire

[Go to End of 51016]

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75 NH PUC 316

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 19,853

New Hampshire Public Utilities Commission

June 7, 1990

REPORT and order expanding an existing docket initiated to review a proposal by an interexchange telecommunications carrier to offer a series of new services to include a generic investigation of issues of competition in the telecommunications market.

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1. MONOPOLY AND COMPETITION, § 83 — Telephone — Interexchange carriers — New service offerings.

[N.H.] Upon review of a proposal by an interexchange telecommunications carrier to offer a series of new services in the state, the commission decided that the most appropriate way to proceed in the case was to initiate a two-tract investigation allowing a simultaneous review of the generic issue of competition in the telecommunications market and the petition by the carrier to offer the specific new services. p. 319.

2. MONOPOLY AND COMPETITION, § 11 — Jurisdiction — State commissions — To grant authority to compete — Telephone carriers.

[N.H.] While initiating a two-tract investigation of a proposal by an interexchange telecommunications carrier to offer a series of new services and generic issues regarding competition in the telecommunications market, the commission found that the threshold issue in the case was whether the commission had any statutory authority to allow competition. p. 320.

3. SERVICE, § 32.1 — Limitations on jurisdiction — State commissions — Property rights — Effect on ability to withdraw authorization of service.

[N.H.] While initiating a two-tract investigation of a proposal by an interexchange telecommunications carrier to offer a series of new services and generic issues regarding competition in the telecommunications market, the commission found that any authority to provide the services would be interim in nature and that it would not grant such authority unless it was shown that approval may be withdrawn; the commission explained that the fact that property rights might vest in either the utility or its customers might result in less than full regulatory flexibility on the issue. p. 320.

APPEARANCES: AT&T Communications of New Hampshire by Harry M. Davidow, Esquire; U.S. Sprint by Helen Hall, Esquire; MCI by Lee Weiner, Esquire; Office of Consumer Advocate by Kenneth Traum and John Rohrbach; New England Telephone Company by John Reilly,

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Esquire; Union Telephone

Company by Dorothy Bickford, Esquire and Ellen Schemitz, Esquire; Granite State Telephone Company and Merrimack Telephone Company by Frederick Coolbroth, Esquire; Long Distance North of New Hampshire by David Jordan, Esquire; Contel of New Hampshire and Contel of Maine by John Cunningham, Esquire and Tim Platt, Esquire; Telephone and Data Systems for Kearsarge Telephone Company by Michael Roddy, Esquire; Staff of Public Utilities Commission by Audrey Zibelman, Esquire.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 5, 1990, the commission conducted a prehearing conference to address matters of intervention and procedural matters. At the prehearing conference the Staff of the Public Utilities Commission on the behalf of all parties except AT&T, proposed a procedural discussion to address the issue of whether the commission's investigation of AT&T's petition should include a generic investigation of intrastate competition issues, and, if so, the proper scope of the investigation.

On April 9, 1990, the commission issued order no. 19,779 (75 NH PUC 211), and established the following procedural schedule on the issue of scope:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

April 10, 1990 All parties to file
                 memoranda.
May 1, 1990    Reply memoranda.
May 14, 1990   Hearing on the issue of
                 scope.
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In accordance with the above schedule a hearing on the issue of scope was conducted on May 14, 1990.

II. *Interventions.*

Motions for late Intervention were filed on behalf of U.S. Sprint, MCI, Telephone and Data Systems for Kearsarge Telephone Company (Kearsarge). Hearing no objections filed to any of the motions to intervene, the commission granted all three motions. The commission also granted the motion of Long Distance North of New Hampshire, Inc. (LDN), to intervene. The commission had deferred consideration of the LDN motion at its last hearing because LDN did not appear at that hearing.

III. *Position of the Parties.*

A. *AT&T*

AT&T opposed expanding the scope of this docket into a generic proceeding. Instead, AT&T urged the commission to focus its attention on its four proposed services. According to the company, an investigation of its four services would allow the commission to consider

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adequately the issue on whether the proposed benefits of these services would outweigh their cost, including any adverse impact on the local exchange companies.

AT&T took no position on whether or not the commission should commence a separate generic proceeding to examine the issue of competition in general. However, the company suggested that the commission could fashion its decision in its investigation of AT&T's petition in such a manner to make it clear that any commission approval of AT&T's proposed services were subject to its decision in the generic competition proceeding. AT&T also stated that if the commission were to turn this proceeding into a generic competition proceeding, the company would withdraw its petition.

B. *U.S. Sprint*

U.S. Sprint indicated that it had no opposition to AT&T's proposed services and, in fact, wishes to offer comparable services in New Hampshire. With regard to the scope issue, U.S. Sprint recommended that the commission commence a generic docket in order to establish a regulatory framework within which carriers could offer competitive services within the

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state. Sprint did not have an opinion on whether the commission should have a parallel investigation into AT&T's proposed services and a generic competition docket, or consolidate the AT&T petition into a larger generic docket.

C. *New England Telephone (NET)*

NET recommended to the commission that it commence a generic proceeding. NET believes that competition is an irresistible force in this state and that a generic proceeding is necessary to create a framework that will allow competition to exist and develop in a manner that is consistent with the commission's goals for development in the state's telecommunications industry. NET took no position on AT&T's request to investigate its petition in this proceeding. NET did, however, urge the commission not to address the basic issues regarding the competition on an ad hoc basis.

D. *Granite State and Merrimack County Telephone Companies.*

Granite State Telephone Company and Merrimack County Telephone Companies commenced their presentation by noting that the current telecommunications infrastructure in the state is sufficient to serve the needs of New Hampshire telephone companies. The companies stated that while they took no position on whether or not the commission commenced a generic proceeding, if the commission did decide to explore the issue of competition, Granite State and Merrimack Companies would urge the commission to proceed in a generic docket.

Granite State and Merrimack County were opposed to proceeding with the AT&T petition as a separate docket. The companies opined that granting AT&T's petition to provide particular services in New Hampshire may allow customers to assert vested rights to continue to receive these services even if the commission were to find subsequently in its generic proceeding that there should be no competition within this state. The companies also expressed concern that allowing AT&T to proceed separately may result in similar filings by other telephone companies and, in the end, result in the creation of competition for long distance services in New Hampshire

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without the benefit of full inquiry to determine whether or not such competition is in the public good.

E. *Contel*

Contel recommended that the commission commence a generic proceeding in which it could address basic legal and regulatory issues. Contel also argued that even if the commission bifurcated this docket and continued its examination of AT&T's four proposed services in a separate proceeding, the commission would still need to address the threshold legal issue of its authority to allow competitive telecommunication services in that proceeding. Finally, Contel suggested that *State v. New Hampshire Gas,* 86 N.H. 16 (1932), raises a question of whether the commission has the legal authority to condition AT&T's authority to supply services on its ultimate finding in the generic proceeding. Contel suggested that one way to avoid this issue would be for AT&T to amend its petition to state that its agreement to subject its authority to provide the services to any final determination by the commission in the generic proceeding.

F. *Kearsarge Telephone Company*

Kearsarge recommended that the commission proceed with a generic proceeding. Kearsarge was opposed to examining the four AT&T service offerings separate from a generic proceeding. Kearsarge also recommends that the generic proceeding include the establishment of access charges.

G. *Long Distance North*

Long Distance North was opposed to the commencement of a generic proceeding. LDN argued that the issues concerning the commission's legal authority to permit competition were more properly considered in a fact specific docket. LDN further argued that the commission could condition AT&T's authority to supply the four services in New Hampshire

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upon a final determination by the commission of whether or not competition should be allowed in the state. According to LDN, a grant of conditional authority by the commission would not vest any rights to continued service by either the carriers or their customers.

H. *Union Telephone Company*

Union Telephone Company argued that the commission did not have the authority to allow either competition among telephone providers in this state or to investigate the issue of whether such competition should be permitted. Union further argued that even if the commission were to find that it did have the authority to allow for competition, it would have to examine each petition on a case by case basis. Union argued in the alternative that if the commission were to find it did have general authority to explore the issue of competition, it should not explore the issue in a generic docket. Union recommended that the commission proceed on an ad hoc basis in which it explored the service proposed to be offered and addressed the issue of whether the franchise utility's current service was inadequate. According to Union, a determination that the service of the franchised utility is either nonexistent or inadequate is a prerequisite to allow for competition within a franchised telephone company's service territory. Finally, if the commission proceeds on a generic basis, Union urged the commission not to grant AT&T's petition until such

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time as it had an opportunity to resolve the greater policy issues within the generic docket.

I. *MCI*

MCI supported AT&T's request for a separate track for determination of whether or not its four specific service issues should be authorized. MCI noted that if such services were authorized by the commission, it would like to be treated in a similar manner. MCI also endorsed the prompt initiation of a generic docket to explore more general competition issues, including, *inter alia*, the appropriate regulatory treatment of competitive carriers and access charges.

Finally, MCI stated that to the degree the commission would authorize AT&T, MCI, and other carriers to provide service on an interim basis, MCI would have no objection to having its authorization subject to any commission determination in the large generic proceeding.

J. *Consumer Advocate*

The Consumer Advocate took no position on how the commission should proceed with the docket.

L. *Public Utilities Commission Staff*

The staff recommended that the commission open a generic docket to explore the issue of whether competition should be authorized within the state. Staff argued that the issues posed by the AT&T petition were so intertwined with the greater policy issues concerning allowance of competition, the regulatory treatment of competitive telephone companies and access charges, that the commission could not proceed with the AT&T petition in a discreet fashion.

Staff also expressed its concern that if the commission were to proceed with the AT&T petition on a discreet basis, other companies would seek similar interim approval and the net result would be that there would be competition in this state without the benefit of a commission resolution of the larger policy issues. Finally, staff urged the commission to establish a separate docket to establish access charges even if it determines to proceed with a review investigation of the AT&T petition.

IV. *Discussion.*

At the outset, the commission wishes to express its appreciation to all the parties to this proceeding for their suggestions as to how it should proceed with this docket. The commission found the written and oral comments of the parties both enlightening and helpful in the identification of and the relationship among the issues which it will be addressing in this docket.

[1] After consideration of the comments, we have concluded that the best method for

addressing the various issues raised by AT&T's petition is to investigate this docket on two parallel tracks. The first track will address the generic issues of competition. Therein, we will decide upon the commission's legal authority to permit competition and, if we determine that competition is in the public good, the basic legal and regulatory framework within which the companies will operate.

[2] In establishing this generic track for investigating the introduction of competition in the

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telecommunications market in this state, we are not mindful of Union Telephone Company's arguments that the commission is without any statutory authority to permit competition and, in any event, must not allow competition on a general basis. As was discussed during the May 21, 1990 hearing, we believe the issues raised by Union are of great importance and because of their threshold nature, require prompt attention. We are, therefore, establishing the following briefing and hearing schedule to consider Union's claims regarding our legal authority and the issue of whether or not this matter should be transferred to the New Hampshire Supreme Court for immediate consideration.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Reply Memorandum	June 14, 1990
Responsive Memorandum	June 21, 1990
Hearing on Legal Authority	July 19, 1990, at 2 P.M.

The parties should note that for the purpose of this issue, the commission will consolidate the current docket with the petition to provide telephone services filed by Long Distance North of New Hampshire, Inc. (Docket No. DR 87-249). Parties herein who are also parties to the LDN proceeding are invited to file single memoranda for all three dockets.

[3] Simultaneously with its investigation into the more generic issues involving competition, the commission will investigate AT&T's petition to offer the customer network services of AT&T Megacom Wats, AT&T Megacom 800, AT&T 800 Readyline and AT&T Multiquest. The commission wishes to make it clear that any authority provided to AT&T to provide these services will be strictly interim in nature and will be fully subject to its resolution of the generic investigation. The commission will not authorize AT&T to supply any of the four proposed services unless it can be satisfied that any authority that it provides AT&T may be withdrawn or otherwise limited by the commission in a manner that is consistent with its ultimate determination in the generic investigation. We will not authorize the four proposed services if our investigation into those proposed services indicates that we will not have full flexibility in the generic part of this proceeding because *inter alia* property interests in the services may vest in either the utility or its customers.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is hereby incorporated by reference: it is hereby

ORDERED, that this proceeding shall be expanded into a generic docket concerning issues of competition, as set forth in the foregoing report; and it is

FURTHER ORDERED, that the generic investigation shall proceed simultaneously with the commission's investigation into AT&T's specific service offerings; and it is

FURTHER ORDERED, that the parties follow the procedural schedule set forth in the foregoing report; and it is

FURTHER ORDERED, that all motions to intervene are granted.

By order of the Public Utilities Commission of New Hampshire this seventh day of June,

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1990.

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[Go to End of 51017]

75 NH PUC 321

Re Kearsarge Telephone Company

DE 90-041
Order No. 19,854

New Hampshire Public Utilities Commission

June 8, 1990

ORDER permitting a local exchange telephone carrier to extend the availability of Direct Inward Dialed service to all customers.

SERVICE, § 433 — Telephone — Direct Inward Dialing service — Availability — Revenue contribution — Local exchange carrier.

[N.H.] The commission permitted a local exchange telephone carrier to extend the availability of Direct Inward Dialed service to all customers through a general service offering where it found that extension of the service would result in a positive revenue contribution to local service.

By the COMMISSION:

ORDER

WHEREAS, on March 8, 1990, Kearsarge Telephone Company filed a petition seeking to extend the availability of Direct Inward Dialed (DID) Service to all its customers via a general service offering; and

WHEREAS, by order No. 19,787, dated April 10, 1990 the New Hampshire Public Utilities Commission suspended the filing in order to give staff adequate time to review this petition; and

WHEREAS, it appears that the extension of this service to all Kearsarge Telephone Company customers will be accompanied by a positive revenue contribution to local service; and

WHEREAS, the commission finds that the proposed tariff pages are just and reasonable and consistent with the public good; it is hereby

ORDERED, that the following, NHPUC No. 7, Kearsarge Telephone Company tariff pages,

Index, 3rd Revised Sheet 1,

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Section 3, First Revised Contents,

Section 3, Original Sheets 25 and 25

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 1990.

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[Go to End of 51018]

75 NH PUC 321

Re Birchview by the Saco, Inc.

DR 89-207
Supplemental Order No. 19,855
New Hampshire Public Utilities Commission
June 11, 1990

REPORT and supplemental order denying, without prejudice, a request by a water utility for a temporary rate increase.

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1. RATES, § 630 — Temporary rates — Evidentiary standards — Utility annual reports.

[N.H.] The level of temporary rates approved by the commission must be based upon information contained in the company's annual filed reports; a company is not entitled to temporary rates if it appears that there are reasonable grounds to question the figures contained in such reports. p. 323.

2. RATES, § 595 — Water — Temporary rate increase — Accounting requirements.

[N.H.] The commission rejected a request by a water utility for a temporary rate increase where it found that company books demonstrated commingling of utility and nonutility assets and where the company was in violation

Page 321

of a number of commission rulings concerning metering and billing procedures as well as accounting standards; the commission found that the evidence failed to demonstrate a basis to set a reasonable temporary rate and directed its staff to conduct an audit. p. 323.

APPEARANCES: Paul A. Savage, Esquire, Brown, Olson and Wilson on behalf of Birchview

By the Saco, Inc.; Audrey Zibelman, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On February 5, 1990, Birchview by the Saco, Inc. (Petitioner or Company), serving a limited area in the Town of Bartlett, N.H., filed proposed rate schedules and supporting documents which would result in an increase in annual revenues of $17,120.00. In conjunction with the Petitioner's request for an increase in permanent rates, the Petitioner filed a request for a temporary rate increase in the amount of
$10,003.00 on an annual basis.

By order no. 19,734 (75 NH PUC 134),
dated February 28, 1990, a prehearing conference to address procedural matters regarding the proposed permanent rate increase and a hearing on the Petitioner's request for temporary rates was held before the Public Utilities Commission at its offices in Concord on May 15, 1990.

II. *Public Participation*

In attendance at the hearing were over a dozen ratepayers served by the Petitioner. Oral statements were made by Mr. T.M. Egbert, Jr. and Mr. Michael Schena, customers of the Petitioner. Both ratepayers opposed the permanent rate level increase because in their view the service provided by the Petitioner was substandard from the standpoint of frequent outages and low water pressure resulting in numerous related problems.

III. *Procedural Schedule*

The parties at the May 15th hearing agreed to confer on a procedural schedule in the permanent rate proceeding and should the parties agree, provide a proposed schedule in writing to the commission. On May 18, 1990 the commission received the following proposed procedural schedule stipulated by the parties.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Revised Company Testimony	June 22, 1990
Staff Data Requests to Petitioner	July 13, 1990
Company Response to Staff Data Requests	August 3, 1990
Second set of Data Request to Petitioner	August 17, 1990
Company Responses to Second set of Data Requests	August 31, 1990
Staff and Intervenor Testimony	September 21, 1990
Company Data Requests on Staff and Intervenor Testimony	October 5, 1990
Response to Company Data Requests	October 19, 1990
Settlement Conference	October 26, 1990
Hearing on The Merits	October 31 1990

We find that the proposed procedural schedule is reasonable and it will be adopted by the commission.

IV. *TEMPORARY RATES*

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The Company, through its witness Daniel Lanning, proposed that temporary rates be set at

a level that would increase current revenues in the amount of $10,000. According to Mr. Lanning, the rate increase is necessary to allow the Company to make necessary capital expenditures. Mr. Lanning also testified that the increase would protect the Company's customers from rate shock caused by its total proposed rate increase of $17,000.

Staff presented testimony by Assistant Finance Director Mary Jean Newell that the inadequate condition of the Company's records prevented staff from recommending temporary rates in excess of rates currently in effect. Staff explained that the Company's books reflected a commingling of the assets of the Petitioner and an affiliate development corporation. Until the financial reports reflect assets and expenses solely attributable to the utility, staff could not recommend a level of temporary rates in excess of current rates.

During the course of his cross-examination, Mr. Lanning revealed that the Petitioner was not and has not been in compliance with previous commission orders concerning financial reporting and meter installation requirements specified in DE 74-126, when the Petitioner appeared before the commission for authority to operate as a utility, or DR 81-235, the subsequent rate case. In addition the Petitioner had unilaterally altered the manner in which bills were rendered to the customers relative to the tariff on file at the commission. Specifically, the Petitioner has changed his billing procedures from a one year prospective billing to a quarterly bill in arrears. Furthermore, while the Petitioner's report of proposed rate changes indicated a 117% increase in current revenue, in actuality, the rate increase would more closely approximate a 150% increase. The difference is due to proformed revenue increases reflected in the Company's current revenue as submitted in its report of proposed rate changes.

IV. *COMMISSION ANALYSIS*

The commission's authority to set temporary rates in a rate proceeding is set forth in RSA 378:27.

> 378:27 *Temporary Rates*. In any proceeding involving the rate of a public utility brought either upon motion of the commission or upon complaint, the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports.

[1] Under the plain terms of this statute, the level of temporary rates must be based upon the information contained in the Company's annually filed reports. The Company is not entitled to temporary rates if it appears to the commission that there are reasonable grounds to question the figures contained in the Company's annual reports.

[2] During the course of the temporary rate proceeding, it became evident that the Petitioner

has failed to comply with the provisions of previously issued commission orders. Specifically the Petitioner is in violation of DE 74-126, Order No. 13,182 issued July 12, 1978, which retroactive to January 1, 1978, required that the Company maintain its records in accordance with N.H.P.U.C., specified chart of accounts for water utilities. The Company violated RSA 374:5, by failing to keep the commission informed of certain capital improvements. The Company books demonstrate commingling of non-utility and utility assets and liabilities, in violation of the commission's order no 15,549 in DR 81-235, dated March 25, 1982. The Petitioner has altered its billing procedure, and no longer bills annually in the month of December for water to be furnished the following 12 months, in accordance with commission order no. 13,182. Finally, the Company has not complied with a metering program in which at least (35) thirty-five meters were to be installed every year (Supplemental Order 15,549 in DR 81-

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235) beginning March 25, 1982.

Based upon the evidence disclosed during the hearing, the commission finds that there is a reasonable basis upon which to question the figures contained in the company's books. The commission therefore will not accept staff's recommendation to set temporary rates at the same level as the company's current rates. Rather, we conclude the evidence fails to demonstrate a basis to set a reasonable temporary rate at any level. The commission is aware its staff is conducting an audit. Following the completion of the audit, we will reconsider the company's petition for temporary rates.

In view of the record showing non-compliance with previous commission orders, the commission will indicate that there are penalties that may be imposed by the commission pursuant to RSA 365:41 and 42. The Petitioner is hereby on notice that during the permanent rate proceeding the commission will consider and take whatever steps are appropriate to address past non-compliance with commission requirements and to assure that the Company will comply with the provisions of any and all of our orders.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Staff of the New Hampshire Public Utilities Commission conduct an audit on site at the offices of Birchview By The Saco, Inc., on or before June 30, 1990; and it is

FURTHER ORDERED, that the Petitioner's request for temporary rates in excess of $10,000 over current annual revenues be and hereby is denied without prejudice pending a full report from the commission finance staff concerning the books and records of the Petitioner; and it is

FURTHER ORDERED, that a hearing to investigate further the merits of the temporary rate request be reconvened on July 25 1990, at 10:00 a.m., before the Public Utilities Commission at its offices at 8 Old Suncook Road, Building #1, Concord, N.H., and it is

FURTHER ORDERED, that the parties may file written testimony with the commission with a copy to the Petitioner no later than seven days prior to the date of the hearing; and it is

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FURTHER ORDERED, that the proposed procedural schedule recommended by the parties and reflected in the foregoing report be approved and govern the remainder of the permanent rate proceeding.

By order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1990.

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NH.PUC*06/19/90*[51019]*75 NH PUC 324*New Hampshire Electric Cooperative, Inc.

[Go to End of 51019]

75 NH PUC 324

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 19,856

New Hampshire Public Utilities Commission

June 19, 1990

ORDER granting a motion to intervene.

PARTIES, § 18 — Intervenors — Federal agencies — Cooperative utility cases.

[N.H.] The commission granted a motion by the federal Rural Electrification Administration (REA) to intervene in a case concerning an electric cooperative where it found that the REA had a substantive interest in the outcome of the case.

By the COMMISSION:

ORDER

The United States of America, on behalf of its agency, the Rural Electrification Administration (REA), having filed on May 18, 1990 a motion to intervene as a party in Docket DR 90-078; and

WHEREAS, the commission finds that the REA has a substantive interest in the outcome of these proceedings and can contribute to the record upon which the commission must base

its deliberations; and

WHEREAS, there having been no objections filed in opposition to the REA's motion to intervene; and

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WHEREAS, the commission has established a procedural schedule to cover the duration of these proceedings by order of notice dated May 8, 1990; it is hereby

ORDERED, that the REA's motion to intervene is granted subject to the REA restricting its participation in the proceedings to conform to the procedural schedule previously established herein.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1990.

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NH.PUC*06/19/90*[51020]*75 NH PUC 325*Bretton Woods Telephone Company

[Go to End of 51020]

75 NH PUC 325

Re Bretton Woods Telephone Company

DF 89-223
Order No. 19,857

New Hampshire Public Utilities Commission

June 19, 1990

ORDER authorizing a telephone utility to issue additional securities.

SECURITY ISSUES, § 50.1 — Factors affecting authorization — Increased capitalization — Financial stability — Telephone utility.

[N.H.] A telephone utility was authorized to issue additional securities to increase its capitalization and provide for financial stability; the proceeds would be treated as additional paid-in capital and the utility intended to restructure as a three-year note payable an intercompany account payable due its sole shareholder.

By the COMMISSION:

ORDER

On December 4, 1989, Bretton Woods Telephone Company (Bretton Woods or Company) forwarded to this commission, by letter from Leonard Mass, General Manager, an application for authority, pursuant to RSA 369:1 to Issue Additional Securities; and

WHEREAS, Bretton Woods Telephone Company, is a telephone public utility, duly organized and existing under the laws of the State of New Hampshire; and

WHEREAS, Bretton Woods states that it presently has 200 shares of no par value common

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stock issued and outstanding and that the stated value of this stock is $1,000 on the Company's balance sheet; and

WHEREAS, Bretton Woods states that the proceeds from the sale of the additional shares in the amount of $167,000, would be treated as additional paid-in capital to the company; and

WHEREAS, the Company has an intercompany account payable in the amount of $105,806 due its sole shareholder which the Company intends to restructure as a three-year note payable; and

WHEREAS, Bretton Woods states that this transaction would enable the Company to increase its capitalization and provide for financial stability; and

WHEREAS, Bretton Woods filed a Pro Forma Balance Sheet, Income Statement and Adjustments for the period ended December 31, 1989, and a Resolution from the Board of Directors Authorizing the Issuance of Stock and a Note Payable; and

WHEREAS, the commission has investigated, through data requests and a meeting held February 22, 1990, said application; and

WHEREAS, Bretton Woods as requested by the commission staff, provided further justification and supporting documentation for the intercompany account payable; and

WHEREAS, the New Hampshire Public Utilities Commission believes that pursuant to RSA 369:1 and RSA 369:4 it is consistent with the public good to approve Bretton Woods' application; it is hereby

ORDERED, that Bretton Woods is authorized to Issue Additional Securities, pursuant to

RSA 369:1 and 369:4; and it is

FURTHER ORDERED, that Bretton Woods shall on January first and July first of each year, file with this commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Securities until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1990.

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NH.PUC*06/20/90*[51021]*75 NH PUC 326*Birchhaven Associates, Inc.

[Go to End of 51021]

75 NH PUC 326

Re Birchhaven Associates, Inc.

DE 90-102
Order No. 19,858

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New Hampshire Public Utilities Commission

June 20, 1990

ORDER authorizing a homeowners association to construct, use, maintain, repair, and reconstruct a sewer line crossing state-owned railroad property for the purpose of providing sewer service to certain association members.

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1. CERTIFICATES, § 11 — Jurisdiction and powers — State commissions — Utility construction — State-owned land.

[N.H.] State statute RSA 371:17 requires commission authorization prior to the construction of any utility on state-owned land. p. 326.

2. CERTIFICATES, § 125 — Sewer construction — License to cross state-owned land — Factors considered.

[N.H.] The commission authorized a homeowners association to construct, use, maintain, repair, and reconstruct a sewer line crossing state-owned railroad property for the purpose of providing sewer service to certain association members where it was found that the construction was necessary to meet the reasonable requirements of the petitioner, construction would not substantially affect public rights in the property, and the only private property affected belonged to members of the association. p. 326.

3. CERTIFICATES, § 2 — Unauthorized construction — Sewer line — State-owned land — Penalties.

[N.H.] A homeowners association that had already begun to construct a sewer line crossing state-owned railroad property was granted a license to complete the work; however, the association was placed on notice that the future performance of utility construction on state-owned property without commission authorization could result in the imposition of penalties. p. 326.

By the COMMISSION:

ORDER

[1-3] WHEREAS, on May 7, 1990 a petition was received from Birchhaven Associates, Inc., a homeowners association located on the northwest end of Paugus Bay in the City of Laconia, New Hampshire, seeking authorization under RSA 371:17 to construct, use, maintain, repair and reconstruct a private sewer line crossing state-owned Concord-to-Lincoln railroad property for the purpose of providing sewer service to certain members of the association; and

WHEREAS, commission Order No. 18,393 (71 NH PUC 533), DE 86-184, dated September 3, 1986, granted authorization to a Charles Carroll to cross said railroad property with an eight inch sewer passing beneath the railroad tracks inside a ten inch ductile iron sleeve; and

WHEREAS, the current petition requests authorization to cross at the same location with an

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eight inch sewer inside a ten inch ductile iron sleeve; and

WHEREAS, investigation has revealed that the current petition has been submitted for

work already done; and

WHEREAS, further investigation has revealed discrepancies among the current petition, the previous authorization, and the actual work installed to date; and

WHEREAS, it appears that the actual construction to date consists of two side-by-side eight inch steel sleeves, one containing both a two inch sewer force main for Charles Carroll and a separate two inch force main for the Birchhaven homeowners, the other sleeve having been installed for future use and containing a 4" pipe capped at both ends, both sleeves being located at approximate station 1713 + 49, V 21/68 of the Concord-to-Lincoln railroad; and

WHEREAS, the Birchhaven force main apparently encroaches on state-owned property for a total length of approximately 440 feet, including the approximately 20 foot long sleeved portion; and

WHEREAS, RSA 371:17 requires commission authorization prior to construction of any utility on state-owned land; and

WHEREAS, upon reflection and due to the specific circumstances of this docket, the commission has decided not to pursue the current or previous petitioners in regard to penalties or other actions in regard to the above matters; and

WHEREAS, the Bureau of Railroads (DOT) is in basic agreement with the subject petition; and

WHEREAS, the commission finds that the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property; and

WHEREAS, the only private property affected by the current petition appears to be that belonging to members of the homeowners association; and

WHEREAS, the commission finds the above evidence justifies waiver of public hearing in accordance with RSA 371:20; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than July 17, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Laconia region, such publication to be no later than July 2, 1990 and to be documented by affidavit filed with this office on or before July 20, 1990; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:22, the petitioner serve a copy of this

Order of Notice by first-class mail to the clerk of the City of Laconia postmarked no later than July 2, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is, granted, pursuant to RSA 371:17 *et seq*. to Birchhaven Associates, Inc., c/o Elmer Goodwin, 65 Pinecrest Dr., Gilford, NH 03246 for the construction, use, maintenance, repair and reconstruction of the aforementioned sewer force main across public railroad property in Laconia, New Hampshire identified at approximate Valuation Station 1713 + 49, Map V 21/68; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), Water Supply and Pollution Control Division (DES) and others as mandated by the City of Laconia; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date; and it is

FURTHER ORDERED, that no additional work within state property other than work already approved by this and any previous orders be done without prior commission authorization, whether proposed to serve additional homes at this location or for any other reasons, upon risk of ensuing penalty.

By order of the public Utilities Commission of New Hampshire this twentieth day of June, 1990.

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NH.PUC*06/21/90*[51022]*75 NH PUC 328*Public Service Company of New Hampshire/Northeast Utilities

[Go to End of 51022]

75 NH PUC 328

Re Public Service Company of New Hampshire/Northeast Utilities

Movant: Hydro Intervenors

DR 89-244
Order No. 19,859

New Hampshire Public Utilities Commission

June 21, 1990

ORDER denying a motion for reconsideration of an order denying a motion for further discovery in a proceeding to review an electric rate agreement for resolving the Chapter 11 bankruptcy of Public Service Company of New Hampshire.

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1. PROCEDURE, § 16 — Discovery — Production of evidence — Motion for further discovery.

[N.H.] In denying a motion for reconsideration of an untimely motion by certain intervenors

for further discovery in a proceeding to review an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission reaffirmed its finding that the grant of the motion for further discovery would unduly burden the producing party, would have minimal value with respect to the ultimate issue of whether the rate agreement is in the public good, and would disrupt the orderly conduct of the proceeding. p. 328.

2. PROCEDURE, § 33 — Rehearings and reopenings — Grounds for denial.

[N.H.] The commission denied a motion for reconsideration of a prior order where the motion contained no factual or legal assertions not considered in the prior order. p. 328.

By the COMMISSION:

ORDER

Hydro Intervenors having filed on June 8, 1990, a motion for rehearing on their request of May 14, 1990 for further discovery; and

WHEREAS, said request for further discovery was denied by the commission by order no. 19,834 (75 NH PUC 294) dated May 22, 1990, in which the commission cited, as reasons for its denial, that the information requested by the Hydro Intervenors would be unduly burdensome to produce, would be of minimal value with respect to the ultimate issue of whether the rate agreement is in the public good, is untimely and, if granted, would disrupt the orderly proceeding of this docket; and

WHEREAS, in support of its motion for rehearing, the Hydro Intervenors assert:

1. At least one alternative proposal by Hydro Intervenors would not result in any significant changes in the financial projections incorporated in the analysis already prepared by Northeast Utilities (NU).

2. The record development of the acquisition premium is results-oriented and is not related in any way to the statutory formula for determining just and reasonable rates.

3. Alternative methods of accounting for the "acquisition premium" would give the commission a rational basis for choosing one such alternative over others and, without this choice, there would be intrinsic standard for determining the reasonableness of the methodology; and

[1, 2] WHEREAS, the commission finds that the assertions by Hydro Intervenors are without merit because, *inter alia*, the record indicates that alternatives proposed by Hydro Intervenors could result in substantial changes to the rate agreement, the commission clearly established within its scoping orders previously in this docket that it will apply applicable law in determining whether or not the proposed rates are "just and reasonable," and the requested information would have minimal probative value; and

WHEREAS, Hydro Intervenors did not raise in this motion for rehearing any factual or legal assertions which were not before the

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commission or considered by the commission regarding its decision in order 19,834; it is

ORDERED, that the Hydro Intervenors' motion for rehearing on their request for further discovery is denied for the reasons cited above and in order no. 19,834.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of June, 1990.

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NH.PUC*06/26/90*[51023]*75 NH PUC 329*EnergyNorth Natural Gas, Inc.

[Go to End of 51023]

75 NH PUC 329

Re EnergyNorth Natural Gas, Inc.

DR 88-136, DR 89-181
Order No. 19,861

New Hampshire Public Utilities Commission

June 26, 1990

ORDER prohibiting public disclosure of certain discovery materials designated as confidential, commercial and financial information in a proceeding to review the reasonableness of a contract between a gas distributor and an affiliated propane supplier.

PROCEDURE, § 16 — Discovery and inspection — Confidential materials — Protective order.

[N.H.] The commission issued a protective order prohibiting public disclosure of certain discovery material designated as confidential, commercial and financial information by the responding utility; if any member of the public were to seek disclosure of the material the commission would weigh the benefits of disclosure to the public against the benefits of nondisclosure to the utility.

By the COMMISSION:

ORDER

EnergyNorth Natural Gas, Inc., having filed a Motion for Protective Order on May 24, 1990, which, in pertinent part, requested authority to decline to produce a document, identified as the Company's responses to Data Requests by the Staff of the Public Utilities Commission in Data Requests 39, 40, 41 and 42; and

WHEREAS, EnergyNorth Natural Gas, Inc. asserts that disclosure of the aforesaid information would cause a cognizable harm to ENPI in its competitive environment; and

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WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, " ... confidential, commercial, or financial information ..."; it is

ORDERED, that EnergyNorth shall, upon receipt hereof, provide the commission, and the commission staff the data requested, Staff Requests 39, 40, 41 and 42; and until otherwise ordered, it is to be viewed only by the commission, the commission staff and Office of the Consumer Advocate. Until such further order of the commission, said data and the information contained therein shall not be copied or reproduced, nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, on motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA Chapter 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that unless otherwise ordered all copies of the propriety documents shall be destroyed or returned to the originator of the response within 30 days after the conclusion of these proceedings; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claim by EnergyNorth for the materials in question the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits on

nondisclosure to EnergyNorth.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1990.

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NH.PUC*06/26/90*[51024]*75 NH PUC 330*Resort Waste Services Corporation

[Go to End of 51024]

75 NH PUC 330

Re Resort Waste Services Corporation

DR 90-035
Order No. 19,862

New Hampshire Public Utilities Commission

June 26, 1990

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ORDER accepting a stipulation providing for the financial stability and continued operation of a financially troubled land-development sewer utility.

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1. PUBLIC UTILITIES, § 10 — Jurisdiction and powers — State commissions — Assurance of adequate service and reasonable rates.

[N.H.] The commission accepted a stipulation providing for the financial stability and continued operation of a financially troubled land-development sewer utility where the stipulation was consistent with the commission's responsibility to ensure adequate service and reasonable rates for all franchised utilities under its jurisdictions. p. 330.

2. PUBLIC UTILITIES, § 122 — Sewer — Land-development utility — Capacity control member.

[N.H.] Upon acceptance of a stipulation providing for the financial stability and continued operation of a financially troubled land-development sewer utility, the commission dismissed a proceeding to determine the public utility status of a bank that provided financing to the capacity control member of the utility. p. 330.

By the COMMISSION:

REPORT

I. *Background*

The background of this case is set forth in detail in report and order no. 19,796 (75 NH PUC 237) and will not be repeated here.

II. *Procedural History*

On March 6, 1990, the commission issued order no. 19,741 (75 NH PUC 142) setting a hearing for March 26, 1990 in order to examine the financial condition of Resort Waste Services Corporation (Resort Waste or corporation) in light of the "bankruptcy" of Satter Companies of New England, the capacity control member of Resort Waste (see report and order no. 19,796 at pgs. 1 and 2).

As a result of said hearing, the commission issued report and order no. 19,796 establishing a hearing date of June 1, 1990, in order to determine whether Dartmouth Bank was, and is, a public utility pursuant to RSA 362:2 due to its financial and managerial relationship with Satter Companies of New England and, therefore, responsible for CCM payments.

The commission established said hearing due to its concerns over the financial condition of Resort Waste and the fact that there was no group in place managing the corporation.

Since the issuance of that order, the staff of the commission, Robert Satter for Resort Services Corporation and the Dartmouth Bank entered into a stipulation agreement which is attached hereto. The other intervenors in this case, although not signatories to the stipulation agreement have indicated in a letter dated May 30, 1990, that they have no objections to the stipulation.

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III. *Stipulation Agreement*

[1, 2] The Stipulation Agreement provides that Dartmouth Bank will infuse $3,000.00 a month into Resort Waste as a "protective advance under its loans" for its loans to Satter Companies of New England and Satter Companies of Bretton Woods, Inc. Said infusion of capital will commence with the month of May

and end six months henceforth or on the date of foreclosure, whichever occurs first. The stipulation further provided that Resort Waste and Rosebrook Water Company, Inc. (Rosebrook) shall enter into contracts with Crawford Management Group, John W. Morgan, President. Copies of which are attached to the Stipulation Agreement attached hereto for the day-to-day management of the two utilities located at Bretton Woods and under the control of the "Satter Companies".

The parties further agreed that the New Hampshire Public Utilities Commission would agree to dismiss its current proceedings to determine whether or not Dartmouth Bank
" ... is a public utility pursuant to RSA 362.22 and/or whether or not Dartmouth Bank is or was involved in a joint venture with Satter Companies of New England or the Satter Company of Bretton Woods, Inc. and shall agree not to commence any similar proceedings for six months or occurrence of a foreclosure or Bretton Woods, whichever first occurs. However, the New Hampshire Public Utilities Commission shall retain the right to open any similar proceeding without any prejudice to any parties to assert any and all objections to such proceeding should the operation of Resort Waste or Rosebrook cease due to any financial emergencies which occur for other than the collection of outstanding bills.

IV. *Commission Analysis*

The Commission will accept the Stipulation of the parties in full as attached hereto as it provides for the financial stability of Resort Waste and an entity to manage both Resort Waste and Rosebrook.

It is the Commission's responsibility and role to insure adequate service and reasonable rates for all of the franchised utilities under its jurisdiction. The Commission finds that the stipulation agreement insures both of those goals.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the stipulation attached hereto be, and hereby is, accepted in full.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1990.

STIPULATION AGREEMENT

1.0 This agreement is entered into this 29th day of May, 1990, between Resort Waste Services Corporation (Resort Waste or Company), Rosebrook Water Company, Inc. (Rosebrook)

the Staff (staff) of the New Hampshire Public Utilities Commission (commission) and the Dartmouth Bank (Dartmouth) for the purposes and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On or about February 9, 1990, the commission was notified that the Satter Companies of New England, a New Hampshire general partnership, and a capacity control member of Resort Waste a New Hampshire public utility in the Town of Carroll, New Hampshire was discontinuing business due to the financial difficulties. The commission was also notified that Resort Waste's president and chief executive officer had resigned. Furthermore, the commission had been informed that the engineering firm, Metcalf & Eddy, which operates the sewer plant had not been paid for its services in over three months and was threatening to leave the site, no longer providing its services if it was not paid. As a result of the imminent danger that the engineering firm would abandon the plant resulting in a discontinuance of service, the commission issued order no. 19,741 in this docket on March 6, 1990. Said order provided, pursuant to RSA 374:4, that the officers and directors of Resort Waste should appear before the commission on March 26, 1990, to inform the commission of Resort Waste's current financial and operating conditions. It was further ordered that pursuant to RSA 378:7, RSA 378:9 and RSA 378:28 the commission would investigate the current tariff of Resort Waste to determine its continuing viability and the possibility of alterations to its terms, conditions, rates and charges.

A duly noticed hearing was held on March 26, 1990, at 10:00 o'clock in the forenoon.

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As a result of testimony concerning the financial condition of Resort Waste, the commission issued report and order no. 19,796 setting a June 1, 1990, hearing in order to determine whether Dartmouth was in fact a partner of Satter Companies of New England and, therefore, responsible for Satter Companies of New England's responsibilities as a capacity control member.

During the course of the past month the parties have entered into negotiations to ensure the continuing viability of Resort Waste and Rosebrook, a water utility. The parties further believe that the stipulation agreed to herein will accomplish said end.

3.0 *Stipulation of the Parties*. It is hereby stipulated that Rosebrook and Resort Waste enter into certain contracts, satisfactory to them and to the PUC with Crawford Management Group copies of which are attached hereto and incorporated herein.

3.1 Said contracts may be terminated by Rosebrook for Rosebrook and Resort Waste for Resort Waste without penalty or further cost or expense upon sixty days written notice. All rights to further fees and costs for Crawford Management Group cease upon expiration of the sixty-day period.

3.2 All amounts collected for Rosebrook in excess of reasonable costs of operation (including taxes, utilities, repairs, miscellaneous expenses including appropriate reserves) to be held to secure Dartmouth's security interest in the stock of Rosebrook.

3.3 Rosebrook and Resort Waste shall utilize their best efforts to keep and maintain costs of operation and maintenance as low as possible consistent with providing adequate and reliable service including, *inter alia* the negotiation of a new management contract with or in substitution

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for Resort Waste's current contract with Metcalf & Eddy.

3.4 Dartmouth shall pay the sum of $3,000 per month commencing with the month of May, 1990 to Resort Waste as a protective advance under its loans to the Satter Companies of New England and the Satter Company of Bretton Woods, Inc., said payments to cease after a period of six months or upon foreclosure of Bretton Woods whichever first occurs.

3.5 The New Hampshire Public Utilities Commission shall agree to dismiss its current proceeding to determine whether or not Dartmouth Bank " ... is a public utility pursuant to RSA 362:2 ... " and/or whether or not Dartmouth is or was involved in a joint venture with Satter Companies of New England or the Satter Company of Bretton Woods, Inc. and shall agree not to commence any such or similar proceeding for six months or until the occurrence of a foreclosure of Bretton Woods whichever first occurs.

3.6 However, the New Hampshire Public Utilities Commission retains the right, to open any similar proceeding without prejudice to any parties' ability to assert any and all objections to such proceeding including, *inter alia* with the ability to object to the commission's right or jurisdiction to conduct such a proceeding, with appropriate notice should the operation of Resort Waste or Rosebrook cease due to any financial emergencies which occur for reasons other than the collection of outstanding bills.

4.0 *General Conditions*. This agreement is subject to the following further conditions:

4.1 The making of this agreement shall be promptly presented to the commission for approval and approval shall be issued without delay.

4.2 The making of this agreement and the contents thereof shall not be deemed in any respect to constitute an admission nor acknowledgment by any party that any allegation in these proceedings is true and valid. Moreover, nothing in this agreement nor the agreement itself maybe used or submitted into evidence in any other proceeding or action of any kind.

4.3 The making of this agreement establishes no principles, precedents or findings of fact in any other proceeding or investigation, or action or proceeding of any kind in any forum.

4.4 The commission approval of this agreement does not establish any principles or precedents.

4.5 The commission approval of this agreement shall not in any respect constitute a determination as to the merits of any allegations made in this proceeding.

4.6 This agreement is expressly conditioned upon the commission's acceptance of all

its provisions, without change or condition, and if the commission does not so approve it, the agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

4.7 This agreement constitutes an integrated writing and each of the provisions is in consideration and support of every other provision and is an essential condition of every other provision.

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4.8 The discussions which have produced this agreement have been conducted on the explicit understanding that this agreement and all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudice to the position of any party hereto or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

4.9 Notwithstanding this agreement, or any term thereof, this agreement (and all acts or orders in relation thereto) shall not constitute in any way a waiver, release, discharge, modification, or amendment concerning any and all rights, interests, benefits, defenses, offsets, causes of action, or claims of any kind of Dartmouth Bank, nor of or concerning any indebtedness or obligation owed (nor of any obligation or indebtedness owed to) Dartmouth Bank, Resort Waste Services Corporation, Rosebrook Water Company, Inc. or the Public Utilities Commission. Moreover, nothing in this agreement nor in any act or order relating thereto, shall in any way constitute a finding of fact or a conclusion of law regarding any of the matters in these proceedings.

IN WITNESS WHEREOF, the parties, fully authorized agents or representatives have executed this agreement.

Resort Waste Services Corporation
By Its Agent: Date 5/9/90
Robert Satter, Director

Staff of New Hampshire Public
Utilities Commission Date 5/4/90
By Its attorney:
Eugene F. Sullivan, III, Esq.

Dartmouth Bank Date 5/25/90
By John M. Staton, A.V.P.

Rosebrook Water Company, Inc. 5/9/90

AGREEMENT

Agreement between Resort Waste Services Corporation, Inc.(RWS) (Owner) and Crawford Management Group, Inc. (CMG) (Manager) for the general management of the Bretton Woods Waste Water Treatment Facility.

Routine Scope of Services:

For the consideration stated herein, the Manager agrees to provide the management services herein contained with respect to the following:

1. To act as principal liaison between the Owner and the waste water treatment plant operations managers.

2. Conduct weekly inspections of the facility along with the operator to assure the facility is receiving satisfactory care and maintenance as per contracted agreement.

3. Responsible for snow removal to include; coordinating with the selected contractor to assure that snow removal from roadways and parking areas is completed on a timely basis

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following each storm.

4. Responsible for invoicing and collection of Resort Waste user fees on a quarterly basis including bank deposits and account maintenance.

5. The furnishing of monthly reports on the general status of the facility operation and performance including financial statements to the Owner, the Public Utilities Commission, and the Dartmouth Bank.

Owner Insurance:

During the term of this agreement, Owner shall maintain at its sole cost and expense, insurance policies to protect its property and interests at the facility.

CMG Insurance:

During the term of this agreement, CMG shall maintain at its sole cost and expense, Workman's Compensation Insurance to protect the property and it's interests as required by the Owner.

Service Fee

The Owner shall pay CMG the following monthly service fees in consideration of the services to be provided pursuant to the terms of this Agreement:

1. Routine scope of services at the rate of $250.00 per month, payable in advance on the first day of each month commencing on the commencement date of the agreement.

Expense Limitations:

CMG shall not incur any expense for any one item of repair or replacement in excess of $3000.00 without the specific authorization of the Owner. However, emergency repairs immediately necessary to avoid suspension of the waste service to the properties, may be made by CMG irrespective of the cost limitation imposed by this paragraph. Notwithstanding, this authority as to emergency repairs, it is understood and agreed that CMG will, if at all possible, confer immediately with the Owner regarding such expenditures.

Initial Term:

The initial term of this agreement shall be one year commencing on May 1, 1990, and may be renewed on such terms and conditions as the parties may agree.

The parties further agree that CMG shall be paid $1,000 by Resort Waste Services, Inc. for similar service provided in the first four months of 1990.

Termination:

This agreement may be terminated by either party hereto, with or without cause, and without penalty, with 60 days written notice, sent by registered mail to:

Crawford Management Group
P.O. Box 293
Twin Mountain, NH 03595

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and/or
Resort Waste Services, Inc.
U.S. Route 302
Bretton Woods Resort
Bretton Woods, NH 03575

with copies to:

NH Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301
and
Dartmouth Bank
c/o Michael Hullinger
156 Hanover Street
Manchester, NH 03101

Upon the effective date of termination Resort Waste Services Corporation shall not be responsible for any fees, expenses or charges of any kind incurred or accrued to or by CMG after said date of termination, including any portion of the service fee costs or charges which would be attributed to any period of time following the effective date of termination.

In witness where of the parties hereto have executed this agreement:
Resort Waste Services Corporation
Robert A. Satter, Chairman

5-25-90 Date

Crawford Management Group
John W. Morgan, President

5-23-90 Date

**This contract supercedes the original agreement signed by Robert Satter on May 9, 1990.

AGREEMENT

Agreement between Rosebrook Water Company, Inc. (Owner) and Crawford Management Group (CMG), Inc. (Manager) for the operation and maintenance of the Rosebrook Water Company at Bretton Woods, NH.

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Routine Scope of Services:

CMG shall be responsible for the general management, operation, and routine maintenance of the Rosebrook Water Co. The services to be rendered by CMG pursuant to the terms of this agreement shall include:

1. Supervision of the day to day operations of the Water Company to keep the system in good working order.

2. Normal monitoring and maintenance of the pump station.

3. Weekly well pump inspections, grease valve stems, grease and adjust packing, maintain oil level in pump motor, change oil as required.

4. Weekly visual inspection of the reservoir on the top of the mountain for potential problems, verification of water level, adjust solar telemetry set-up required for proper pump operation.

5. Take daily readings of pump operation and record in daily log, enabling the early identification of potential problems.

6. Flush property fire hydrants and water lines periodically. Inspect and lubricate hydrant valves as needed for proper smooth operation.

7. Co-ordinate with local fire department for periodic testing of the fire hydrants with fire apparatus.

8. Provide water samples to Water Pollution each month as required for laboratory testing and analysis.

9. File quarterly water use reports with the Department of Water Resources as required.

10. Provide quarterly meter readings of all water meters, commercial, and residential for billing purposes.

11. Invoicing and collection of all water users on a quarterly basis, for total water usage.

12. The furnishing of monthly reports and Quarterly Financial reports on the general status of the facility operation and performance to be sent to the Owner, New Hampshire Public Utilities Commission, and to the Dartmouth Bank.

13. Make recommendations for capital improvements and any other recommendations as may be appropriate for the improvements of the Rosebrook Water Company service.

14. Maintain a 24 hour, 7 day a week maintenance and emergency system. The maintenance and emergency support system shall include the retention of qualified personnel or firms in all trades necessary to maintain the water system. Retained personnel or firms shall be subject to call whenever an emergency affecting health, safety, or disruption of the water service may occur.

Owners' Responsibility:

The Owner shall be responsible for the following:

1. The maintenance of all federal, state, and local permits and licenses that are necessary to operate the facility. The Owner shall be responsible to insure that the facility complies with all applicable federal, state, and local rules and regulations.

2. Provisions of electric costs for the operation of the water pumping stations, and costs of snow removal.

3. Responsible for the cost of all parts and items of personal property purchased to perform

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the maintenance and repairs necessary to keep all equipment, water lines, pumps, and any other related equipment necessary to maintain water service and fire protection for all Bretton Woods properties, served by the Rosebrook Water Company.

Service Fees:

The Owner shall pay the following monthly service fees in consideration of the services to be provided pursuant to the terms of this Agreement.

1. Routine scope of services at the rate of $250.00 per month.

A. Payable in advance on the first day of each month commencing on the commencement date of the Agreement.

Contracted Services, Beyond Routine Scope of Services:

1. Maintenance repairs and services not included in the routine scope of services outlined above during normal working hours will be performed as required, at the rate of $20.00

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per professional hour expended.

2. Emergency Call-in Service, after normal hours, will be performed as required at the rate of $50.00 per professional hour expended. However, CMG shall make every effort to perform all routine scope of services within normal working hours.

3. CMG shall submit invoices to the owner covering these services beyond the normal scope of services on a monthly basis. Payment of such invoices shall be made within 15 days of receipt by the Owner.

Expense Limitations:

CMG shall not incur any expense for any one item of repair or replacement in excess of $3000.00 without the specific authorization of the owner. However, emergency repairs immediately necessary to avoid suspension of water service to the properties, may be made by CMG irrespective of the cost limitation imposed by this paragraph. Notwithstanding, this authority as to emergency repairs, it is understood and agreed that CMG will, if at all possible, confer immediately with the Owner regarding such expenditures.

Owner Insurance:

During the term of this Agreement, the Owner shall maintain at its sole cost and expense, insurance policies to protect its properties and interests for the Rosebrook Water Company covering such risks as fire and extended coverage insurance.

CMG shall be named as an additional insured. The Owner shall provide to CMG a certificate of Insurance evidencing the required coverage on or before the commencement date of this Agreement.

CMG Insurance:

During the term of this agreement, CMG shall maintain, at its sole cost and expense, insurance polices to protect its interests covering the following risks:

A. Workmens Compensation.

B. Public Liability, including bodily injury and property damage.

Initial Term:

The initial term of this agreement shall be one year commencing on May 1 1990, and may be renewed on such terms and conditions as the parties may agree.

The parties further agree that CMG shall be paid $1,000 by Rosebrook Water Company, Inc. for similar service provided in the first four months of 1990.

Termination:

This agreement may be terminated by either party hereto, with or without cause, and without penalty, upon 60 days written notice, sent by registered mail to:

Crawford Management Group
P.O. Box 293
Twin Mountain, NH 03595
and/or
Rosebrook Water Company
U.S. Route 302
Bretton Woods Resort
Bretton Woods, NH 03575

with copies to:

NH Public Utilities Commission
8 Old Suncook road
Concord, NH 03301
and
Dartmouth Bank
c/o Michael Hullinger
156 Hanover Street
Manchester, NH 03101

Upon the effective date of termination Rosebrook Water Company, Inc. shall not be responsible for any fees, expenses or charges of any kind incurred or accrued to or by CMG after said date of termination, including any portion of the service fee costs or charges which would be attributed to any period of time following the effective date of termination.

In witness where of the parties hereto have executed this agreement:

Rosebrook Water Company, Inc.
Robert A. Satter, Chairman

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5-25-90
Date

Crawford Management Group, Inc.
John W. Morgan, President

5-23-90
Date

**This contract supercedes the contract agreement signed by Robert Satter on May 9, 1990.

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NH.PUC*06/26/90*[51025]*75 NH PUC 337*Fryeburg Water Company

[Go to End of 51025]

75 NH PUC 337

Re Fryeburg Water Company

DF 90-109
Order No. 19,863

New Hampshire Public Utilities Commission

June 26, 1990

ORDER authorizing issuance of mortgage notes by a water utility.

SECURITY ISSUES, § 44 — Factors affecting authorization — Mortgage notes — Public good.

[N.H.] A water utility was authorized to issue and sell for cash its mortgage notes, in an aggregate principal amount not in excess of $199,000 with interest up to 11% per annum, and was also authorized to mortgage its plant, property, and equipment as security; issuance of the proposed financing, which would be used in part to retire existing notes, with the balance applied to demand notes and working capital, was found consistent with the public good.

By the COMMISSION:

ORDER

WHEREAS, Fryeburg Water Company, a public utility operating in Fryeburg, Maine and East Conway, New Hampshire, under the jurisdiction of this commission, seeks authority, pursuant to RSA 369 to issue and sell for cash, up to one hundred and ninety-nine thousand ($199,000) principal amount of mortgage notes with interest of up to 11.0% per annum, and the company to give a blanket mortgage of its real and personal property to a trustee acting for the mortgagee(s); and

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WHEREAS, the Fryeburg Water Company represents that the proceeds from the proposed issue will be used to retire existing notes in the amount of approximately one hundred and fifty-nine thousand dollars ($159,000) and the balance to be applied to the applicant's demand notes and working capital; and

WHEREAS, the commission, following investigation and consideration of the evidence, finds that the issuance of said proposed financing is consistent with the public good; it is hereby

ORDERED, that Fryeburg Water Company be, and hereby is, authorized to issue and sell for cash its mortgage notes, in an aggregate principal amount not in excess of one hundred and ninety-nine thousand dollars ($199,000) with full indebtedness due on or after July 1, 1994 and before July 1, 1995, interest to be up to 11.0% per annum; and it is

FURTHER ORDERED, that the Fryeburg Water Company be, and hereby is, authorized to mortgage its plant, property and equipment as security for this note or notes authorized herein; and it is

FURTHER ORDERED, that the proceeds from the sale of the mortgage note or notes, be applied, to the extent necessary to the payment of its indebtedness in the amount of one hundred and fifty-nine thousand dollars ($159,000), and the balance to be applied to the applicant's demand notes and working capital; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the Fryeburg Water Company shall file with this commission a

detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of said Mortgage Note or Notes, until there is a full accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1990.

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NH.PUC*06/27/90*[51026]*75 NH PUC 338*Locke Lake Water Company, Inc.

[Go to End of 51026]

75 NH PUC 338

Re Locke Lake Water Company, Inc.

DR 89-205
Order No. 19,864

New Hampshire Public Utilities Commission

June 27, 1990

ORDER, in a rate investigation, directing a water utility to file testimony in support of its rates.

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RATES, § 648 — Procedure and practice — Evidence — Rate investigation — Testimony in support of rates.

[N.H.] A water utility, which was currently under temporary rates and was the subject of a rate investigation, was directed to file testimony in support of its rates by a specified date or four weeks from the sale of the utility, whichever occurred earlier.

By the COMMISSION:

ORDER

On November 8, 1989, the commission initiated a rate investigation and ordered Locke Lake Water Company, Inc. (company) to appear on December 11, 1989 "to show cause why the commission should not open a docket to investigate whether the rates and charges currently demanded by Locke Lake are unjust and unreasonable pursuant to the provisions of RSA 378:7"; and

WHEREAS, on March 16, 1990, the commission issued report and order no. 19,760 (75 NH PUC 181) establishing the company's current rates as temporary rates and giving the company four months in which to either sell the utility or otherwise file testimony in support of its rates; and

WHEREAS, on June 13, 1990, the company filed a motion to continue for six months, without opposition from staff, as the company was in the process of installing meters to its customers and in negotiations with another company for the purchase of this system; and

WHEREAS, as the company is currently under temporary rates and will continue to be under temporary rates until it files a rate case, and any company which purchases Locke Lake will also be under temporary rates during this period; it is hereby

ORDERED, that Locke Lake Water Company, Inc. file testimony in support of its rates on or before January 17, 1991, or four weeks from the sale of the company, whichever first occurs.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 1990.

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NH.PUC*06/28/90*[51027]*75 NH PUC 338*United Illuminating Company

[Go to End of 51027]

75 NH PUC 338

Re United Illuminating Company

DE 90-076
Order No. 19,865

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New Hampshire Public Utilities Commission

June 28, 1990

ORDER specifying the procedural schedule and treatment of allegedly privileged or confidential information in a proceeding involving a sale and leaseback of an electric utility's Seabrook Station ownership interest.

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1. PROCEDURE, § 39 — Time limitations — Procedural schedule — Parties'

Page 338

recommendation.

[N.H.] The parties' recommended procedural schedule was adopted as reasonable for the remainder of a proceeding involving an electric utility's petition for certain authority in connection with a sale and leaseback of part of its Seabrook Station ownership interest. p. 339.

2. PROCEDURE, § 16 — Discovery and inspection — Confidential or privileged information — Exemption from public disclosure.

[N.H.] The parties' recommended procedure, with regard to treatment of information alleged to be confidential or privileged, was adopted as reasonable for a proceeding involving an electric utility's petition for certain authority in connection with a sale and leaseback of part of its Seabrook Station ownership interest; the specified procedure would be applicable to protect the confidentiality of filed information that the utility in good faith believed exempt from public disclosure within the meaning of the applicable statute. p. 339.

APPEARANCES: Frederick J. Coolbroth, Esq., Devine, Millimet & Branch for United Illuminating Company; Audrey Zibelman, Esq. for New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

[1, 2] On April 27, 1990, United Illuminating Company (UI), filed a petition for certain authority in connection with a sale and leaseback of a portion of its Seabrook Station ownership interest. By Order of Notice dated May 17, 1990, the Public Utilities Commission ("commission") scheduled a pre-hearing conference on June 8, 1990, to determine whether motions to intervene should be granted, to establish a procedural schedule for the duration of the proceedings, and to address any additional matters which might aid the commission in the disposition of the proceeding.

There were no motions to intervene filed before the prehearing conference.

Staff and UI agreed to and recommended the following expedited procedural schedule:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Staff Data Requests to Company June 22, 1990
Hearing on Petition            June 28, 1990
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A second matter addressed during the conference was the treatment of confidential and privileged information. UI asserted that particular documents staff indicated that it would be seeking during its investigation will contain confidential financial information. The company sought exemption from public disclosure under RSA 91-A:5 IV for this information.

The staff and UI jointly recommended the adoption of the following procedure for the treatment of confidential information in this proceeding. The company will designate any documents, testimony and other filings that it wishes to be exempt from public disclosure by marking them with the words "PROTECTED MATERIALS, DO NOT PHOTOCOPY." The company shall file one copy of designated material. All documents so designated will not be copied, or reproduced, nor shall the information contained therein be further disseminated. Provided, however, that the commission will not retain the confidential treatment of information longer than appropriate. Accordingly, the company shall advise the commission when its financing arrangements are consummated and the extent to which any of the protected financial information may be disclosed. On or before June 27, 1991 and annually thereafter, the company shall advise the commission if it desires continued exemption from public disclosure of any remaining protected documents or information. If the company fails to request continued exemption, the commission will assume that the information and documents are subject to public disclosure. Additionally, throughout the course of the proceeding the commission and staff retain the right to challenge all documents that

the company classifies as confidential. In the event of a challenge, UI will have an opportunity to be heard as to why the classified information is exempt from public disclosure under RSA 91-A:5.

II. *Commission Analysis*

The commission finds that the parties' recommendations for the schedule of the remainder of this proceeding are reasonable and should govern this proceeding. The commission also finds that the parties' recommendations with regard to the treatment of information alleged to be confidential or privileged are reasonable. The order attached hereto shall govern the treatment of confidential information in this proceeding.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is incorporated herein by reference; it is hereby

ORDERED, that the procedural schedule set forth in the foregoing report shall govern these proceedings until further ordered by the commission; and it is

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FURTHER ORDERED, that if during the course of this proceeding the company on its own accord causes to be filed, or, upon the request of the commission or its staff, is requested to file information which the company in good faith believes is exempted from public disclosure within the meaning of RSA 91-A:5(IV) (1990), the following procedure shall be followed with respect to the treatment of such information.

1. United Illuminating shall mark "PROTECTED MATERIALS — DO NOT PHOTOCOPY" all documents or other discovery materials or portions thereof which it wishes to be exempt from public disclosure,

2. The company shall file one copy of protected materials,

3. All documents so designated will not be copied or reproduced, nor shall the information contained therein be further disseminated,

4. The company shall advise the commission when its financing agreements are consummated and the extent to which any of the protected material may be disclosed,

5. On or before June 27, 1991, and on an annual basis or thereafter, the Company shall inform the commission of any remaining documents or information the company in good faith believes continues to be exempt from public disclosure within the meaning of RSA 91-A:5 IV. The commission shall assume that the company does not object to public disclosure of any document or information for which the company has not requested continued exemption;

6. Nothing in the foregoing provisions of this order shall be deemed to prevent the commission or staff from meeting its legal obligations to provide access to public records, pursuant to RSA Chapter 91-A. Provided, however, that in the event the commission, its staff, or members of the public challenge the appropriateness of UI's classification of documents as "PROTECTED MATERIALS", the commission shall provide UI an opportunity for a hearing on the validity of the claimed exemption. No documents which UI designated "PROTECTED MATERIALS" shall be subject to public disclosure in the absence of a commission order finding that the designation is inappropriate.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1990.

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NH.PUC*06/28/90*[51028]*75 NH PUC 341*Southern New Hampshire Water Company, Inc.

[Go to End of 51028]

75 NH PUC 341

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,866

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New Hampshire Public Utilities Commission

June 28, 1990

MOTION to designate members of the commission staff as staff advocates; denied.

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1. COMMISSIONS, § 53 — Membership and personnel — Commission staff — Designation as staff advocate — Discretionary power.

[N.H.] The commission has discretionary power to designate a member of its staff as a staff advocate when that staff member's involvement in a proceeding appeared to require the employee to commit to a particular result; the rule did not require designation as staff advocate for each staff member who served as a witness in a proceeding because, unlike parties, staff members were not predisposed toward a particular result, and because the fact that a staff member's ultimate recommendation favored one party or another did not mean that the employee had committed to a particular result and should be designated a staff advocate. p. 341.

2. COMMISSIONS, § 53 — Membership and personnel — Commission staff — Designation as staff advocate — Purpose.

[N.H.] In accordance with the intent of a rule that empowered the commission to designate a member of its staff a staff advocate if that employee appeared committed to a particular result in a proceeding — that is, to preserve the integrity of the commission process — the commission would designate an employee a staff advocate if the commission found that the employee was committed to a particular result and therefore, regardless of the evidence, was no longer able to supply impartial advice to the commission. p. 341.

3. COMMISSIONS, § 51 — Prejudice or bias — Commission staff — Designation as staff advocate — Grounds for refusal to designate.

[N.H.] A motion to designate members of the commission staff as staff advocates was denied, where based on its review of the record and observation of the conduct of its staff during a hearing, the commission concluded that no circumstances of the proceeding suggested that the staff departed from its role as impartial evaluators of a utility and public interests. p. 341.

By the COMMISSION:

REPORT

The Office of the Consumer Advocate (OCA) moved to designate members of our staff as staff advocates pursuant to N. H. Admin. Rules, PUC 203.15. The OCA claimed that the designation will permit staff to make commitments to a particular result and prevent *ex parte* communications. For the reasons set forth below, we are denying the OCA motion.

Commission Analysis

[1-3] Pursuant to RSA 363:17-a (1990), the Public Utilities Commission is obliged to act as "the arbiter between the interests of the customers and the interests of the regulated utility." RSA

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363:27 (1990), authorizes the commission to hire staff to assist the commission in the fulfillment of its statutory functions. In circumstances in which it appears that a staff member's involvement in a proceeding will require the employee to commit to a particular result, N.H. Rules, P.U.C. 203.15, provides the commission with the discretionary power to designate the affected employee a staff advocate.

The rule does not require designation as staff advocate for each staff member who

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serves as a witness in a proceeding. Unlike the parties, members of the staff are not predisposed towards a particular result. The staff's role is to review the record developed during the proceedings, place on the record additional material facts not otherwise provided by the parties and make recommendations to the commission based on the evidence. The fact that a staff member's ultimate recommendation favors one party or another does not mean that the employee has committed to a particular result and should be designated a staff advocate.

The intent of the rule is to preserve the integrity of the commission process. In accordance with this intent, we will designate an employee a staff advocate if we find that he or she is committed to a particular result and therefore, regardless of the evidence, is no longer able to supply impartial advice to the commission. *See, Appeal of Public Service of New Hampshire*, 122 N.H. 1062, 1077 (1982).

We have reviewed the record in this proceeding and have observed the conduct of our staff during the temporary rate hearing. Based upon this review and observation, we conclude that there is nothing in the circumstances of this proceeding to suggest that staff has departed from its role as impartial evaluators of the utility and public interests. Accordingly, the OCA motion is denied.

Our order will issue accordingly.

ORDER

The Office of Consumer Advocate, having filed on June 21, 1990, a Motion to Designate Staff Advocates pursuant to N.H. Admin. Rules, PUC 203.15, it is hereby

ORDERED, that the motion is denied for the reasons set forth in the attached report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1990.

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NH.PUC*07/02/90*[51029]*75 NH PUC 342*New Hampshire Electric Cooperative, Inc.

[Go to End of 51029]

75 NH PUC 342

Re New Hampshire Electric Cooperative, Inc.

DR 90-078

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Order No. 19,867

New Hampshire Public Utilities Commission

July 2, 1990

REQUEST for a protective order for confidential, commercial and financial information; granted.

PROCEDURE, § 16 — Discovery and inspection — Protective order.

[N.H.] An electric utility, which filed a motion for protective order requesting authority to decline to produce a document, was directed to provide the commission with the data requested (i.e., responses to certain staff data requests), which, until further order, would be viewed only by the commission, its staff, and the Office of the Consumer Advocate and would not be copied or reproduced, and the information therein would not be further disseminated; on motion by any party, the commission would reconsider the extent to which the information would be made part of the public record.

By the COMMISSION:

ORDER

New Hampshire Electric Cooperative, Inc. (NHEC), having filed a Motion for Protective Order on May 31, 1990, which, in pertinent part, requested authority to decline to produce a document, identified as NHEC's responses to data requests by the staff of the Public Utilities Commission in Data Requests, Set One, numbers 1, 4, 5 and 6; and

WHEREAS, NHEC asserts that disclosure

of the aforesaid information would cause a cognizable harm to NHEC in its competitive negotiation environment; and

WHEREAS, the Attorney General on behalf of the State of New Hampshire filed a objection to the request of NHEC for confidential treatment; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ..."; it is hereby

ORDERED, that NHEC shall, upon receipt hereof, provide the commission with the data requested, i.e., responses to Staff Data Requests 1, 4, 5 and 6 of Set One. Until otherwise ordered, it is to be viewed only by the commission, the commission staff and Office of the Consumer Advocate. Until such further order of the commission, said data and the information contained therein shall not be copied or reproduced, nor shall the information contained therein

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be further disseminated; and it is

FURTHER ORDERED, on motion by any party the commission will reconsider the extent to which the material in question shall be made a part of the public record pursuant to RSA Chapter 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that unless otherwise ordered, all copies of the propriety documents shall be destroyed or returned to the originator of the response within 30 days after the conclusion of these proceedings; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claim by NHEC for the materials in question the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits on nondisclosure to NHEC; and it is

FURTHER ORDERED, that this order shall not in any way be construed as limiting the responsibility or obligation of NHEC, consistent with this order, to provide access to all relevant information to the State of New Hampshire and shall be without prejudice to the aforementioned objection of the State.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1990.

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NH.PSC*07/02/90*[51030]*75 NH PUC 343*Public Service Company of New Hampshire

[Go to End of 51030]

75 NH PUC 343

Re Public Service Company of New Hampshire

DR 90-059
Order No. 19,868

New Hampshire Public Service Commission

July 2, 1990

ORDER approving electric utility's energy cost recovery mechanism rate, fuel and purchased power adjustment clause rate, and short-term avoided energy and capacity rates for purchases from qualifying facilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost clauses — Electric utility.

[N.H.] An electric utility's energy cost recovery mechanism in effect from July 1, 1990 until the first effective date (which is the date upon which the Northeast Utilities Plan of

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reorganization for the bankrupt utility takes effect) was set at the currently effective level of 3.664 cents per kilowatt hour, and the fuel and purchased power adjustment clause rate from the first effective date until December 31, 1990 was set at 0.000 cents per kilowatt hour. p. 344.

2. COGENERATION, § 24 — Rates — Electric utility purchases.

[N.H.] The following rates to be paid by an electric utility for purchases from qualifying facilities under short-term rates from July 1,

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1990 through December 31, 1990 were approved: (1) on-peak hours — 2.346 cents per kilowatt hour; (2) off-peak hours — 1.971 cents per kilowatt hour; (3) all hours — 2.139 cents per kilowatt hour; and (4) capacity rate — $50 per kilowatt year. p. 344.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire and Gerald M. Eaton, Esquire on behalf of Public Service Company of New Hampshire; Eve H. Oyer, Esquire on behalf of Northeast Utilities; Kenneth E. Traum of the Office of Consumer Advocate on behalf of residential ratepayers; Paul A. Savage, Esquire on behalf of Biomass Intervenors; Howard M. Moffett, Esquire on behalf of Granite State Hydropower Association; Audrey A. Zibelman, Esquire and James T. Rodier, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

In Docket No. DR 89-219, the commission approved the "Recommendations of the Parties for Calculation of ECRM". Report and Order No. 19,643 (74 NH PUC 482), DR 89-219 at 12. These recommendations established the then existing ECRM component of 3.644¢/Kwh as a temporary ECRM component until June 30, 1990 and provided for a grand reconciliation of ECRM costs for the period July 1, 1989 through June 30, 1990. It was anticipated at that time that the First Effective Date(19)

1 would occur on or before July 1, 1990.

This docket was initiated by the commission's order of notice dated April 12, 1990 in which the commission ordered that a prehearing conference be held pursuant to RSA 541-A:16V(b)-(d) on April 27, 1990.

The parties engaged in data requests and in discussions intended to identify and narrow issues at the April 27, 1990 prehearing conference, and at two additional prehearing conferences held on May 17, 1991 and June 8, 1990.

On May 22, 1990 Public Service Company of New Hampshire (PSNH) filed a letter informing the parties of its proposed plan regarding its pending ECRM filing. In that letter, PSNH proposed that the parties stipulate that the currently effective level of the ECRM component remain unchanged on and after July 1, 1990 through the First Effective Date.

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On May 25, 1990 PSNH filed a technical statement and exhibits supporting a calculation of short-term avoided energy and capacity rates for Qualifying Facilities (QFs). On May 28, 1990 PSNH filed testimony and exhibits proposing an ECRM component of 3.664¢/KWH per KWH (the currently-effective level) for effect from July 1, 1990 until the First Effective Date occurs pursuant to commission order in Docket No. DR 89-244.

At a hearing on June 20, 1990 the parties presented the "Stipulated Recommendations of the Parties for Resolution of this Proceeding" ("Recommendations"), signed by PSNH, Northeast Utilities, the Office of the Consumer Advocate, and the Commission staff. The Recommendations are appended hereto and are incorporated herein by reference. Additionally, at the hearing on June 20, 1990 the motions to intervene of Biomass Intervenors and Granite State Hydropower Association were granted.

II. *Summary of the Recommendations*

[1] Since it is now apparent that the First Effective Date will not occur until after July 1, 1990, the Recommendations propose that the ECRM component in effect from July 1, 1990 until the First Effective Date be set at the currently-effective level of 3.664¢/KWH, and further that the FPPAC rate from the First Effective Date until December 31, 1990 be set at 0.000¢/KWH.

[2] The Recommendations also propose the following rates to be paid by PSNH for purchases from QFs under short-term rate provisions from July 1, 1990 through December 31, 1990:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates (not including adjustments for
the Loss Factor and Indirect Factor):

On-Peak Hours.....	2.346 cents per Kwh
Off-Peak Hours.....	1.971 cents per Kwh
All Hours.....	2.139 cents per Kwh

Capacity Rate (not including adjustments for
the Loss Factor and Peak Reduction Factor): $50.00 per
Kilowatt-year.

Finally, the Recommendations propose that a hearing be held in the fourth quarter of 1990 on the grand reconciliation in ECRM. The proposed scope of hearing would be the prudency and reasonableness of ECRM costs incurred from July 1, 1989 through the First Effective Date.

III. *Commission Analysis*

The purpose of the Recommendations is to provide for long-term rate stability. The Recommendations presented a range of results under varying assumptions for Seabrook Station's in service date and capacity factor. The range of results was also based on the assumption that the proposed ECRM component and FPPAC rate contained in the Recommendations were placed in effect.

Under the "low case" scenario, which PSNH characterized as a "base case" or "likely"

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scenario, a $2.2 million under recovery was projected as of December 31, 1990. If that under recovery were to be recovered over the first six months of 1991, it would increase rates effective January 1, 1991 by 0.7% (excluding the effect of any base rate increase pursuant to approval of the rate plan proposed in Docket No. DR 89-244). Under the "high-case" scenario, the estimated under recovery was $15.2 million, which would correspondingly require an approximate additional 4.9% rate increase on January 1, 1991.

It must be noted that the foregoing rate impacts are predicated upon actual costs for the period from January 1, 1991 through June 30, 1991 being equal to the FPPAC reference assumptions for that period. At this time, and based upon substantial evidence in this proceeding and in Docket No. DR 89-244, it appears that certain key reference assumptions such as oil prices and Seabrook's capacity factor may be unduly pessimistic; that is, the actual costs may well be lower than the FPPAC reference level. Should this occur, any upward impact on rates on January 1, 1991 as a result of the Recommendations may be offset by an FPPAC credit for the period for January 1, 1991 to June 30, 1991. Thus, while we cannot say what the precise impact of the Recommendations will be on bills rendered on and after January 1, 1991, we find good cause exists to believe that any such impact will probably be relatively small.

Our review of the Recommendations and attachments indicates to us that the provision pertaining to short term avoided capacity costs is also just and reasonable. Staff's opinion that a capacity value of $50/Kw-year is the "likely value of [short term capacity] arrangements over the next six months" is reasonable.

With regard to avoided energy costs, we note that the interests of ratepayers and QF have been balanced by averaging the estimated avoided energy costs for the "no Seabrook" case and the case with "Seabrook at 87% availability". This is particularly appropriate given that, unlike ECRM and FPPAC, the short term rates paid to QFs are not reconciled.

We therefore find that the recommendations are just and reasonable and should be approved.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

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ORDERED, that the "Stipulated Recommendations of the Parties for Resolution of this Proceeding" submitted on June 20, 1990 is approved; and it is

FURTHER ORDERED, that the ECRM component in effect from July 1, 1990 until the First Effective Date be set at the currently-effective level of 3.664¢/Kwh, and further that the FPPAC rate from the First Effective Date until December 31, 1990 be set at 0.000//Kwh; and it is

FURTHER ORDERED, that the short term avoided cost capacity rate of $50/KW-year and short term avoided cost energy rates of 2.346¢/Kwh on peak, 1.971¢/Kwh off peak, and 2.139¢/Kwh all hours, are approved effective July 1, 1990 through December 31, 1990; and it is

FURTHER ORDERED, that PSNH shall file tariff pages for the months of January through June 1990 in compliance with this order and applicable commission rules; and it is

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FURTHER ORDERED that a hearing on the grand reconciliation for ECRM be held in the fourth quarter of 1990.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1990.

STIPULATED RECOMMENDATIONS
OF THE PARTIES FOR RESOLUTION
OF THIS PROCEEDING

The undersigned, parties to the above-captioned proceeding who have been present at pre-hearing conferences in this proceeding, hereby report to the Commission that they have reached agreement regarding recommendations to be made for resolution of this proceeding as follows:

I. BACKGROUND AND PURPOSE OF RECOMMENDATIONS

These recommendations are the result of two concurrent prehearing conferences in this docket held on June 8, 1990. Attachments 1 and 2 hereto contain the meeting notes from those conferences.

The purpose of these recommendations is to provide for long-term rate stability. The intent of the parties is to avoid any changes to overall rate level until January 1, 1991 when the second annual increase under the Rate Agreement is anticipated to take effect.

II. ECRM COMPONENT AND FPPAC RATE

In Docket No. DR 89-219, the Commission approved the "Recommendations of the Parties for Calculation of ECRM" which is attached hereto as Attachment 3. Those recommendations established the level of the ECRM component until June 30, 1990 and provided for a grand reconciliation of costs for the period July 1, 1989 through June 30, 1990. It was anticipated at that time that the First Effective Date would occur on or about July 1, 1990.

Since it is now apparent that the First Effective Date will not occur on or about July 1, 1990, the parties recommend that the ECRM component in effect from July 1, 1990 until the First Effective Date be set at the currently-effective level of 3.664 cents per kilowatt-hour. The parties recommend that the FPPAC rate from the First Effective Date until December 31, 1990 be set at 0.000 cents per kilowatt-hour.

Attachment 4 hereto provides estimates of the level of the underrecovery as of December 31, 1990 under two scenarios assuming that the rates listed above are in effect. These estimates provide a "low-case" and "high-case" range for the level of the underrecovery. Attachment 4 also provides an estimated impact of the projected underrecovery on overall rate level as of January 1, 1991 under each scenario.

III. RATES FOR PURCHASES FROM QUALIFYING FACILITIES

The parties recommend that the rates to be paid by PSNH for purchases from Qualifying Facilities under short-term rate agreements from July 1, 1990 through December 31, 1990 be set at the following levels:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates (not including adjustments for
The Loss Factor and Indirect Factor):

On-Peak Hours ..... 2.346 cents per KWH
Off-Peak Hours ..... 1.971 cents per KWH
All Hours ..... 2.139 cents per KWH

Capacity Rate (not including adjustments for the Loss Factor and Peak Reduction Factor): $50.00 per kilowatt-year

The calculation of avoided energy costs is contained in Attachment 5. The calculation was done by averaging the avoided energy costs from two scenarios described thereon. The avoided capacity cost was set at what is anticipated to be a likely value of capacity over the next six months.

IV. PRUDENCY OF ECRM COSTS

The parties recommend that a hearing be held in the fourth quarter of 1990 on the grand reconciliation in ECRM. The scope of the hearing should include the prudency and reasonableness of ECRM costs incurred from July 1, 1989 through the First Effective Date.

V. RIGHT TO REQUEST A HEARING

These stipulated recommendations shall not preclude any party from requesting a hearing prior to December 31, 1990 to determine whether there should be an interim change to the ECRM component or FPPAC rate for good cause. In the event that any party requests a hearing, the parties recommend that the Commission decide whether a hearing is appropriate based upon the moving party's request for hearing and the other parties' responses to such request.

VI. MISCELLANEOUS

It is understood by the parties hereto that each term of the foregoing stipulation is in consideration and support of every other term and that this stipulation shall not take effect unless approved and accepted in its entirety without change or condition by the Commission.

Wherefore, the undersigned move that this stipulation be approved and that an order be issued in accordance therewith.

Northeast Utilities Service Company

Public Service Company of New Hampshire

NHPUC Staff

Office of Consumer Advocate

ATTACHMENT 1

JUNE 15, 1990
DOCKET NO. DR 90-059
REPORT ON ECRM/FPPAC TECHNICAL

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SESSION HELD JUNE 8, 1990

Introduction

An ECRM/FPPAC Technical Session in Docket No. DR 90-059 was held on June 8, 1990, pursuant to the recommendation of PSNH in its May 22 letter to the parties. In attendance at the technical session were representatives from PSNH, Northeast Utilities (NU), the Office of the Consumer Advocate (OCA) and the NHPUC Staff.

The purpose of the technical session was to identify and narrow the issues, provide explanations of the exhibits and data contained in PSNH's May 28 filing, and respond to any questions the parties may have.

Procedural Schedule

The hearings, which were originally scheduled for June 20 and 21, are now scheduled for June 20 at 10:00 a.m. *only*.

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Discussion

Scope of Hearing: The two issues which must be discussed at the June 20 hearing are 1) ECRM component level for July 1, 1990 and 2) Short-term avoided cost payments to SPPs. The parties discussed when the prudence review of actual energy costs from July 1, 1989 through the First Effective Date would be undertaken. It was decided that it is not necessary to review the prudence of these energy costs at the June 20 hearing since the parties are stipulating that the ECRM component remain at the current level of 3.664 cents/kwh, but it must be discussed prior to the grand reconciliation.

Staff indicated that it would be in the best interest of all concerned if there be no increase in the FPPAC rate on the First Effective Date. NU suggested that the prudence review could be held in the Fall of 1990 prior to the December 1990 FPPAC proceeding.

Stipulation: The parties agreed, after discussion and subject to Commission approval, that the ECRM component should remain at its current level of 3.664 cents/kwh for the period July 1, 1990 through the First Effective Date and that the FPPAC rate should be set at 0.000 cents/kwh on the First Effective Date for the period through December 31, 1990. The prudence review of actual energy costs should be held in the Fall 1990 so that the results could be incorporated into the January 1, 1991 FPPAC rate. The OCA suggested that a "re-opener" provision be incorporated into the stipulation in the event that actual results turn out to be significantly different from the assumptions underlying the stipulation.

Issues: The parties attempted to identify issues which would be considered during the Fall prudence review.

— Schiller Unit No. 5 outages. PSNH will not seek recovery of the replacement costs associated with either the first or second outage. Consequently, this will not be an issue.

— ECRM audit. This audit is not yet complete. Staff will inform the parties if there are any issues as a result of the audit findings. These issues, if any, will be brought up in the prudence review regarding the grand reconciliation.

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— Issues associated with C. H. Sprague contracts. The ECRM audit is not yet complete. Staff will inform the parties if this will be an issue.

— Short-term purchases for capability responsibility purposes. Staff will be looking for information which would support the position that PSNH is making short-term purchases that are the overall least cost option, capacity vs. energy issue.

— Staff would like to see a calculation of the replacement costs related to the Schiller Unit No. 3 outage which occurred during February and March 1990, suspected to be caused by a small metal object in the turbine, as soon as possible. This will be an issue which the Company will address in pre-filed testimony.

— Staff was interested in the status of the extended outage at Connecticut Yankee. The Connecticut DPU is investigating the outage. If the Connecticut DPU finds imprudence, Staff indicated that the outage would be considered in the prudence review.

General Discussion

Seabrook Update: Dennis McLane from N. H. Yankee ("NHY") reported on the status of Seabrook Station power ascension program. Mr. McLane indicated that based on the current testing schedule, Seabrook will complete its testing program and warranty run by the end of July. Staff asked when Seabrook would be considered in commercial operation (commercial). Mr. McLane indicated that the Joint Owners decide when Seabrook is commercial. The Joint Owners can call Seabrook commercial prior to the completion of the testing program and prior to full-power operation. To be considered commercial, Seabrook must be turned over to NEPEX for dispatch. Pilgrim nuclear plant first went commercial at 30%. The Joint Owners intend to discuss the status of the testing program and the potential commercial in-service date at its next regularly scheduled meeting on June 21. Mr. McLane indicated that NHY is using an 85% capacity factor for planning purposes. Staff requested a copy of the minutes from the Joint Owners meeting and a report as to the decision made by the Joint Owners

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relative to commercial operation.

Ash Disposal: PSNH indicated it entered into two ash disposal contracts during the end of April. These contracts have no minimum delivery requirements. PSNH is currently working with NU to identify if there are any other less costly options PSNH can pursue.

Merrimack Outage: PSNH reported on the status of the 79-day outage. The project has been extended by 8 days due to work found necessary involving the turbine assembly and identification of further problems upon inspection.

Oil Purchase: PSNH briefly described the recently negotiated agreement to purchase one million barrels of oil. The purchase price is lower than the forecast price used in the May 28 ECRM/FPPAC filing and still allows PSNH to purchase oil on the spot market.

Conclusion

The parties agreed to the stipulation discussed above. As documentation for the stipulation, PSNH will prepare and attach to the stipulation two scenarios which will provide a "high-case"

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and "low-case" range of underrecoveries as of December 31, 1990. The estimate of the underrecovery as of December 31, 1990 will be revised using updated information regarding the recent oil purchase, updated May data and a provision for interest on over- and underrecoveries. The "high-case" scenario will incorporate the same revised assumptions as the "low-case" scenario, except the "high-case" scenario will assume that Seabrook is in-service on August 1 and that the Unit will run at a 40% capacity factor for the period. PSNH will submit a draft copy of the stipulation by Friday, June 15 and will provide the results of the "high-case" and "low-case" scenarios by Monday, June 18.

ATTACHMENT 2

DR 90-059
June 8, 1990
Short-Term Avoided Cost Meeting Notes

A meeting was held on the above date at the offices of the New Hampshire Public Utilities Commission for the purpose of discussing the short-term avoided capacity and energy costs to be used for SPPs on the short-term rate during the July-December ECRM period. The following were present:

Wyatt Brown — PSNH
Cal Bowie — PSNH
Richard Soderman — NU
Eve Oyer — NU
Janet Besser — NHPUC Staff
Audrey A. Zibelman — NHPUC Staff
Paul Savage — Brown, Olson & Wilson
Howard Moffett — Orr and Reno

Mr. Soderman opened by stating the issue was to resolve the SPP rate without a hearing. Ms. Besser said the two issues that needed discussion were the avoided energy costs with Seabrook at 87% availability and the proposed avoided capacity rate.

Mr. Bowie handed out a summary of the estimated avoided energy costs with the various Seabrook assumptions; no Seabrook. 25%, 50%, 75%, and 87% availabilities. Ms. Besser suggested one way to incorporate Seabrook's uncertain operating characteristics and in-service date would be to use the lower availability avoided cost scenario for the initial months and ramp up to a higher availability avoided cost scenario toward the end of the period. The issue of consistency with the ECRM energy estimate was raised. Ms. Besser pointed out that unlike the ECRM rate, the short-term avoided cost rates are not reconciled and that the avoided cost estimate should balance the risk that the avoided costs might be higher or lower. Staff and NU/PSNH agreed to balance the interests of ratepayers and QFs by averaging the estimated avoided energy costs using the no Seabrook case and the case with Seabrook at 87% availability.

On the issue of avoided capacity costs, Ms. Besser agreed that the market value was lower than in previous periods but didn't like merely averaging $0 and $98 to obtain the $49/Kw-yr value. She said that she looked at how other NH utilities were estimating their avoided costs but she couldn't use those values

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because the calculations "contained errors of different sorts." She said she had talked with different companies and, based on those discussions, she believes capacity could be purchased in the $45-60/Kw-yr range this summer. She doesn't like $0/Kw-yr. Ms. Besser said she would be willing to settle on $50/Kw-yr for the ECRM period as a "likely value of arrangements over the next six months."

Ms. Besser stated that based on this Stipulation she would not be filing testimony. Mr. Savage and Mr. Moffett said they would review the matter with their clients and were not certain if they would join in the Agreement or take other action. The hearing is scheduled for June 20.

ATTACHMENT 3

RECOMMENDATIONS OF THE PARTIES
FOR CALCULATION OF ECRM

In furtherance of the proposal made by certain parties in this proceeding(20)

[1] , these parties recommend that the Commission adopt the following procedure for the calculation, and eventual reconciliation, of the Energy Cost Recovery Mechanism ("ECRM").

(A) The existing ECRM component for PSNH be established as a temporary ECRM component to be in effect until June 30, 1990.

(B) On or after July 1, 1990, a grand reconciliation be made for the period of July 1, 1989 through. June 30, 1990.

(C) In calculating the grand reconciliation, the following steps would be taken:
(1) The Company will record ECRM revenue for accounting purposes each month during the period from July 1, 1989 to June 30, 1990, determined, by multiplying the temporary ECRM rate of 3.664¢kwh by actual retail kwh sales.
(2) Actual ECRM costs incurred by the Company will be determined by the commission, subject to the usual and customary review by the commission for reasonableness.
(3) The difference between actual ECRM revenue and actual ECRM costs will be calculated. Actual ECRM revenue for this period will be equal to retail kwh's sold multipled by the currently effective ECRM rate of 3.664¢/kwh. Actual ECRM cost will reflect the actual cost as defined in (2).
(4) In the event the merger First Effective Date (as defined by the Agreement as defined in RSA 362-C) occurs on or before July 1, 1990, the final reconciliation for PSNH will be billed under the Fuel and Purchased Power Adjustment Clause which, pursuant to the Agreement, is to replace ECRM. (see: Agreement, Exhibit C).
(5) In the event the First Effective Date does not occur on or before July 1, 1990, the final reconciliation for PSNH will be applied to the ECRM and the ECRM; will stay in effect.

It is the intent of the aforementioned parties that with the adoption of this procedure, the ECRM hearing scheduled for December 28, 1989 will be limited to adopting the temporary ECRM (as identified in (A)) and setting the Qualifying Facility rate for Small Power Producers.

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Further, the parties agree that ECRM costs will not be reduced as a result of test power runs at the Seabrook station, and that the impact of Seabrook will be reflected in ECRM costs after the regulatory in-service date of Seabrook.

The undersigned is authorized by the aforementioned parties to submit this recommendation on their behalf.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By their attorneys

John P. Arnold
Attorney General

Harold T. Judd
Assistant Attorney General

Page 350

Civil Bureau
25 Capitol Street
Concord, New Hampshire 03301
(603) 271-3658

Dated: December 21, 1989

ATTACHMENT 4

Estimated Underrecovery as of
December 31, 1990
Background

At the pre-hearing conference in Docket No. DR 90-059 on June 8, 1990, PSNH agreed to estimate the level of the underrecovery under FPPAC as of December 31, 1990 under two scenarios (a "low-case" and a "high-case"), and to provide an estimate of the impact of those underrecoveries on rates to be effective January 1, 1991.

Assumptions

The two scenarios PSNH calculated were based on the same data and assumptions contained in PSNH's May 28, 1990 filing, with the following exceptions:

- Oil prices were revised in both scenarios to reflect the impact of the 1,000,000 barrel purchase PSNH recently made.
- Data for the month of May 1990 was revised in both scenarios to reflect more recent estimates.
- Seabrook's estimated capacity factor in the high-case was 40% (vs. 87% in the low case).
- Seabrook's in-service date in the high-case was August 1, 1990 (vs. July 1, 1990 in

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the low-case).

• Interest was accrued on the underrecovery under FPPAC in both scenarios.

• Planned outages at some units were slightly modified in both scenarios to reflect more recent information.

Under both scenarios, the ECRM component was assumed to be 3.664 cents per KWH until the First Effective Date, and the FPPAC rate was assumed to be 0.000 cents per KWH from the First Effective Date until December 31, 1990. The underrecoveries were assumed to be recovered in the first six months of 1991.

Results

The following is a summary of the results:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Low-Case	*High-Case*
Estimated Underrecovery as of 12/31/90	$2.2 million	$15.2 million
Estimated Impact of Underrecovery on Overall Cents per KWH as of 1/1/91	0.068 cents	0.462 cents
Estimated Percent Increase in Rates on 1/1/91 Attributable to Underrecovery	0.7%	4.9%

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ATTACHMENT 5

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE

AVOIDED ENERGY COSTS,
SECOND HALF 1990
A: Final Avoided Energy Costs (Before Adjustments)

No Seabrook

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Month	*On-Peak (Cents/KWH)*	*Off-Peak (Cents/KWH)*	*All Hours (Cents/KWH)*
Jul-90	4.522	2.712	3.515
Aug-90	2.458	2.173	2.305
Sep-90	2.182	2.102	2.135
Oct-90	3.586	2.736	3.130
Nov-90	2.444	2.216	2.320
Dec-90	2.844	2.525	2.660

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Average	3.008	2.417	2.682

B: Final Avoided Energy Costs (Before Adjustments)

87% Seabrook Availability

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Month	On-Peak (Cents/KWH)	Off-Peak (Cents/KWH)	All Hours (Cents/KWH)
Jul-90	1.454	1.329	1.385
Aug-90	1.404	1.285	1.340
Sep-90	1.270	1.176	1.215
Oct-90	1.954	1.592	1.760
Nov-90	1.952	1.883	1.915
Dec-90	2.067	1.881	1.960
Average	1.684	1.525	1.596

C: Final Avoided Energy Costs (Before Adjustments)

Average of 87% Seabrook Availability and No Seabrook Cases

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Month	On-Peak (Cents/KWH)	Off-Peak (Cents/KWH)	All Hours (Cents/KWH)
Jul-90	2.988	2.021	2.450
Aug-90	1.931	1.729	1.823
Sep-90	1.726	1.639	1.675
Oct-90	2.770	2.164	2.445
Nov-90	2.198	2.050	2.118
Dec-90	2.456	2.203	2.310
Average	2.346	1.971	2.139

FOOTNOTES

Report

[1]The first effective date is the date upon which the Northeast Utilities Plan of Reorganization for PSNH takes effect.

Attachment 3

[1]As stated at the public hearing on December 18, 1989, the following parties agree to this treatment of ECRM: The Commission Staff, Public Service Company of New Hampshire, Northeast Utilities, The Consumer Advocate, The Office of the Attorney General and the New Hampshire Electric Cooperative, Inc., Mr. Paul A. Savage, Esquire, counsel for a number of Small Power Producers authorized me to represent that they do not oppose these recommendations.

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NH.PUC*07/02/90*[51032]*75 NH PUC 354*Atlantic Connections, Ltd.

[Go to End of 51032]

75 NH PUC 354

Re Atlantic Connections, Ltd.

DE 90-042
Order No. 19,870

New Hampshire Public Utilities Commission

July 2, 1990

ORDER requiring a telephone company to comply with requests for production of documents and granting a motion for a protective order prohibiting public disclosure of proprietary documents.

---

1. PROCEDURE, § 16 — Discovery and inspection — Proprietary information — Protective order.

[N.H.] The commission granted a motion by a telephone company for a protective order prohibiting public disclosure of discovery material designated as proprietary. p. 355.

2. PROCEDURE, § 16 — Discovery — Production of evidence — Burdensome and voluminous requests.

[N.H.] A telephone company that was the subject of an investigatory proceeding was not required to produce certain discovery documents requested by commission staff where it was found that production of the documents would be unduly burdensome; however, the company was directed to provide commission staff with the opportunity to visit the company's principle place of business to review the documents. p. 355.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 23, 1990, the commission issued order no. 19,766 (75 NH PUC 186) ordering that Docket DE 90-042 be established for the purpose of investigating whether Atlantic Connections, Ltd. (ACL) should be fined up to $25,000 pursuant to RSA 365:41 or any of its officers or agents should be fined up to $10,000 for each day of continuing violations pursuant to RSA 365:42 or whether ACL and its officers or agents should be subjected to criminal prosecution or other appropriate sanctions pursuant to *inter alia*, RSA 365:42, RSA 365:41 or RSA 374:41 *et seq.* for operating as a public utility (RSA 362:2), without authority (RSA 374:22), and for charging rates

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therefore without authority (RSA Chapter 378).

At a hearing held on May 9, 1990, the commission accepted a stipulation from the parties concerning a procedural schedule in this matter to determine (a) whether ACL is a public utility; and (b) if in fact ACL is a public utility, should it be subjected to the above referenced civil and criminal sanctions.

Pursuant to the stipulated procedural schedule data requests were sent by both parties on May 15, 1990, and objections to said data requests were due May 18, 1990.

On May 18, 1990, ACL responded with objections to staff data requests #1, #19, #22, #24, #25, and #26.

II. *Position of ACL*

In response to staff data request no. 1

1(21) the company requested a protective order as the information sought was in ACL's estimation, proprietary as it deals in a highly competitive environment.

ACL objected to staff data request no. 192(22) as ACL indicated, the information sought by staff was too voluminous and that staff was free to review and inspect the company documents at its place of business and to make copies at a cost of $.50 a page.

ACL objected to staff data request no. 223(23) as it believed the word "facilities" was vague and over-broad.

ACL sought a protective order for staff request no. 244(24) as the information sought was proprietary in nature due to the highly

competitive environment in which ACL operates.

ACL objected to staff data request no. 25

5(25) as it believed the word "revenue" was vague and overbroad and irrelevant. ACL requested a protective order for question 25 if it was required to provide the information.

Finally, ACL objected to staff data request no. 266(26) again due to the fact that production of such documents would be extremely voluminous and burdensome to ACL. ACL further contended that the request was not intended to produce any meaningful representations which would tend to prove the essential issue of whether ACL is a "public utility".

III. *Commission Analysis*

[1] The Commission will deal with the issue in each of the questions separately. In regard to staff data request no. 1, ACL's Motion for a Protective Order is granted as the information sought may be proprietary in nature and may lead to a competitive disadvantage for the company. ACL shall provide one copy of this information to the commission said copy to be kept under the supervision of the commission's executive secretary under lock and key available to staff

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members and parties to the proceedings who have signed the statement appended hereto as Appendix A.

[2] In regard to staff data request no. 19, ACL will not be required to produce the documents as it has alleged that the production of the requested documents would be burdensome and far too voluminous. Thus, staff will be given the opportunity at its discretion to visit the company's principal place of business or any other facilities where said documents are located to review the subject documents. The commission will not require the staff to pay $.50 per copy as information provided through data request is not subject to a charge.

In regard to data request no. 22, if ACL had a question concerning the definition of the word "facilities", it should have contacted counsel for the staff of the commission and sought clarification prior to filing the objection contained herein. The staff will provide the company with its definition of facilities and, in the absence of further objection based on the clarified term, the company will comply.

In regard to data request no. 24, as was stated previously ACL believes it is in a competitive environment and its Motion for a Protective Order will be granted. The same conditions which apply to the response to data request no. 1 shall apply to data request no. 24.

In regard to ACL's objection to staff data request #25, the word revenue is neither vague nor overbroad and the company shall respond to the question. Furthermore, this proceeding is not limited to the issue of whether ACL is a public utility; if in fact ACL is a public utility, it could be subject to substantial fines and the information sought would be relevant to that purpose.

In regard to staff data request #26, staff shall be given an opportunity to view the documents and copy any documents that it requires at the company's principal place of business or any other facilities where said documents are located. The commission further notes that whether or not ACL is a "public utility" is only the threshold issue in this case and does not encompass all the issues which may come to light in this proceeding.

Finally, the commission has granted the company's requests for protective orders in this case without prejudice. That is, any party to this proceeding may challenge the continued confidentiality of any of the materials granted said status and the company shall bear the burden in maintaining its continued confidentiality.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Atlantic Connections, Ltd. shall comply with the commission's responses to its objections to staff data requests contained in the attached report; and it is

FURTHER ORDERED, that;

1. Atlantic Connections, Ltd. shall, on receipt hereof, provide to the commission's Executive Director and Secretary, one complete response to staff request 1, 1b, 1c, 1d, 1e, 1f, 24, 25, 26;

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2. The Executive Director and Secretary allow access to said responses only to those members of the commission staff and to parties to this docket who have executed the Acknowledgement of Confidentiality form appended hereto as Appendix A;

3. On motion by any party or the commission the commission will consider the extent to which the material in question shall be made a part of the public record or for the development of relevant testimony and cross examination and to aid the commission in determining the public good;

4. Unless otherwise ordered, all copies of the proprietary documents and derivatives therefrom shall be returned to counsel for ACL at the conclusion of these proceedings.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1990.

APPENDIX A

ACKNOWLEDGMENT OF
CONFIDENTIALITY

The undersigned party to Case No. DE 90-042, *Atlantic Connections, Ltd.*, has read Report and Order No. , , and requests a copy of the information subject to a protective order this case. The undersigned party acknowledges that it is PROPRIETARY INFORMATION within the meaning of the above cited report and order and that the undersigned individual and the part represented by that individual will not divulge or use any of said information in any way, manner or form other than the litigation the above referenced case. The undersigned party further acknowledges that any other use of said information may result in criminal prosecution or fines pursuant to, *inter alia*, RSA 365:41 and RSA 365:42 or civil litigation by any affected party.

Data Request # Information Requested

Name of Party
Name of Agent
Signature of Agent

Dated:

FOOTNOTES

[1]For each service offered to New Hampshire customers by ACL, please provide the following:

a. A rate schedule and customer description.

b. A copy of all customer promotional information describing these services.

c. The number of customers subscribing to each of these services, as of the end of each year, for each year since ACL commenced resale.

d. Identify each service that has the capability to complete calls which both originate and terminate in the State of New Hampshire.

e. Annual intrastate minutes of use for each year since ACL commenced resale.

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f. Annual interstate minutes of use for each year since ACL commenced resale.

[2]Please provide a copy of all bills ACL has received from NET and any interexchange carrier since ACL commenced resale.

[3]What facilities do you have and where are they located in New Hampshire?

[4]Please provide the name and addresses of all your customers.

[5]Please provide all revenues for the last twelve (12) months.

a. What percentage of your revenues are interstate?

b. What percentage of your revenues are intrastate?

[6]Please provide copies of the "Statement of Charges" page of each bill for each of your customers from the first bill forward.

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NH.PUC*07/02/90*[51033]*75 NH PUC 357*Fuel Adjustment Clause, Qualifying Facility Power Purchase Rate, Oil Conservation Adjustment

[Go to End of 51033]

75 NH PUC 357

Re Fuel Adjustment Clause, Qualifying Facility Power Purchase Rate, Oil Conservation Adjustment

Applicant: Granite State Electric Company

DR 90-091
Order No. 19,871

New Hampshire Public Utilities Commission

July 2, 1990

ORDER approving electric utility's fuel surcharge and qualifying facility power purchase rate.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel — Oil conservation — Electric utility.

[N.H.] An electric utility's fuel adjustment clause rate of $.00374 per kilowatt hour, and oil conservation adjustment surcharge of $.00120 per kilowatt hour were found to be just and reasonable for the six-month period beginning July 1990 and ending December 1990. p. 357.

2. COGENERATION, § 24 — Rates — Short-term avoided energy rates — Short-term avoided capacity rate.

[N.H.] An electric utility's proposed qualifying facility power purchase rates were found just and reasonable, and were approved for a six-month period beginning July 1990 and ending

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December 1990; the short-term avoided energy rates were appropriately calculated based on use of an average of an increment and a decrement to load, and the short-term avoided capacity rate was appropriately calculated based on a weighted average of the actual costs of capacity associated with short-term purchases and sales in place during the period July through December 1990. p. 357.

APPEARANCES: Cynthia A. Arcate, Esquire for Granite State Electric Company; Eugene F. Sullivan, Janet Gail Besser and Thomas C. Frantz for PUC staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 19, 1990 to review the Fuel Adjustment Clause (FAC), Qualifying Facility (QF) Power Purchase Rate and the Oil Conservation Adjustment rate (OCA) for the second half of 1990.

[1] On June 1, Granite filed a Fuel Adjustment Clause (FAC) factor of $.00457 per KWH, and an Oil Conservation Adjustment rate (OCA) of $.00121 per KWH. Revised rates were filed at the hearing on June 19, 1990 for the FAC as $.00374 and for the OCA $.00120. Based on the evidence provided, the commission finds the revised FAC rate of $.00374 per KWH, and the revised OCA surcharge of $.00120 per KWH to be just and reasonable and will approve these rates for the six month period beginning July 1990 and ending December 1990.

[2] On May 31, 1990, Granite also proposed new short term QF Power Purchase Rates for the period July through December, 1990. Revised rates were filed at the hearing on June 19, 1990. The energy rates to be paid on per kilowatthour basis are as follows:

Page 357

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates by Voltage Level (cents/KWH)

Voltage Level	*Peak*	*Off-Peak*	*Average*
(1) Subtransmission	2.941	2.311	2.598
(2) Primary Distribution	3.159	2.424	2.758
(3) Secondary Distribution	3.271	2.481	2.840

The capacity rates to be paid on a per kilowatt basis are as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Capacity Rate by Voltage Level ($/KW Year)

(1) Subtransmission	$64.61
(2) Primary Distribution	$70.75
(3) Secondary Distribution	$74.01

The calculation of Granite State's short term avoided energy rates was based on the use of an

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average of an increment and a decrement to load in accordance with the methodology specified in the settlement agreement in DR 86-41, et al, Phase I, as revised in DR 89-221.

The short term avoided capacity rate was based on a weighted average of the actual costs of capacity associated with short term purchases and sales in place during the period July through December 1990. Commission orders in docket DR 86-41, et al, require that short term avoided capacity rates for QFs be based on the short term market value of capacity. A weighted average of the cost of capacity for short term purchases and sales in effect during the effective period of the QF capacity rates is used to estimate the short term market value of capacity.

Based on the evidence provided the commission finds the proposed QF Power Purchase Rate to be just and reasonable and will approve these rates for the six month period July through December 1991. We note, however, that one qualifying facility, Baltic Mills, continues to be paid in a manner inconsistent with the QF Power Purchase Rate and without a separate contract. We urge Granite State to rectify this situation by entering into a contract with Baltic Mills or paying it under the provisions of the Qualifying Facility Power Purchase Rate. We will require Granite to report on the status of Baltic Mills at the time of its next short term avoided cost filing.

At the hearing on June 19, 1990 Granite State also filed a Second Revised Page 11-A of its tariff NHPUC No. 10 — Electricity. The paragraph "Capacity Transactions" was revised to reflect prior commission orders regarding the payment for capacity to QFs whether or not the utility company projected a need for additional capacity in the period in which the QF would be supplying power. The commission finds the revised conditions to be in accordance with its previous orders in this area.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that 29th Revised Page 30 of Granite State Electric Company tariff, Supplement No. 4, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.00374 per KWH, be, and hereby is, permitted to go into effect for the months of July through December 1990; and it is

FURTHER ORDERED, that Fourteenth Revised Page 11-C of Granite State Electric Company's tariff NHPUC No. 10 — Electricity, providing for a Qualifying Facility Power Purchase Rate, be, and hereby is, permitted to go into effect for the period July through December 1990; and it is

FURTHER ORDERED, that Twenty-Fifth Revised Page 57 of Granite State Electric Company's tariff, NHPUC 10 — Electricity providing for an Oil Conservation surcharge of $0.00120 per KWH be, and hereby is, permitted to go into effect for the months of July through December 1990; and it is

FURTHER ORDERED, that Granite shall file revised tariff pages superseding the

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following compliance tariff pages in accordance with this order in accordance with N.H. Code Administrative Rules Puc 1601.05(h) and annotated in accordance with N.H. Code Administrative Rules Puc 1601.04(b):

Twenty-ninth Revised page 30
Fourteenth Revised page 11-C
First Revised page 11-A

By order of the Public Utilities Commission of New Hampshire this second day of July, 1990.

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NH.PUC*07/03/90*[51034]*75 NH PUC 359*Concord Electric Company

[Go to End of 51034]

75 NH PUC 359

Re Concord Electric Company

DR 90-95, DR 90-96
Order No. 19,873

Re Exeter and Hampton Electric Company

DR 90-97, DR 90-98
Order No. 19,873

New Hampshire Public Utilities Commission

July 3, 1990

ORDER approving fuel adjustment clause and purchased power clause rates for two electric utilities.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel — Purchased power — Electric utility.

[N.H.] An electric utility's fuel adjustment clause rate of $.00626 per kilowatt hour, and purchased power adjustment clause rate of $.02533 per kilowatt hour were found to be just and reasonable for the six-month period beginning July 1990 and ending December 1990. p. 360.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Fuel — Purchased power — Electric utility.

[N.H.] An electric utility's fuel adjustment clause rate of $.00573 per kilowatt hour, and purchased power adjustment clause rate of $.02608 per kilowatt hour were found to be just and reasonable for the six-month period beginning July 1990 and ending December 1990. p. 360.

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APPEARANCES: Elias G. Farrah, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Edwin P. LeBel, Janet Gail Besser and Thomas C. Frantz for PUC Staff.

By the COMMISSION:

REPORT

On June 1, 1990 Concord Electric company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") filed revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the period July through December 1990. The FAC rate request was $(0.00491) per KWH for Concord and $(0.4440) per KWH for Exeter & Hampton (including Franchise Tax effect). The PPAC rate request was $0.02658 per KWH for Concord and $0.02636 for Exeter & Hampton (including Franchise Tax effect). The companies filed testimony and exhibits which supported the proposed revisions to their respective FAC and PPAC.

On June 1, 1990 the companies also filed revised tariffs for Short-Term Power Purchase (short term avoided capacity and energy) Rates for Qualifying Facilities (QF) as follows:

```
[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy RatesOn Peak   3.79¢ per KWH
            Off Peak  2.74¢ per KWH
            All-Hours 3.40¢ per KWH
Capacity Rate          $89.95 per KW-year
```

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 27, 1990 to review the Fuel Adjustment

Page 359

Clause and Purchased Power Adjustment Clause and Short-Term Power Purchase (avoided capacity and energy) Rates filings of the companies.

Concord Electric Company and Exeter & Hampton Electric Company presented two witnesses, Paul Weiss and Karen M. Asbury.

At the hearing on June 27 the company filed revised tariffs for Short-Term Power Purchase Rates for QFs of:

```
[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy RatesOn Peak   3.79¢ per KWH
            Off Peak  2.74¢ per KWH
            All-Hours 3.40¢ per KWH
Capacity Rates         $54.19 per KW-year
```

The calculation of the companies' short term avoided energy rates was based on the use of an average of a 5 megawatt increment and a 5 megawatt decrement to load. This is in accordance with the methodology specified in the settlement agreement in DR 86-41, *et. al.*, Phase I, as revised in DR 89-225 and DR 89-227.

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The short term avoided capacity rate reflects a weighted average of actual and forecasted capacity costs associated with short term purchases and sales in place during the period March to December 1990. The months March through June 1990 were included in the calculation to provide actual data. Commission orders in docket DR 86-41, *et. al*., require that the short term avoided capacity rate for QFs be based on the short term market value of capacity. A weighted average of the cost of capacity for short term purchases and sales in effect during the effective period of the QF capacity rate is used to estimate the short term market value of capacity.

The FAC and PPAC filings cover the six month period from July through December, 1990. In testimony the witnesses for the companies provided information that the increase in purchased power is caused by an increase in wholesale rates from the companies' sole supplier of energy, UNITIL Power Corporation (UNITIL). UNITIL's increase in rates is caused by a change in its new wholesale rates filed for effect July 1, 1990 in which its demand cost decreased from $14.70 per KW month to $14.47 per KW month and its demand energy charge increased from $0.01789 per KWH to $0.01828 per KWH. The fuel charge increased from $0.02285 per KWH to $0.02775 per KWH.

At the hearing the staff questioned the reasons for the increase in wholesale rates. The company stated that there were two major reasons for the increase. The first was the number of planned outages at UNITIL's base load and intermediate plant purchases which will require replacement of lost energy and capacity with higher cost generation as shown on Exhibit 1 PW8. The second reason was UNITIL Power's large undercollection for the January to June 1990 period as a result of higher energy costs than projected in the first quarter of 1990.

Staff also requested and received updated information as to the projected over/under collections of the FAC & PPAC rates. The company in its filing of June 1, 1990 used a projection of its (over)/under collections of actual data for the months of January through April 1990 and estimated data for May and June of 1990.

At the hearing the company testified that using actual data for the period of January to May 1990 and estimated data for June 1990, the estimate over/under recovery would be as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Original Filing	*Updated Information*
Concord FAC	($11,956)	($17,787)
Exeter & Hampton FAC	($24,129)	($ 9,600)
Concord PPAC	($237,868)	($239,242)
Exeter & Hampton PPAC	($52,711)	($121,207)

The updated information changed the rates as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Concord FAC	($0.491)	($0.494)
Exeter & Hampton FAC	($0.444)	($0.437)
Concord PPAC	$0.02558	$0.02551
Exeter & Hampton PPAC	$0.02636	$0.02626

[1, 2] Staff also inquired into the companies' estimated oil costs associated with purchases of capacity. Staff's concern was that

UNITIL's oil price projections were higher than those projected by Public Service Company of New Hampshire's filing in DR 90-059. As a result of staff's questions, the Company undertook a review of their oil price forecast. The Company has determined that their oil forecast were higher in their original filing than the current market conditions support. As a result of the companies' review, they are now proposing new PPAC and FAC Rates which also include updated information using actual data for May 1990, over/under recovery. These rates are:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Concord Electric Company	FAC	($0.00626)
Exeter & Hampton Electric Co.	FAC	($0.00573)
Concord Electric Company	PPAC	$0.02533
Exeter & Hampton Electric C.	PPAC	$0.02608

Based on the Companies' revised filing, we will require the companies to refile their tariff pages to reflect the updated rates.

Staff also raised concerns regarding the sales forecast for Concord Electric and Exeter & Hampton Electric. Concord estimated an increase in sales for the months of August, September and October of 4.0 percent over 1989 levels. As a result of staff's questioning, the company states that they have used the same forecast model as in the past and that the increases in sales could be due to the weather and billing cycle adjustments.

The commission has reviewed the companies' estimates of sales for the upcoming period and will accept them as reasonable for this period. We will, however, require the company at the next FAC/PPAC hearing in December, 1990 to explain fully how these sales estimates were developed and to provide a history of the accuracy of their forecasts of sales in the past.

Based on the evidence provided, the commission finds the FAC and PPAC rates for Concord Electric Company and Exeter & Hampton Electric Company to be just and reasonable and will approve the rates for the six month period beginning July 1990 and ending December 1990.

The commission also finds the proposed short term avoided energy and capacity rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous commission orders. The rates will be effective July through December 1990.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the Fifteenth Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a Fuel Adjustment Clause of $(0.00491) per KWH (including Franchise Tax effect) for the months of July through December 1990, be, and hereby is rejected; and it is

FURTHER ORDERED, that Forty-First Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a Fuel Adjustment Clause of $(0.00444) per KWH (including Franchise Tax effect) for the months of July through December

1990, be, and, hereby is rejected; and it is

FURTHER ORDERED, that Twelfth Revised Page 19A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a Purchased Power Adjustment Clause of $0.02558 per KWH (including Franchise Tax effect) for the months of July through December 1990, be, and hereby is rejected; and it is

FURTHER ORDERED, that twelfth Revised Page 18 of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a Purchased Power Adjustment Clause of $0.02636 per KWH (including Franchise Tax effect) for the months of July through December 1990, be, and hereby is rejected; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised signed tariff pages reflecting purchase power charges and fuel adjustment clauses in accordance with the attached report for effect July 1, 1990; and it is

FURTHER ORDERED, that Third Revised Page 20E of Concord Electric Company's tariff, NHPUC 10 — Electricity,

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providing for Short-Term Power Purchase Rates for Qualifying Facilities for energy of 3.79¢/KWH on peak; 2.74¢ off-peak; and 3.4¢ all hours and for capacity of $54.19/KW-year, for the months of July through December 1990, be, and hereby is permitted to go into effect July 1, 1990; and it is

FURTHER ORDERED, that Third Revised Page 19F of Exeter & Hampton Electric Company's tariff NHPUC No. 15 — Electricity, providing for Short-Term Power Purchase Rates for Qualifying Facilities for energy of 3.79¢/KWH on peak; 2.74¢ off-peak; and 3.4¢ all hours and for capacity of $54.19/KW-year, for the months of July through December 1990, be, and hereby is permitted to go into effect July 1, 1990.

The above noted FAC and PPAC rates have been adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1990.

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NH.PUC*07/03/90*[51035]*75 NH PUC 362*Northern Utilities, Inc.

[Go to End of 51035]

75 NH PUC 362

Re Northern Utilities, Inc.

DR 89-260
Order No. 19,874

New Hampshire Public Utilities Commission

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July 3, 1990

ORDER authorizing a gas distribution utility to transfer the common stock of its wholly-owned interstate pipeline subsidiary to its corporate parent.

INTERCORPORATE RELATIONS, § 18.1 — Affiliated interests — Stock transfer — Corporate simplification — Gas distribution company — Interstate pipeline.

[N.H.] A gas distribution utility was authorized to transfer the common stock of its wholly-owned interstate pipeline subsidiary to its corporate parent where the utility entered a stipulation that resolved concerns regarding gas supply and non-gas cost allocation; the purpose of the transfer was to simplify the corporate structure of the companies and reduce borrowing costs.

APPEARANCES: David Deans for Northern Utilities, Inc., Kenneth Traum for the Consumer Advocate's Office, and George McCluskey for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

On December 20, 1989, Northern Utilities ("Northern") filed a petition with the commission requesting authorization to transfer via dividend to Bay State Gas Company ("Bay State") all of the common stock of Granite State Gas Transmission ("Granite State"). Granite State, a natural gas interstate pipeline, is currently a wholly-owned subsidiary of Northern. Northern, in turn, is a wholly-owned subsidiary of Bay State. Northern stated in its petition that the purpose of the proposed transfer is to simplify the corporate structure of Bay State, Northern and Granite State, in order to reduce borrowing costs for Northern and Granite State.

As indicated in its petition, Northern had previously filed for approval of the stock transfer with the Maine commission pursuant to a statute that explicitly required the regulatory approval of such action. Northern notified the New Hampshire commission of the Maine filing in September 1989, explaining that it not seeking similar authorization in New Hampshire because there is no similar statutory requirement.

On or about December 15, 1989, the staff notified Northern of the commission's decision to open a proceeding regarding the proposed stock transfer. Subsequently, Northern filed a petition pursuant to RSA 374:3 and 366:9. On

April 11, 1990, the commission issued an Order of Notice setting a prehearing conference for May 11, 1990, at which the parties agreed to enter into settlement negotiations and to report to the commission within 30 days. On June 11, 1990, a status conference hearing was held at which

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time a stipulation purporting to resolve the issues was presented to the commission.

II. *The Proposed Stipulation*

The proposed stipulation, which is appended to and incorporated herein, addresses several issues raised by staff, including the allocation of certain non-gas costs among Granite State, Bay State and Northern; the allocation of Granite State's future gas supplies between New Hampshire, Maine and Massachusetts; and whether Granite State may directly supply customers in New Hampshire.

The stipulation provides, in essence, as follows;

1. Northern will use its best efforts to convene within six months of the commission's approval of this stipulation, a three state conference among New Hampshire, Maine, and Massachusetts to review:

a. the formula for allocating gas supplies among the three jurisdictions; and
b. the formula for allocating certain non-gas costs among Northern, Granite State and Bay State.

2. Granite State will not add any sales customers along the Portland Pipeline, or any other of its pipelines, within New Hampshire without obtaining the approval of the commission, except where Granite State is required to take action consistent with its obligations as an open access pipeline.

3. The parties recommend that the commission find the transfer of Granite State stock to Bay State to be just and reasonable and in the public interest.

III. *Commission Analysis*

The commission finds that the proposed stipulation provides a reasonable mechanism for addressing staff's concerns which are shared by the commission, on gas supply and non-gas cost allocation. Consequently, we will approve the stipulation as being just and reasonable and in the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that the proposed stipulation between Northern Utilities, Inc., the Consumer Advocate, and the staff be, and hereby is, approved; and it is

FURTHER ORDERED, that pursuant to, *inter alia*, RSA 374:3 and 366:9, that the proposed transfer of the common stock of Granite State Transmission via dividend to Bay State Gas by Northern Utilities is authorized and approved.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1990.

NORTHERN UTILITIES, INC.

PETITION TO TRANSFER STOCK
DR 89-260

STIPULATION AND AGREEMENT

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The Staff of the New Hampshire Public Utilities Commission ("Staff"). the Office of the Consumer Advocate, Northern Utilities. Inc., ("Northern" or "the Company") and Granite State Gas Transmission, Inc. ("Granite State") hereby enter into this Stipulation and Agreement ("Stipulation"). The purpose of this Stipulation is to settle all issues having any bearing on the above-captioned proceeding. Further, it is the desire of the parties in executing this Stipulation to expedite the Public Utilities Commission's ("Commission") consideration and resolution of all issues related to this proceeding.

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Background

On December 20, 1989, Northern filed a petition with the Commission requesting authorization to the extent the Commission finds such authorization necessary to transfer via dividend to Bay State Gas Company ("Bay State") all of the common stock of Granite State. Granite State, a natural gas interstate pipeline, is a wholly-owned subsidiary of Northern, a New Hampshire public utility primarily engaged in the business of distributing natural gas. Northern is a wholly-owned subsidiary of Bay State, a Massachusetts public utility primarily engaged in the business of distributing natural gas. Because Northern is wholly-owned by Bay State, the transfer of Granite State's stock to Bay State will not increase Bay State's control of Granite State.

Northern stated in its petition that the purpose of the proposed transfer is to simplify the corporate structure of Bay State, Northern and Granite State, which is intended to result in reduced borrowing costs for Northern and Granite State. Northern and Granite State are seeking to accomplish the transfer at this time because of the past growth and anticipated future expansion of Granite State. Granite State expects large capital requirements in the near future for the construction of a number of new take stations and for the upgrade of the Portland Pipeline as well as the expansion of its existing pipeline facilities.

As indicated in its petition, Northern had previously filed for approval of the stock transfer with the Maine Public Utilities Commission, pursuant to 35-A M.R.S.A., Section 708(1)(A), which explicitly required the Maine Commission's approval of such action. Northern subsequently notified the New Hampshire Commission of the above described Maine filing in September 1989, explaining that it was not seeking similar authorization in New Hampshire because there was no similar statutory requirement. The Maine Commission approved the transfer on February 7, 1990, pursuant to a Stipulation and Agreement between Northern Granite State, the Maine Commission Staff and the Public Advocate.

On or about December 15, 1989, the Commission staff notified Northern that the Commission intended to open a proceeding regarding the proposed transfer. Subsequently, Northern filed its petition with the Commission stating that it believed the Commission had jurisdiction to review the proposed transfer under RSA 374:3 and 366:9, but not under RSA 366:3 or 374:30. Between February and April 1990, the staff produced and Northern responded to initial and supplemental discovery requests. Northern also provided the staff with all of the discovery responses filed in the Maine proceeding regarding the transfer and filed a copy of the Maine PUC's order, dated February 9, 1990, approving the transfer.

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Since the filing of its petition and discovery responses, Northern has engaged in settlement discussions with the Staff and the Consumer Advocate. The Staff has raised numerous issues, including allocation of certain non-gas costs among Granite State, Bay State and Northern, allocation of Granite State's future gas supplies between New Hampshire, Maine and Massachusetts and whether Granite State would directly supply customers in New Hampshire. In particular since Granite State will obtain future gas supplies for the benefit of Bay State and Northern, Staff wishes to address the method of allocating such future supplies between the two companies. All parties have now agreed to resolve this matter through this Stipulation. The following provisions constitute the full and complete agreement of the parties:

Terms

1. It is agreed that the record on which the Commission may base its determination whether to accept this Stipulation shall consist of all pleadings, testimony and discovery documents filed by the Company or the Staff in this proceeding.

2. It is agreed that the Commission should find that the transfer by Northern of all of the common stock of Granite State to Bay State, via a dividend, is just and reasonable and consistent with the public interest.

3. It is agreed that the Commission should grant Northern approval. to the extent the Commission deems such approval is required, for

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the proposed transfer via a dividend of all of the common stock of Granite State to Bay State.

4. It is agreed that Northern will use its best efforts to convene, within six months of the Commission's approval of this stipulation, a conference involving the appropriate regulatory authorities in New Hampshire, Maine and Massachusetts to review:

a. the formula for allocating gas supplies among the three jurisdictions; and

b. the formulae for allocating certain non-gas costs among Northern, Granite State and Bay State. It is agreed that Northern will immediately implement for bookkeeping purposes any new allocation formulae agreed to by the company and all three state agencies.

5. It is agreed that this Stipulation and Agreement and the joint conference provided for in paragraph no. 4(b) above shall not diminish or effect in any way the NHPUC's existing jurisdiction over costs incurred by Northern or their inclusion in Northern's rates. including costs incurred by Northern from Bay State.

6. It is agreed that Granite State will not add any sales customers along the "Portland Pipeline", or any other of its pipelines, within New Hampshire without obtaining the approval of the Commission, except where Granite State is required to take action consistent with its obligations as an "open access" pipeline subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

7. It is agreed that Northern and Granite State will provide the Staff and the Consumer Advocate with timely notification of any filings made by Granite State or Northern with the

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FERC which involve the transportation, distribution or sale of gas in New Hampshire.

8. It is agreed that Northern and Granite State will provide the Staff and the Consumer Advocate with written semi-annual reports by May 1 and November 1 of each year, regarding the Portland Pipeline project and any related major projects planned or commenced. Such reports may be made orally with the prior approval of the Commission.

9. It is agreed that Granite State will continue to be bound by any previous agreements with, or commitments to, the Commission and that all such agreements and commitments, including without limitation this Stipulation and Agreement, shall be binding on any and all of Granite State's successors and assigns.

10. It is agreed that Northern will provide the Staff and Consumer Advocate with all bookkeeping entries which Northern and Bay State use to accomplish the proposed transfer for the month in which the transfer occurs.

11. It is agreed that this Stipulation shall not be deemed a precedent or admission as to any matter of fact or law, nor shall it preclude any party hereto from raising any issue in any future proceeding.

12. It is agreed that this Stipulation represents the full agreement between all parties hereto and that rejection by the Commission of any part of this Stipulation and Agreement constitutes rejection of the whole.

13. In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

IN WITNESS WHEREOF the parties have caused this Stipulation to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

NORTHERN UTILITIES, INC.
DATED: June 11, 1990
By: John R. Snow,
Vice President

GRANITE STATE GAS
TRANSMISSION, INC.
DATED: June 8, 1990
By: Thomas A. Sacco
Vice President

PUBLIC UTILITIES COMMISSION STAFF
DATED: June 11, 1990
By: George R. McCluskey

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OFFICE OF THE CONSUMER ADVOCATE
DATED: June 11, 1990
By: Kenneth Traum

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NH.PUC*07/03/90*[51036]*75 NH PUC 366*EnergyNorth Natural Gas, Inc.

[Go to End of 51036]

75 NH PUC 366

Re EnergyNorth Natural Gas, Inc.

DR 90-045
Order No. 19,875

New Hampshire Public Utilities Commission

July 3, 1990

ORDER approving a stipulation governing the provision by a natural gas distributor of interruptible gas sales service.

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1. SERVICE, § 332 — Natural gas — Interruptible sales — Distribution company.

[N.H.] The commission approved a stipulation governing the provision by a natural gas distributor of interruptible gas sales service; the stipulation provides that (1) the distributor will inform its interruptible customers of the imposition by the pipeline supplier of monthly balancing requirements and potential system balancing penalties; (2) the distributor will inform its interruptible customers that potential daily balancing requirements and penalties may be imposed upon them prospectively; (3) the distributor shall allocate available gas to those interruptible customers expected to pay the highest margins, whenever the distributor's monthly nomination of third-party gas is restricted by the pipeline supplier; (4) interruptible customers shall submit to the distributor nominations of monthly gas volumes; and (5) interruptible customers are subject to balancing charges assessed against the distributor by the pipeline. p. 366.

2. RATES, § 384 — Natural gas rate design — Interruptible sales — Distribution company.

[N.H.] The commission approved a stipulation governing the provision by a natural gas distributor of interruptible gas sales service where the terms of the stipulation would allow the distributor to provided a marketable service that would enable it to maximize its volume of sales and margin, while ensuring that firm customers do not unduly bear risks and higher costs as a result of interruptible service. p. 367.

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APPEARANCES: Jacqueline Fitzpatrick, Esquire for EnergyNorth Natural Gas, Inc. ("the Company"), John Rohrbach for the Office of Consumer Advocate, and James T. Rodier, Esquire for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural Background*

The commission opened docket DR 90-045, Summer Cost of Gas Adjustment, by Order of Notice dated March 27, 1990 and scheduled a hearing for April 19, 1990. Report and Order No. 19,804 (75 NH PUC 248) was issued on April 30, 1990 providing for a 1990 summer cost of gas adjustment of ($0.0636) per therm for effect May 1, 1990. Additional hearings were continued until May 21, 1990 to provide the staff an opportunity to investigate 1) the Company's pricing of gas to interruptible customers; and 2) whether the Company was observing the procedures set forth in the stipulation which was adopted by the commission, in Docket DE 88-083. On May 14, 1990, staff filed the direct testimony of George R. McCluskey in this regard.

Mr. McCluskey was cross-examined on May 21 and statements from a number of the Company's interruptible customers were received at that time. At a hearing held June 4, the commission was presented with an outline of the principles on the merits of a proposed settlement of the issues.

II. *The Proposed Stipulation*

[1] On June 15, 1990, the staff, the Consumer Advocate, and the Company entered into a

stipulation (Exhibit 13) which supplements and amends the aforementioned stipulation in DE 88-083. The purpose of Exhibit 13, which is appended hereto and incorporated herein, is to settle all issues concerning the sale of interruptible gas which arose in this proceeding.

The proposed stipulation provides, in essence, as follows:

1. The Company will inform its interruptible customers of the imposition by the pipeline supplier of monthly balancing requirements and potential system balancing penalties.

2. The Company will inform its interruptible customers that potential daily balancing requirements and penalties may prospectively be imposed upon the interruptible class should it cause daily imbalance penalties.

3. Whenever the Company's monthly nomination of third party gas is restricted by the pipeline supplier the Company shall allocate the available gas to those interruptible customers expected to pay the highest margins

4. Interruptible customers shall submit to the Company nominations of the monthly gas volumes each customer requires.

5. Interruptible customers are subject to balancing charges assessed against the Company by its pipeline supplier. The amount of the charges will be determined as

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follows: each of 1) the monthly nominations and 2) the actual monthly demands of the interruptible customer will be aggregated and compared. Whenever the deviation is in excess of 8%, the interruptible customers that caused the imbalance will be billed on a *pro rata* basis according to excess volumes.

6. The Company shall not be required to implement daily balancing of interruptible customer demands at this time. However, daily nominations may be required if the staff or the Consumer Advocate determine, based on a review of data, that daily imbalance penalties are being incurred.

III. *Commission Analysis*

[2] The staff's interest in this proceeding is to ensure that firm customers do not unduly bear risks and higher costs as a result of interruptible service. The Company's primary issue is to provide a marketable interruptible service offering in order to maximize its volume of sales and margins.

The commission will approve the proposed stipulation based upon our finding that its provisions reasonably address and balance the concerns of all parties to the proceeding, including those expressed by interruptible customers. Moreover, we find that the public interest is protected by the inclusion of a provision that allows for the introduction of daily nominations.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, it is hereby

ORDERED, that the proposed stipulation (Exhibit 13) between EnergyNorth Natural Gas, Inc, the Consumer Advocate, and the staff be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1990.

STIPULATION

The Staff of the New Hampshire Public Utilities Commission (Staff), the Consumer Advocate of New Hampshire (Consumer Advocate) and EnergyNorth Natural Gas, Inc. (ENGI or the Company) hereby enter into this stipulation which supplements and amends the *Stipulation and Agreement* entered into by the parties August 24, 1988, in Docket DE 88-083, which was subsequently adopted by this Commission in a Report and Order No. 19,181 (73 NH PUC 374) dated September 22, 1988. The *Stipulation and Agreement* together with this *Stipulation*, if adopted by this Commission, together shall herein be identified as "Stipulation".

The purpose of this Stipulation is to settle all issues concerning the Company's sales of gas to interruptible customers in the above-captioned proceeding. Further, it is the desire of the parties in executing this Stipulation to expedite the Public Utilities Commission's

(Commission) consideration and resolution of all such issues related to this proceeding.

PROCEDURAL HISTORY AND ISSUES

Docket Number 90-045 is a Summer Cost of Gas Adjustment. The Commission opened this

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docket on March 27, 1990. An Order of Notice was issued scheduling hearings April 19, 1990 and requiring the Company to submit an Affidavit of Publication. Publication occurred April 2, 1990 and the Affidavit of Publication was filed April 16, 1990 in compliance with the Commission's Order. Hearings were convened April 19, 1990 and continued until May 21, 1990 to give the Staff an opportunity to investigate 1) the Company's pricing of gas sales to interruptible customers; and 2) whether the Company was observing the procedures set forth in the stipulation between Staff and the Company, which was adopted by the Commission, in Docket DE 88-083.

TERMS AND CONDITIONS

The following constitutes the full and complete agreement of the parties:

1. The posted price of a customer's alternate fuel used in the interruptible pricing formula shall be determined on a monthly basis using an average of the daily posted prices for the four Fridays preceding the date on which the Company is required to submit its gas supply nominations (Nomination Date) to its pipeline supplier.

2. The Company agrees to inform its interruptible customers of the imposition upon the Company by its pipeline supplier of monthly balancing requirements and potential system balancing penalties. In addition, the interruptible customers will be informed that, in addition to the provisions of this Stipulation, potential daily balancing requirements and penalties may prospectively be imposed upon the interruptible customer class should it cause daily any imbalance penalties on the Company's system.

3. The Company shall establish pricing criteria for allotting third-party gas to interruptible customers whenever the Company's monthly nomination of third-party gas is restricted by its pipeline supplier. Such criteria shall be established each month to facilitate the distribution of third-party gas among or between the interruptible customers. Any interruptible customer that is unable to purchase third-party gas for a given month may purchase CD gas from the Company or utilize its alternate fuel. The Staff and Consumer Advocate shall have the right to review any such criteria established by the Company and its application to interruptible customers. Any party has the right to litigate whether such criteria are appropriate in the event that the parties are unable to reach an agreement.

4. Interruptible customers shall submit to the Company nominations of the monthly gas volumes each customer requires. Such nominations shall be monthly, by a date and time set by the Company. The interruptible customers, by making such nominations agree to use that volume of gas in the month for which the nomination was made, unless the Company is able to resell excess volumes or acquire additional volumes. Notwithstanding the above, if an interruptible customer does not use its monthly nomination of gas and the Company incurs no system balancing penalties, the interruptible customer shall not be required to *use* the gas supply it nominated, and such customers shall not be subjected to Paragraph 5 penalties.

5. The intent of the parties is to provide margin from interruptible sales to firm ratepayers. Interruptible customers are subject to potential retroactive billing charges (Charges) assessed against the Company by its pipeline supplier. "Charges" includes the

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purchase of CD gas and any system balancing penalties imposed upon the Company by its pipeline supplier. For any month for which the Company is assessed Charges, whether any portion of such Charges will be assessed against an interruptible customer will be determined as follows: each of 1) the monthly nominations and 2) the actual monthly demand of the interruptible customers will be aggregated and compared. Whenever the deviation between the aggregate of

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the interruptible customers actual monthly demand and monthly nominations is in excess of eight (8) percent, the interruptible customers that caused the imbalance will be assessed Charges on the volumes in excess of the eight (8) percent deviation. Any Charges so incurred by an interruptible customer shall be billed by the company to the customer within thirty (30) days of the close of the month to which such Charges apply. Failure to remit such Charges to the Company within twenty-five (25) days of receipt shall be just cause for termination of interruptible service to a customer.

6. The Company shall not be required to undertake daily balancing of its interruptible sales volumes for the purpose of assessing Charges to interruptible customers, whether the Company incurred such Charges, provided however, that the Staff and Consumer Advocate shall review the first three months' data regarding the interruptible customer's daily projected and actual demand. Moreover, it is expressly acknowledged that the Staff or Consumer Advocate may review the Company's daily balancing data at any time and, if the Company is incurring daily balancing penalties which are caused by the aggregate demand of all interruptible customers, upon the request of Staff or the Consumer Advocate, the Company will require interruptible customers to submit daily nominations and risk the imposition of such Charges.

7. Costs of gas used by interruptible customers and any subsequent Charges will be recorded on the Company's books in accordance with paragraph 4 of this Stipulation. Unless subsequent Charges are incurred for a month or an interruptible customer purchases CD gas, the cost of gas recorded on the Company's books for interruptible customers will be the highest cost of spot gas.

8. The parties to this Stipulation recognize that the procedures and regulation for procuring gas supplies are changing rapidly at the Federal and State levels, and that it is not unexpected that further changes relating to gas supply will emerge in the near future which may render all or part of this Agreement inappropriate, unworkable or otherwise. All parties agree that each party retains its right to raise any such issues to the Commission.

9. It is agreed that the Commission may base its determination whether to accept this Stipulation on the record in DR 90-045 and DE 88-083 and all data filed with the Commission in these dockets.

10. The Company shall forthwith negotiate new contracts consistent with the provisions of this Stipulation with its interruptible customers. Such contracts shall be filed with the Commission. The contracts of interruptible customers presently in

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existence shall expire August 1, 1990, and service shall not be continued beyond July 31, 1990 to any interruptible customer who has failed to execute a new contract.

The Company may continue its present purchase, sales and pricing practices for the month of July upon the same terms and conditions that it was permitted to maintain and continue such practices for the months of May and June.

11. If the Commission approves this Stipulation, any interruptible contracts executed after August 1, 1990, which are consistent with the terms of this Stipulation, shall become effective twenty (20) days after the contracts are filed with this Commission unless the Commission orders otherwise.

12. It is agreed that this Stipulation shall not be deemed a precedent as to any matter of fact or law, nor shall it preclude any party thereto from raising any issue in any future ratemaking proceeding.

13. It is agreed that this Stipulation represents full agreement between all parties hereto and that rejection by the Commission of any part of this Stipulation constitutes rejection of the whole.

14. In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

15. In the event that the Commission does not approve this Stipulation by 4:30

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p.m. on June 18, 1990, all parties agree that the Stipulation will become null and void.

IN WITNESS WHEREOF, the parties have cause this Stipulation to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

ENERGYNORTH NATURAL GAS, INC.
Date: June 14, 1990

STAFF OF THE PUBLIC UTILITIES COMMISSION
Date: June 15, 1990

CONSUMER ADVOCATE
Date: June 15, 1990

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NH.PUC*07/09/90*[51037]*75 NH PUC 370*Purchase Power Cost Adjustment

[Go to End of 51037]

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Re Purchase Power Cost Adjustment

Granite State Electric Company

DR 90-092
Order No. 19,876

New Hampshire Public Utilities Commission

July 9, 1990

ORDER revising the purchase power cost adjustment rate of an electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Electric utility.

[N.H.] An electric utility was authorized to revise its purchase power cost adjustment (PPCA) rate to reflect a pending increase in wholesale rates charged by its wholesale power supplier; the revised PPCA rate would become effective coincident with the effective date of the wholesale rate increase.

APPEARANCES: Cynthia A. Arcate, Esquire for Granite State Electric Company; Eugene F. Sullivan and Thomas C. Frantz for PUC staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 19, 1990 to review the Purchase Power Cost Adjustment (PPCA) filing of Granite State Electric Company for the second half of 1990.

On April 24, 1990, Granite State Electric Company (Granite) filed a Purchased Power Cost Adjustment (PPCA) of $.00441 reflecting an increase in its basic rates designated as PPCA No. W-11 Supplement. This filing reflects an increase in the cost to Granite of power purchased from New England Power Company (NEP) under a new wholesale rate schedule designated as Rate W-11 Supplement. On March 26, 1990, NEP filed with FERC a proposed increase to its Primary Service for Resale rates designated as the Rate W-11 Supplement. The W-11 Supplement differs from NEP's Rate W-11(a) in that it recovers NEP's costs associated with the commercial operation[1(27)] of Seabrook Unit 1. NEP's W-11 Supplement would increase its annual revenue by approximately $31.1 million over NEP's W-11 (a) rate, as settled. NEP has requested that the W-11 Supplement be permitted to go into effect coincident with Seabrook in-service date. In this way, NEP ensures that rates reflecting costs associated with the commercial service of Seabrook will be collected on the unit's in-service date but not before. (If the unit enters service during a month, the Supplement charges will be prorated for the period of time when service was rendered while the rates were in effect).

Also included as part of NEP's filing is a Seabrook Surcharge designed to collect an additional $16.8 million annually for five years. The Seabrook Surcharge has been filed in

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accordance with the comprehensive settlement approved by FERC as part of NEP's W-9 rate proceeding. The Seabrook Surcharge is also to

become effective coincident with Seabrook's in-service date and will be prorated in a manner consistent with the W-11 Supplement. For purposes of the April 24, 1990 filing, both parts of the proposed NEP increase are referred to as the W-11 Supplement. Subject to the FERC's acceptance of NEP's filing, Granite will be charged under the W-11 Supplement Rate on the date that Seabrook enters commercial service. If the unit enters service during a month, the Supplement charges would be prorated.

On May 31, 1990, Granite advised the commission that by order dated May 24, 1990, FERC accepted NEP's Rate W-11 Supplement for filing and suspended it for a nominal period, to become effective on the in-service date of the Seabrook nuclear power plant, subject to refund. Accordingly, Granite requests that the commission approve its PPCA W-11 Supplement effective coincident with the effective date of NEP's W-11 Supplement pursuant to the FERC order. The commission notes that effective June 30, 1990 at 12:01 a.m., Seabrook Station was accepted by NEPOOL for dispatch at a claimed capability of 709.6 MW.

Based on the evidence provided, the commission finds the PPCA of $.00441 to be just and reasonable and will approve these rates coincident with the effective date of the NEP No. W-11 Supplement allowed by FERC.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, Fifth Revised Page No. 31-A, be, and hereby is, permitted providing for Purchased Power Cost Adjustment No. W-11 Supplement to go into effect coincident with the effective date of the NEP No. W-11 Supplement as allowed by FERC; and it is

FURTHER ORDERED, that when the Seabrook unit enters service during a month, the W-11 Supplement charges will be prorated for usage during the period when service was rendered; and it is

FURTHER ORDERED, that Granite shall file revised tariff pages superseding the following compliance tariff pages in accordance with this order in accordance with N.H. Code Administrative Rules Puc 1601.05(h) and annotated in accordance with N.H. Code Administrative Rules Puc 1601.04(b):

Thirteenth Revised page 32
Eleventh Revised page 34
Eleventh Revised page 38
Eleventh Revised page 39
Twelfth Revised page 41
Twelfth Revised page 45

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Thirteenth Revised page 47
Eleventh Revised page 52
Eleventh Revised page 54

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1990.

FOOTNOTES

[1]Since this is a FERC approved wholesale rate passed through to ratepayers through the PPCA, the FERC definition of "commercial operation" is applicable. *See Appeal of Sinclair Machine Products*, 126 N.H. 822 (1985). This order should not be construed as reflecting any conclusion on the part of this commission as to the appropriate definition of that term.

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NH.PUC*07/09/90*[51038]*75 NH PUC 371*United Illuminating Company

[Go to End of 51038]

75 NH PUC 371

Re United Illuminating Company

DE 90-076
Order No. 19,877

New Hampshire Public Utilities Commission

July 9, 1990

ORDER assenting to the proposed sale and leaseback of a portion of a foreign electric utility's ownership interest in the Seabrook nuclear plant. Commission rules that during the term of the lease, the lessors would not be "public utilities" as defined in state statute RSA 362:2.

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1. CONSOLIDATION, MERGER, AND SALE, § 7 — Commission powers and duties — Transfer or lease of utility property — Statutory considerations.

[N.H.] State statute RSA 374:30 provides that any public utility may transfer or lease any portion of its franchise, works or system, or any part thereof located in the state, provided that the commission finds that it would be in the public good and enters an order assenting thereto. p. 375.

2. ELECTRICITY, § 4 — Generating plants — Operating practices — Sale and leaseback transaction — Seabrook nuclear plant.

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[N.H.] The commission assented to proposed sale and leaseback of a portion of a foreign electric utility's ownership interest in the Seabrook nuclear plant where it was found that the consummation of the proposed transaction would be in the public good; under the terms of the sale and leaseback transaction, the foreign electric utility would retain all of its existing obligations with respect to the start-up operation, maintenance, and eventual decommissioning of the plant. p. 375.

3. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval — Sale and leaseback transaction — Seabrook nuclear plant ownership — Public good — Financial benefit.

[N.H.] The commission assented to proposed sale and leaseback of a portion of a foreign electric utility's ownership interest in the Seabrook nuclear plant where it was found that the consummation of the proposed transaction would be in the public good; the evidence established that the transaction would provide the most economical mechanism for the utility to resolve certain financial constraints and would further allow the utility to redeem or repurchase outstanding high cost debt. p. 375.

4. PUBLIC UTILITIES, § 34 — Tests of public utility character — Sale and leaseback — Seabrook nuclear plant ownership.

[N.H.] In an order assenting to the proposed sale and leaseback of a portion of a foreign electric utility's ownership interest in the Seabrook nuclear plant, the commission ruled that during the term of the lease neither the owner trustee, the owner participant, nor the owner trust would be "public utilities" as defined in state statute RSA 362:2; the record demonstrated that the proposed sale and leaseback transaction met the criteria for exempting lessors from the definition of electric utility company under the Public Utility Holding Company Act and that the lessors would have no more dominion or control over the utility property than would a mortgagee. p. 375.

5. PUBLIC UTILITIES, § 33 — Tests of public utility character — Ownership of facilities — Mortgagees.

[N.H.] Even though a mortgagee of utility property holds "title" to utility property, the mortgagee would not be a public utility under New Hampshire law unless it were to foreclose on the utility property. p. 375.

6. PUBLIC UTILITIES, § 34 — Tests of public utility character — Ownership — Sale and leaseback — Seabrook nuclear plant.

[N.H.] The lessors in a proposed sale and leaseback of a portion of a foreign electric utility's ownership interest in the Seabrook nuclear plant were excluded from the statutory definition of public utility where the lessors would have no more dominion or control over the operation of the plant than would a mortgagee; under the terms of the sale and leaseback transaction, the foreign electric utility would retain all of its existing obligations with respect to the start-up operation, maintenance, and eventual decommissioning of the plant. p. 375.

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i. PUBLIC UTILITIES, § 34 — Tests of public utility character — Passive ownership — Facilities leased to operators.

[N.H.] Discussion, by the commission, of state and federal regulatory decisions that have

held that in sale and leaseback transactions passive owners should not be considered to be "public utilities". p. 375.

ii. PUBLIC UTILITIES, § 34 — Tests of public utility character — Passive ownership — Facilities leased to operators — Public Utility Holding Company Act.

[N.H.] Discussion, by the commission, of the Public Utility Holding Company Act, 17 C.F.R. § 250.7(d), which codifies a rule adopted by the Securities and Exchange Commission that excluded from the definition of "utility company" certain lessors under net leases of utility facilities. p. 375.

APPEARANCES: Frederick J. Coolbroth, Esq. of Devine, Millimet & Branch on behalf of The United Illuminating Company and Audrey Zibelman on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

Statement of Facts

On April 27, 1990, The United Illuminating Company ("UI") filed a petition seeking certain authority in connection with a proposed sale and leaseback of a portion of its ownership interest in Seabrook Unit I.

UI is a Connecticut electric utility which supplies electricity to approximately 23% of the State which with operations located in the southwestern part of that State. UI does not sell electricity at retail in New Hampshire. UI is also the owner of a 17.5% undivided ownership interest as tenant in common in the Seabrook nuclear electric generating plant located in Seabrook, New Hampshire. As a result of this ownership interest, UI is a "foreign electric utility" within the meaning of RSA Chapter 374-A.[1(28)]

UI proposes to enter into a transaction pursuant to which it will sell and lease back a portion of its undivided interest in Seabrook Unit I. UI's interest in Seabrook Unit I has an appraised value of approximately $250 million. The interest to be sold and leased back (the "Undivided Interest") will be sold to a trust (the "Owner Trust"), the trustee of which will be Meridian Trust Company, a Pennsylvania Trust Company (the "Owner Trustee" or "Lessor"), and the beneficiary of which will be a subsidiary of Citicorp (the "Owner Participant"), a bank holding company having subsidiaries which include Citibank, N.A. Simultaneously, UI will lease the Undivided Interest back from the Owner Trustee pursuant to a lease of the Undivided Interest ("Lease"). The undivided Interest is expected to exclude interest in certain facilities to be retained by UI, such as pollution control facilities, shared facilities and transmission facilities.

The cash consideration to be paid to UI upon the sale of the Undivided Interest shall be provided in part (approximately 15%) through an equity contribution to be made by the Owner Participant; the remainder will be funded through debt financing. The permanent debt financing

will be provided by the issuance on a non-recourse basis by the Owner Trustee of long-term secured lease obligation bonds (the "Bonds"). The Bonds will be secured by a mortgage and security interest on the Undivided Interest and by an assignment of the Lease and related documents. In the event that the public offering of the Bonds is delayed, UI may arrange for interim debt financing which will be repaid upon the issuance of the Bonds.

The Lease will have an initial term ("Basic Lease Term") extending up to thirty-two years from the date of closing on the sale of the Undivided Interest, and UI will have the right at the end of the Basic Lease Term to renew the Lease for additional terms during the useful life of Seabrook Unit I. UI will have the option to purchase the Undivided Interest at its fair market value at the end of the Basic Lease Term or at the end of any elected renewal period. In addition, UI will have certain options to terminate the Lease and purchase the Undivided Interest during the Basic Lease Term at the fair market

Page 373

value of the Undivided Interest less any amount of Lessor's debt which UI chooses to assume.

The transaction documents provide for the various circumstances under which UI can elect to repurchase the Undivided Interest as well as the circumstances under which the Owner Trustee and Owner Participant may require UI to repurchase the Undivided Interest.

The Lease will be a net lease with UI being responsible for the share of the costs of operation, maintenance, repair, insurance, taxes, assessments and other charges or liabilities relating to the Undivided Interest, including, without limitation, decommissioning and rebuilding. UI's interest in the Seabrook Joint Ownership Agreement (other than with respect to decommissioning) will be assigned to the Owner Trustee and reassigned to UI for the term of the Lease. The terms of the transaction provide for decommissioning obligations to remain with UI during the Lease term and to continue after the expiration of the Basic Lease Term and any renewal, notwithstanding the termination of the Lease for any reason. UI asserts that it is its intention to remain as fully responsible for decommissioning of the Undivided Interest as it would have been had the sale and leaseback transaction not been consummated.

In addition to retaining all obligations with respect to the Undivided Interest during the Lease term, UI will also retain the benefits of the Undivided Interest, including the entitlement to all of the capacity and energy associated with the Undivided Interest.

UI will provide the Lessor with rights with respect to those retained facilities which are not sold as part of the Undivided Interest. UI will also provide the Lessor with certain access rights, pursuant to a Ground Lease, with respect to the land on which Seabrook Unit I is situated. In each case these rights will be subleased back to UI for periods coterminous with the Lease.

Positions of the Parties

A. *UI*

UI proposes to enter into this sale and leaseback transaction for the purpose of avoiding a financing constraint that would prevent UI from borrowing additional money except on a subordinated debt basis during a period beginning in mid-1990 and extending through 1994.

During this period, UI anticipates external financing requirements of approximately $125 million to $150 million. As a result of write-offs associated with UI's interest in Seabrook Unit I and the commencement of depreciation accruals with respect to that Unit, UI estimates that it will be unable to satisfy the earnings coverage test under its debenture indenture for the issuance of additional unsubordinated debt during that period. Rental payments made pursuant to the Lease will not be regarded as interest charges for purposes of that calculation.

In addition to meeting UI's future financing requirements, UI intends to apply proceeds from the proposed transaction to redeem and/or repurchase a portion of its higher priced outstanding debt.

UI considered several financing alternatives to the proposed transaction. One alternative would be significant offerings of preferred and common stocks. However, UI believes that such offerings would be prohibitively expensive to UI's customers. Another option is for UI to pre-finance its capital requirements prior to the commencement of the indenture coverage constraint, and, in fact, UI stated its intention to incur such borrowings to guard against the contingency that the sale/leaseback transaction does not occur. However, there is substantial cost to UI of such prefinancing due to the fact that interest charges on the borrowed funds exceed the income which UI is able to earn on investment of the borrowed funds. Accordingly, UI believes that the most cost effective alternative is the proposed sale/leaseback transaction.

UI maintains that the proposed sale/leaseback transaction will not have any adverse effect on Seabrook Unit I. UI asserts that its obligations with respect to the start-up operation, maintenance and eventual decommissioning of the Unit will remain unchanged.

UI is also seeking a determination from this Commission that the Owner Trustee and the Owner Participant and their respective successors and assigns, and the Owner Trust will not be deemed to be public utilities under New Hampshire's utility laws. UI bases its request on

the net lease of the Undivided Interest and the resulting limited and passive role played by the Owner Trustee and the Owner Participant and their successors and assigns during the term of the Lease. UI asserts that this result will be consistent with rulings by other federal and state regulatory commissions in similar sale/leaseback transactions.

B. *Staff*

The Staff has held a technical session with representatives of UI and issued a number of data requests to UI. Based upon the information received in the technical sessions, the responses to data requests and the testimony of the UI witnesses at the hearing, the Staff does not object to the granting of the relief requested in the petition.

Commission Analysis

[1-6] In its petition, UI is requesting Commission action in two respects. First, UI is requesting approval under RSA 374:30 of the transfer of the Undivided Interest and the execution by UI of the Ground Lease. Second, UI is requesting a determination by the Commission that during the term of the Lease, neither the Owner Trustee nor the Owner Participant, nor their successors and assigns, or the Owner Trust will be deemed "public utilities"

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under RSA 362:2. We will address each issue in turn.

A. *RSA 374:30*

RSA 374:30 provides in part as follows:

> Any public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this State, ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.

The evidence establishes that consummation of the proposed sale/leaseback transaction will provide the most economical mechanism for UI to resolve the financing constraint resulting from the interest coverage problem under UI's debenture indenture and thereby provide UI with the financial flexibility to meet its external capital requirements over the next few years. The transaction will further allow UI to redeem or repurchase certain of its outstanding high-cost debt. The transaction will allow UI to realize these benefits without any adverse effect on Seabrook Unit I. Accordingly, the Commission finds that consummation of the proposed transaction will be consistent with the public good.

B. *Public Utility Status of Owner Trustee and Owner Participant*

[i, ii] RSA 362:2 defines the term "public utility" to include a person or entity "owning, operating or managing any plant or equipment or any part of the same ... in the generation, transmission or sale of electricity ultimately sold to the public ..." Any such "public utility" is subject to the general regulatory jurisdiction of the Commission. Thus, under the terms of this statute, the Owner Trustee and Owner Participant could be deemed public utilities if we find their participation in the sale and leaseback transactions makes them "owners" of Seabrook unit I. There are no New Hampshire court decisions or Commission rulings construing this statute which address the applicability of the definition to the passive investors and passive participants in sale and leaseback transactions involving public utility facilities. A number of decisions of federal and state regulatory bodies have held that in sale and leaseback transactions passive owners, such as the Owner Trustee and the Owner Participant, should not be considered to be "public utilities." For example, Section 201(e) of the Federal Power Act defines a "public utility" as "any person who owns or operates facilities subject to the jurisdiction" of the Federal Energy Regulatory Commission (the "FERC"). 16 U.S.C.A. 824(e) (1985). Several FERC rulings have disclaimed regulatory jurisdiction over the passive investors and passive participants in sale and leaseback transaction. *See Re Bridgeport Resco Company, L.P.*, 43 FERC ¶62,168, 93 PUR4th 87 (1988); *Re Baltimore Refuse Energy Systems*

Company/Wheelabrator Millbury, Inc., 40 FERC ¶61,366 (1987); *Re El Paso Electric Company*, 36 FERC §61,055 (1986); *Re United Illuminating Company*, 29 FERC ¶61,270, 65 PUR4th 333 (1984): *Re: Pacific Power and Light Company*, 3 FERC ¶61,119 (1978). A similar conclusion was reached by the Connecticut DPUC in *Re United Illuminating Company*, 76 PUR4th 500 (1986).

Section 2(a) (3) of the Public Utility Holding Company Act of 1935 (the "PUHCA")

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similarly defines an "electric utility company" as "any company which owns or operates facilities used for the generation, transmission or distribution of electric energy for sale ... " 15 U.S.C.A. §79b(a) (3) (1981). In 1973, the Securities and Exchange Commission (the "SEC") adopted Rule 7(d) under the PUHCA, 17 C.F.R. §250.7(d), to exclude from the definition of "utility company" certain lessors under net leases of utility facilities. Adoption of Rule 7(d) under the PUHCA, Holding Company Act Release No. 18000, [1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶79,381 (May 31, 1973). Rule 7(d) provides that a company which owns any utility facilities shall not be deemed to be an electric utility company provided that such company owns the facility as a company, as a trustee, or as holder of a beneficial interest under a trust, or as a purchaser or assignee of any of the foregoing; and

> (1) such facility is leased under a net lease directly to a public utility company either as a sole lessee or joint lessee with one or more other public utility companies, and such facility is or is to be employed by the lessee in its operations as a public utility company; and
>
> (2) such company is otherwise primarily engaged in one or more businesses other than the business of a public utility company or is a company all of whose equity interest is owned by one or more companies so engaged, either directly or through subsidiary companies; and
>
> (3) the terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over the rates and service of the public utility company which leases such facility; and
>
> (4) the lease of the facility extends for an initial term of not less than 15 years, except for termination of the lease upon events therein set forth, unless the owner shall state in the initial certificate that a shorter term specified in the lease is not less than two-thirds of the expected useful life of the facility; and
>
> (5) the rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues of income of the public utility company, or any part thereof.

Rule 7(d)(2) provides that the exclusion will cease to be applicable in the event of termination of the lessee's right of possession or use of the facility during its term, unless within ninety days of the date of such termination, and subject to such prior or subsequent approvals as may by law be required, the company negotiates a new lease or an operating agreement at a fixed rental. 17 C.F.R. §250.7(d)(2).

The record shows that the proposed UI sale and leaseback transaction will meet all of the criteria for exemption set forth in Rule 7(d). UI states that the Owner Trustee and the Owner participant intend to rely on that exemption from the PUHCA.

Further, although there are no New Hampshire decisions on this precise question, the concept of "ownership" under RSA 362:2 is not applied in every instance that a person holds "title" to utility property. With regard to the law of mortgages, New Hampshire is a "title" jurisdiction in that a mortgage in New Hampshire is a conveyance of title to real estate by the mortgagor to the mortgagee subject to defeasance in the event that the mortgagor fully performs the obligations which the mortgage secures. Even though a mortgagee of utility property holds "title" to that utility property, the mortgagee is not a "public utility" under New Hampshire law unless it

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forecloses on the utility property. *State of New Hampshire v. New Hampshire Gas & Electric Co.*, 186 N.H. 16 (1932). With respect to the public utility status of the Owner Trustee and Owner Participant in this proposed transaction, the analysis is the same. During the term of the lease, the Owner Trustee and the Owner

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Participant will have no more dominion and control over the utility property than would a mortgagee. Therefore, it is consistent with New Hampshire's treatment of mortgagees for this Commission to give consideration to the federal and state rulings described above in determining the public utility status of the participants in this sale/leaseback transaction.

The Commission finds that the test prescribed in Rule 7(d) under the PUHCA is an appropriate one to apply in determining whether a participant in a sale/leaseback transaction should be deemed to be a public utility under RSA 362:2. Since the record shows that the proposed transaction will meet this test, the Commission determines that during the term of the Lease, including any renewal period, neither the Owner Trustee or the Owner Participant, nor their successors or assigns, or the Owner Trust will be "public utilities" within the meaning of RSA 362:2.

This result is applicable only in the unique circumstances of sale/leaseback transactions and does not extend to other contexts in which the Commission is examining the public utility status of business enterprises.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the commission assents to the transfer by The United Illuminating Company of a portion of its undivided ownership interest in Seabrook Unit I and the execution and delivery by The United Illuminating Company of the Ground Lease as part of the sale/leaseback transaction described in the foregoing Report; and it is

FURTHER ORDERED, that during the term of the Lease, including any renewal term, neither the Owner Trustee nor the Owner Participant, nor their respective successors or assigns, or the Owner Trust, will be "public utilities" as defined in RSA 362:2.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1990.

FOOTNOTES

[1]Pursuant to RSA 374-A:7 II (c) the Connecticut Department of Public Utility Control ("DPUC") has filed with this Commission a certification that the DPUC has general regulatory jurisdiction over the financing of UI and that the DPUC has general supervision over UI in the conduct of its electric business. Therefore, UI is exempt from the requirements of RSA Chapter 369 and other New Hampshire regulatory laws with respect to the financing of UI's interest in the Seabrook plant.

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NH.PUC*07/09/90*[51039]*75 NH PUC 377*Kearsarge Telephone Company

[Go to End of 51039]

75 NH PUC 377

Re Kearsarge Telephone Company

DF 90-039
Order No. 19,878

New Hampshire Public Utilities Commission

July 9, 1990

ORDER authorizing a telephone public utility to borrow funds from the Rural Electrification Administration and the Rural Telephone Bank.

SECURITY ISSUES, § 44 — Authority to borrow — Factors considered — Public good — Construction financing — Telephone public utility.

[N.H.] A telephone public utility was authorized to borrow funds from the Rural Electrification Administration and the Rural Telephone Bank, the proceeds from which would be used to finance its construction program; the commission found that the proposed financing would be consistent with the public good.

APPEARANCE: R. Stevenson Upton, Esquire on behalf of Kearsarge Telephone Company; and Eugene F. Sullivan, Merwin

Page 377

Sands, Kathryn Bailey and ChristiAne Mason on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On February 28, 1990, Kearsarge Telephone Company (Kearsarge), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as a telephone public utility under the jurisdiction of this Commission, filed a petition for authority pursuant to the provisions of RSA 369:1 to borrow $3,323,100, the loans to be secured by concurrent loans consisting of $1,431,000 from the United States of America, acting by and through the Rural Electrification Administration (REA), and $1,892,100 from the Rural Telephone Bank (RTB) at the rate in effect at the time of the draw down. Pursuant to an order of notice issued March 27, 1990, a duly noticed hearing was held in Concord on May 17, 1990 at

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which the testimony of Robert J. Collins, President of Kearsarge Telephone Company was submitted.

The Company described the financing, referred to as the "C" loan, as a mortgage note to the REA in the principal amount of $1,431,000, payable over 21 years with an interest rate of five percent per annum. The terms of the loan provide for principal payments beginning two (2) years after the date of the Note on amounts borrowed. Payments are due monthly and the interest is payable monthly, as it accrues with loan advances. The concurrent loan is a mortgage note to RTB in the principal amount of $1,892,100 payable over 21 years. The interest rate for the RTB varies each fiscal year for the loan advances taken during that fiscal year, and with the rate calculation each September 30 based on costs of government borrowings reduced by seed funds annually appropriated in Congress for the RTB loan program. Prior to requesting advances, there is a requirement to purchase $90,100 of Class B RTB stock.

In his testimony Mr. Collins stated that the company presently has almost $1.2 Million in temporary cash investments and an equity ratio of sixty-two percent. He also indicated that to the extent that certain projects are not qualified REA projects, the capital on hand would be utilized to finance those projects, without threatening the Company's equity ratio.

Mr. Collins stated that the proceeds of the concurrent loans will be used to help finance plant expenditures through 1994 to serve an estimated 1200 new customers, to install a new co-located digital host switch in the New London exchange and a remote switch in the Boscawen exchange, to install subscriber carrier and toll carrier systems in all four exchanges, to install portable buildings for subscriber carrier field terminals at seven locations and purchase land needed for three of those buildings, and to provide for other system improvements.

The Company submitted financial exhibits including a balance sheet, income statement, and cash flow statement, reflecting actual conditions in 1989 and estimated for the years 1990 and 1991. Copies of the loan documents were also submitted, including mortgage and security agreements providing for liens on all the property.

Based upon all the evidence, the commission finds that proceeds drawn from the proposed financing will be expended to finance the Company's construction program, and further finds that the proposed financing will be consistent with the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof: it is hereby

ORDERED, that Kearsarge Telephone Company be, and hereby is, authorized to borrow $3,323,100, the loans to be secured concurrent loans consisting of $1,431,000 from the United States of America, acting by and through the Rural Electrification Administration (REA), and $1,892,100 from the Rural Telephone Bank (RTB), all in accordance with the foregoing report; and it is

FURTHER ORDERED, that Kearsarge Telephone Company, be and hereby is authorized to mortgage all of its present and future

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property, tangible and intangible, including franchises, as security for such loans; and it is

FURTHER ORDERED, that the proceeds drawn from this proposed financing shall be used to finance the Company's construction program; and it is

FURTHER ORDERED, that finalized copies of the mortgage note and the re-stated mortgage and security agreement and the resolution of the Board of Directors be filed with the commission; and it is

FURTHER ORDERED, that on January lst and July lst of each year, Kearsarge Telephone Company, shall file with this commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds drawn from said proposed financing until the expenditure of the whole of all proceeds drawn shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1990.

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NH.PUC*07/17/90*[51040]*75 NH PUC 379*EnergyNorth Natural Gas, Inc.

[Go to End of 51040]

75 NH PUC 379

Re EnergyNorth Natural Gas, Inc.

DF 90-100
Order No. 19,880

New Hampshire Public Utilities Commission

July 17, 1990

ORDER authorizing a gas distribution utility to issue and sell general and refunding mortgage bonds.

SECURITY ISSUES, § 50.1 — Authorization — Improvement of capital structure — Bond issue and sale — Debt cost reduction — Electric utility.

[N.H.] A gas distribution utility was authorized to issue and sell general and refunding mortgage bonds for the purpose of replacing existing short term debt with lower cost long-term debt; the commission found that the proposed bond issue and sale would be consistent with the public good.

By the COMMISSION:

ORDER

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WHEREAS, EnergyNorth Natural Gas, Inc., a corporation duly organized and existing under the laws of the State of New Hampshire, with its headquarters in Manchester, New Hampshire, is engaged in the business of purchasing, distributing and selling natural gas, liquefied natural and petroleum gas, in twenty-seven (27) cities and town in southern and central New Hampshire, having filed, on May 31, 1990, a petition for authority to issue $10,000,000 of General and Refunding Mortgage Bonds at an annual interest rate of 9.75% and a 30 year maturity; and

WHEREAS, EnergyNorth Natural Gas, Inc. states that the purpose of the proposed transaction is to reduce existing short term debt which has a current rate of 10% and with this issuance reduce the overall cost of debt to the Company; and

WHEREAS, EnergyNorth Natural Gas, Inc. is authorized and has outstanding indebtedness as of March 31, 1991, as evidenced by bonds, notes or other evidence of indebtedness, payable according to their terms more than twelve (12) months after the respective dates thereof, (its "Long Term Indebtedness") excluding that portion due within twelve (12) months from March 31, 1990, was $23,793,030; and

WHEREAS, EnergyNorth Natural Gas, Inc. is authorized and has outstanding indebtedness as of March 31, 1990, evidence by promissory notes payable according to their terms on demand or less than twelve (12) months after their respective dates (its "Short Term Indebtedness"). The short term debt together with the long term debt payable within one year is $7,887,138; and

WHEREAS, all of EnergyNorth Natural Gas, Inc. short term indebtedness as of March 31, 1990, is indebtedness to banks for money borrowed in connection with the construction or

other acquisition of additions and improvements to EnergyNorth Natural Gas, Inc.'s plant and facilities; and

WHEREAS, EnergyNorth Natural Gas, Inc. authorized and outstanding stock (its "Capital Stock") is as follows:

Preferred Stock:
(a) 10,000 shares authorized and 5,000 shares outstanding, $1.00 par value at 15.50% and

Common Stock:
(b) 120,000 shares authorized and 120,000 shares outstanding, par value $25 per share ("Common Stock"); and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said request; it is

ORDERED, that EnergyNorth Natural Gas, Inc., is hereby authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its general and refunding mortgage bonds, 9.75%, 30 year maturity, in the aggregate principal amount of $10,000,000 ("the Bond") which bond shall be dated the date on which it is issued, bearing interest from such date at the rate of nine and seventy-five one-hundredths percent (9.75%) per annum, maturing 30 years after such date, and to use the $10,000,000 to reduce short term debt of the Company; and it is

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FURTHER ORDERED, that the following documents will be filed when available:

(a) Exhibit 4 — Lender's Commitment Letter;

(b) Exhibit 5 — Copy of Bond Purchase Agreement;

(c) Exhibit 6 — Copy of Bond;

(d) Exhibit 7 — Copy of Supplemental Indenture; and

(e) Exhibit 8 — Certified copy of the votes authorizing the proposed financing; and it is

FURTHER ORDERED, that on January First and July First of each year EnergyNorth Natural Gas, Inc. shall file with this commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such bonds until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1990.

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NH.PUC*07/17/90*[51041]*75 NH PUC 380*Lakes Region Water Company, Inc.

[Go to End of 51041]

75 NH PUC 380

Re Lakes Region Water Company, Inc.

DF 90-107
Order No. 19,881

New Hampshire Public Utilities Commission

July 17, 1990

ORDER authorizing a water utility to issue long-term debt and to retire short-term debt incurred in connection with certain capital additions.

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1. SECURITY ISSUES, § 44 — Factors affecting authorization — Public good — Long-term debt issuance.

[N.H.] The commission may authorize a utility to issue long-term debt if it finds after investigation that such issuance would be in the public good. p. 381.

2. SECURITY ISSUES, § 44 — Authorization — Long-term debt issuance — Water utility.

[N.H.] A water utility was authorized to issue long-term debt, the proceeds from which would be used for the construction of system upgrades. p. 381.

3. SECURITY ISSUES, § 44 — Authorization — Short-term debt retirement — Water utility.

[N.H.] A water utility was authorized to

Page 380

retire short-term debt incurred in connection with certain capital additions. p. 381.

By the COMMISSION:

ORDER

On June 19, 1990, Lakes Region Water Company, Inc. (Lakes Region) filed a petition pursuant to RSA 369:3 (1990), requesting authority to issue long term debt; and

WHEREAS, as of December 31, 1989, Lakes Region had long term debt in the amount of $29,991.00 for a meter acquisition and installation, $50,000.00 to retire existing obligations to creditors and $13,500.00 for the purchase of a pickup truck; and

WHEREAS, as of June 1, 1990 Lakes Region had short term debt in the amount of $2,451.00 for insurance; and

WHEREAS, Lakes Region proposes to borrow $250,000.00 from Bank East over a term of fifteen years at an interest rate of 12.5% guaranteed by the small business administration; and

WHEREAS, Lakes Region proposes to use the proceeds from the proposed borrowing for construction to upgrade its systems; and

WHEREAS, Lakes Region indicated that additional money has been included in the event of additional costs, overruns and unknown factors; and

WHEREAS, the commission conducted an analysis of the proforma financial statements for the proposed financing filed with the petition; and

WHEREAS, Lakes Region indicated that it will file a statement duly sworn by its treasurer showing the disposition of the proceeds of such financing; and

WHEREAS, pursuant to RSA 369:4 (1990), the commission may grant permission to issue long term debt if the commission finds after investigation that such issuance would be for the public good; and

WHEREAS, the commission finds that it would be for the public good for Lakes Region to issue long term debt in this case at an interest rate of 12 1/2% to be paid over fifteen years; it is hereby

[1-3] ORDERED, NISI that Lakes Region be, and hereby is, granted authorization to issue long term debt in the amount of $250,000.00 at an interest rate of 12.5% by Bank East to be paid in fifteen years and to retire any short term debt that the company may have incurred to install capital additions in its system during the summer of 1990; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments to the commission or submit a written request for a hearing no later than twenty (20) days from the date of publication of this order; and it is

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FURTHER ORDERED, that no later than July 23, 1990, Lakes Region shall effect the notification by a single publication of an attested copy of this order in at least two newspapers having general circulation in that portion of the State in which operations are proposed to be conducted; and it is

FURTHER ORDERED, that the publication shall be documented by affidavit to be made on a copy of this order and filed with this office on or before July 30, 1990; and it is

FURTHER ORDERED, that such authority shall be effective on August 13, 1990 unless a request for a hearing is filed with this commission within twenty (20) days of the date of publication of this order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1990.

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NH.PUC*07/17/90*[51042]*75 NH PUC 382*Eastern Utilities Associates/Unitil Corporation

[Go to End of 51042]

75 NH PUC 382

Re Eastern Utilities Associates/Unitil Corporation

DF 89-085
Order No. 19,883

New Hampshire Public Utilities Commission

July 17, 1990

ORDER denying, in part, and granting, in part, a motion to compel production of documents in a proceeding to determine whether the proposed hostile takeover of one public utility holding company by another would be lawful, proper, and in the public interest.

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1. PROCEDURE, § 17 — Production of evidence — Discovery — Commission powers.

[N.H.] The broad investigatory powers of the commission permit it to compel utilities to produce information that may not be discoverable in traditional litigation; nevertheless, matters that are unrelated to the commission's investigation and may be harassing and burdensome to a party are not a proper subject of discovery. p. 385.

2. CONSOLIDATION, MERGER, AND SALE, § 68 — Procedure — Production of evidence — Hostile takeover.

[N.H.] In a proceeding to determine whether the proposed hostile takeover of one public utility holding company by another would be lawful, proper, and in the public interest, the commission denied a motion to compel production of information relative to the planned merger

of an out of state utility and the target company; it was found that the movant had not demonstrated the relevance of the planned merger to the proceeding; moreover, the commission noted its concern that release of the requested information could unduly harm the target company in potential takeover negotiations. p. 385.

3. CONSOLIDATION, MERGER, AND SALE, § 68 — Procedure — Production of evidence — Hostile takeover.

[N.H.] In a proceeding to determine whether the proposed hostile takeover of one public utility holding company by another would be lawful, proper, and in the public interest, the commission denied a motion to compel production of information relative to the target company's internal analysis of the tender offer; it was found that the harm that would result to the target company's ability to conduct meaningful takeover negotiations outweighed the need for disclosure of the information. p. 385.

4. PROCEDURE, § 17 — Production of evidence — Discovery — Privilege — Confidentiality — Commission powers.

[N.H.] When addressing claims of privilege or confidentiality, the commission considers the following factors as a method of balancing competing interests: (1) whether the information is customarily confidential and not otherwise publicly available; (2) the specified injury or liability the public disclosure of the information will cause and how the injury or liability would be caused; (3) the nature and extent of the anticipated harm (quantified to the maximum extent possible); (4) the length of time for which nondisclosure is sought and the rationale therefore; and (5) whether nondisclosure outweighs the public benefit of disclosure. p. 385.

5. CONSOLIDATION, MERGER, AND SALE, § 68 — Procedure — Production of evidence — Hostile takeover.

[N.H.] Although the commission denied a motion by the proponent of a proposed hostile takeover of one public utility holding company by another to compel production of information relative to the target company's internal analysis of the tender offer, the commission did not prohibit proper discovery designed to challenge the target company's assertion that the takeover offer was inadequate. p. 385.

6. CONSOLIDATION, MERGER, AND SALE,

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§ 68 — Procedure — Production of evidence — Confidential material — Hostile takeover.

[N.H.] In a proceeding to determine whether the proposed hostile takeover of one public utility holding company by another would be lawful, proper, and in the public interest, the commission granted a motion to compel production of the financial forecasts of the target company; it was found that requiring the production of financial forecasts was common practice, that the information would be useful to the proceeding, and that a balancing of the competing interests favored disclosure; however, due to the confidential nature of the forecasts, the utility amended a prior protective order to protect the target company's interests. p. 386.

7. COSTS — Attorney's fees — Grounds for denial.

[N.H.] The commission denied a request for attorney's fees associated with a motion to compel production of discovery material; it was found that the record did not support the claim that the party objecting to production acted in bad faith. p. 388.

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i. CONSOLIDATION, MERGER, AND SALE, § 68 — Procedure — Production of evidence — "Business strategy" privilege — Hostile takeover.

[N.H.] Discussion, by the commission, of the "business strategy" privilege — a qualified immunity which developed to protect corporations from being compelled to disclose certain types of potentially damaging information; the privilege is most frequently used in hostile takeover situations to allow the targeted company the opportunity to withhold information that is a potential defense to the takeover and is based on the rationale that directors of targeted companies have a continuing responsibility to explore alternative transactions that may be better for the corporation. p. 385.

APPEARANCES: Richard A. Samuels, Esq. and Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton, P.A.; Theodore E. Dinsmoor, Esq. and Donald J. Williamson, Esq. of Gaston & Snow for Eastern Utilities Associates ("EUA"); Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman; Paul K. Connolly, Jr. and Scott J. Mueller of LeBoeuf, Lamb, Leiby & MacRae, for UNITIL Corporation ("UNITIL"); Kenneth E. Traum, for Office of Consumer Advocate; Audrey Zibelman, Esq., for the New Hampshire Public Utilities Commission and James T. Rodier, Esq., for the commission staff.

By the COMMISSION:

REPORT

I. *Procedural Background*

On May 31, 1990, UNITIL filed its objections to EUA's second set of document and information requests, containing general and specific objections to 59 data requests. On June 8, 1990, EUA filed a Motion to Compel UNITIL Corporation to produce responses to EUA's Second Set of Document and Information Requests and for Expedited Hearing. UNITIL filed an Opposition to EUA's Motion to Compel on June 13, 1990. The commission heard oral arguments on June 15, 1990.

II. *Position of Parties*

UNITIL's objections to the data requests fall into three general categories. First, UNITIL objects to the following requests that seek information regarding UNITIL's potential merger with Fitchburg Gas and Electric Company of Massachusetts (Fitchburg): EUA-2-7, 31, 32, 33, 34, 42, 45, 47, 49, 64, 65, 70-75, 78, 88, 95, 101, 103-109, 111, 117, 119, 120, 123, 124, 127, 128, 133, 140, 143, 144, 148 and 149. UNITIL asserts a claim of privilege regarding information supplied by Fitchburg to UNITIL under a written confidentiality provision contained in their merger agreement. UNITIL also objects to the above requests to the extent that they seek information regarding a potential

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combination of Fitchburg and UNITIL on the grounds that the information sought is irrelevant and not reasonably calculated to lead to the discovery of relevant evidence.

Second, UNITIL objects to the following requests which seek information regarding UNITIL's internal analysis of, and documents related to, EUA's hostile takeover bid of the UNITIL companies: EUA-2-34, 35, 46, 53, 68 and 69. UNITIL objects to these requests to the extent that they seek information regarding UNITIL's response to EUA's tender offer on the grounds that such information is privileged, irrelevant and not reasonably calculated to lead to the discovery of relevant evidence.

According to UNITIL, its confidential internal memoranda regarding EUA's tender offer are protected by a business strategy privilege because disclosure to EUA would destroy UNITIL's future ability to deal effectively with EUA on behalf of UNITIL's shareholders.

Third, UNITIL objects to the following requests which seek information that Fitchburg has provided to UNITIL in the course of obtaining management and administrative services: EUA-2-21, 75, 78, 88, 95, 101, 103-109, 111, 117, 119, 120, 123, 124, 127, 128, 133, 140, 143, 144, 148-151, 154, 168, 169, 170, 172, 173, 192 and 193. UNITIL claims this information should be privileged because disclosing Fitchburg's confidential business information to its adversary, EUA, would result in extreme harm and competitive disadvantage to Fitchburg. Because of potential harm to Fitchburg and the fact that the information is not needed by EUA to press any legitimate claim or defense in this proceeding, UNITIL claims that the commission should not require disclosure of the Fitchburg data.

In its oral argument, UNITIL also addressed its three late-filed objections to EUA's data requests EUA-2-5, 38 and 39. These requests were for the financial forecast of the UNITIL companies. UNITIL objected to providing this information on the basis of privilege. UNITIL claimed the financial forecast would provide a blueprint of the company and put EUA at an unfair advantage in its continuing hostile takeover attempt. UNITIL distinguished its requests for EUA's financial forecast by stating that UNITIL sought EUA's information specifically to show the final impact on EUA of its Seabrook investment.

B. *EUA's POSITION*

EUA generally denies UNITIL's claims of relevancy and privilege. With regard to information pertinent to the UNITIL/Fitchburg merger and UNITIL's financial forecasts, EUA argued that the information is relevant to the issue of the competence and capability of UNITIL's management. According to EUA, obtaining this information will allow the commission to compare the relative strength and weaknesses of the management of UNITIL and EUA.

EUA further argues that information concerning the UNITIL/Fitchburg merger and the financial forecasts are likely to provide insight into UNITIL's assumptions about its future operations and other matters that would otherwise be unavailable to EUA through alternative means of discovery. EUA disagrees with UNITIL's claims of privilege and contends that any concerns along these lines may be addressed in an appropriately drafted protective order.

EUA also claims that it is entitled to UNITIL's internal, candid analysis of EUA's tender offer. EUA claims it needs the information to rebut UNITIL's report on the offer as inadequate.

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Finally, EUA claimed that UNITIL's objections were made in bad faith and sought attorney's fees EUA incurred in filing its motion. According to EUA, UNITIL is attempting to obstruct full and fair discovery.

C. *Position of the Consumer Advocate*

The Consumer Advocate states that financial forecasts are often provided in commission proceedings. The OCA also noted that in the circumstances of this case, UNITIL's arguments regarding the forecasts made some sense. While not commenting on the legal issues, the Consumer Advocate opinion was that UNITIL should provide materials in its possession on the UNITIL/Fitchburg merger. At the same

hearing, the Consumer Advocate urged the commission to start the hearings because of its concern that the cost of this proceeding ultimately will be borne by UNITIL's ratepayers.

D. *Position of the Commission Staff*

Staff indicated that its consultant, Ernst & Young, also had sought financial forecast information from UNITIL. Staff noted that while EUA may have ulterior purposes for asking for the forecast, the staff and its consultants needed the information to conduct its examination. In regard to UNITIL's objections and EUA's motion to compel, staff noted the appropriate standard to be applied should be balancing the probative value of the requested information versus the potential harm to UNITIL.

III. *Commission Analysis*

[1] On numerous occasions, the commission has set forth its views on the broad scope of discovery available to the commission in investigations and rate proceedings. For example, in *Re Public Service Company of New Hampshire*, 72 NH PUC 502, 504 (1987), we observed that the broad investigatory powers of the commission entitles us to compel utilities to produce information which may not be discoverable in traditional litigation.

While it is broad, the discovery available in regulatory proceedings is not unlimited. Matters that are unrelated to the commission's investigation and which may be harassing and burdensome to a party are not a proper subject of discovery.[1(29)] The purpose of this proceeding is for the commission to ascertain whether or not EUA's proposed acquisition of UNITIL is lawful, proper and is in the public interest. RSA 374:33.(1990). We have refined this to specify that EUA must demonstrate *inter alia* that the proposed transaction will result in a net benefit to ratepayers. It is with this purpose in mind that we examine EUA's data requests.

A. *Information Relative To UNITIL's Merger To Fitchburg Gas and Electric Light Company*

[2] EUA asked approximately 30 questions on UNITIL's planned merger with Fitchburg. Generally, the questions were designed to obtain the terms of the merger and the companies' internal analyses of the merger's impact on their operations. EUA also prepared approximately 40 data requests that are designed to obtain information Fitchburg has supplied to UNITIL. We agree with UNITIL that the requested information is not discoverable.

While it is true that a proposed merger between Fitchburg and UNITIL has developed to a

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point where it is beyond mere speculation, that transaction is not before the commission for an order under RSA 374:33. Therefore, it is not appropriate to address the merits of that possible transaction here. In this proceeding we are interested in how UNITIL will operate in the future as it is currently constituted. Our investigation will involve the comparison of UNITIL as a stand-alone company with UNITIL merged with EUA. The possible effect on UNITIL following a UNITIL/Fitchburg merger is irrelevant to this examination.

Further, the requested information is of an extremely sensitive nature. While we are not prepared to hold that the material is privileged, we share UNITIL's concern that the information could unduly harm UNITIL and Fitchburg in potential take-over negotiations with EUA. In light of this concern, we believe it particularly appropriate to require EUA to demonstrate the relevancy of its requests to this proceeding. Because EUA failed to demonstrate relevancy in its written memorandum and oral argument, we are denying its motion.

B. *UNITIL's Internal Analysis of EUA's Tender Offer*

[3-5] UNITIL also objected to a series of data requests on its internal analysis of EUA's tender offer. UNITIL claims that the information is irrelevant and that its disclosure will harm the company's legitimate interests. The commission shares UNITIL's concern regarding the potential harm from disclosure and we are denying EUA's motion.

[i] UNITIL primarily relies on the so-called "business strategy" privilege as its legal

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basis for withholding the information. The "business strategy" privilege is actually a qualified immunity which developed to protect corporations from being compelled to disclose certain types of potentially damaging information. The privilege is most frequently used in hostile takeover situations to allow the targeted company the opportunity to withhold information that is a potential defense to the takeover. The rationale is that during the takeover attempt, the directors of the targeted company have the continuing responsibility to explore alternative transactions that may be better for the corporation. *See, e.g., General Metropolitan PUC v. The Pillsbury Co.*, Fed. Sec. L. Rep (CCH) Para 94,096 (Del. Ch., Nov. 21, 1988), in which the court permitted the Pillsbury Company a qualified immunity from disclosing potential "white knights"; and *Gioia v. Texas Air Corp.*, 1988 WC 18,224, (Del. Ch. March 3, 1988), in which the court allowed Texas Air to withhold disclosure of its strike plan in a shareholder derivative suit on the grounds that the information was confidential business information and disclosure would harm the company in other contexts. In both *General Metropolitan* and *Gioia* the court granted the immunity only after concluding that the need of the party seeking disclosure was outweighed by the potential for harm to the targeted party.

The approach of the Delaware Chancery Court is similar to the one used by this commission when addressing claims of privilege or confidentiality. In such cases, the commission considers the following factors as a method of balancing competing interests:

(1) Whether the information is customarily confidential and not otherwise publicly available;

(2) What specified injury or liability the public disclosure of the information will

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cause and how the injury or liability would be caused;

(3) the nature and extent of the anticipated harm (quantified to the maximum extent practicable);

(4) the length of time for which nondisclosure is sought and the rationale therefore; and

(5) how nondisclosure outweighs the public benefit of disclosure.

In Re Public Service of New Hampshire, 72 NH PUC 502-508 (1987).

With regard to the potential harm to UNITIL, it is apparent that EUA's knowledge of UNITIL's internal analysis of the tender offer will provide EUA with a considerable advantage in take-over negotiations. If we compel disclosure, UNITIL will be supplying EUA with its "bottom line". Needless to say, after such disclosure any meaningful negotiation between EUA and UNITIL over the amount of the tender offer will not occur.

Balanced against this clear harm to UNITIL's ability to negotiate the corporation's interests, is EUA's limited need for the information. EUA argued that the information is necessary to evaluate UNITIL's management. Given the availability of multiple alternative approaches that would comparably satisfy the articulated EUA interest, we do not believe that compelling discovery of information that causes special harm to UNITIL is justified.[2](30)

We also believe that alternative discovery channels exist that would be comparable in meeting EUA's interests while mitigating the adverse impact on UNITIL. For example, EUA may send data requests to UNITIL's expert witnesses that ask for the basis of their conclusions that the offer is inadequate. During cross-examination, EUA will have the opportunity to challenge the expert opinions. Thus, while we hold that UNITIL is not required to respond to EUA's data requests, we are by no means prohibiting proper discovery designed to challenge UNITIL's assertion that the offer is not adequate.

C. *The UNITIL Financial Forecasts*

[6] UNITIL also objects to disclosing its financial forecast on the grounds that the information will undermine its ability to safeguard its shareholders' interests. EUA, the OCA, and the commission staff are requesting the information in order to perform an analysis of the impact of EUA's proposed acquisition of

Page 386

UNITIL on the latter's operations. As with UNITIL'S internal evaluation of the tender offer, the determination of whether to require disclosure is dependent upon a balancing of competing interests. For the reasons set forth below, we conclude that in this circumstance the balance favors disclosure.

We commence our examination with the observation that it is both expected and common for utilities to file financial forecasts in proceedings before the commission. The data contained in these forecasts supply the commission with a valuable tool for evaluating the utility's financial condition for ratemaking purposes and other related matters. Hence, it was not unexpected that UNITIL was requested to supply its financial forecasts in this proceeding. Indeed, we note that

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UNITIL has itself requested a copy of EUA's forecasts.

Further, the nature of this proceeding makes examination of UNITIL's forecast particularly critical. An adequate analysis of the public interest at a minimum requires some forward looking evaluation of UNITIL's financial condition. We can think of no better source of this information than the financial forecast.

During the oral arguments on the data requests UNITIL proposed that in the event we compel disclosure of confidential information, we should require EUA to ensure that personnel who are involved in the takeover not have access to the information. UNITIL also acknowledged that the proposed limitation could prevent the EUA counsel involved in this proceeding from cross-examining UNITIL witnesses on the forecast.

Earlier in this proceeding, EUA sought exemption from public disclosure of certain information requested by UNITIL. After considerable effort of the parties and staff, agreement was reached for the treatment of confidential data and resulted in our issuance of a "Protective Order". *Re: Eastern Utilities Associates/UNITIL Corp.*, 75 NH PUC 207 (1990).

We find the terms of this protective order are not sufficient to protect UNITIL's interests with respect to the financial forecast. Accordingly, we find that the following supplement to paragraph 5 is reasonable:

> "PROTECTED MATERIALS" which contain confidential financial information produced by UNITIL pursuant to the commission's report and order no. 19, —, shall be marked on each page as "CONFIDENTIAL FINANCIAL INFORMATION" shall not be disclosed to or used by any person including, but, not limited to, Eastern Utilities Associates' ("EUA") employees, officers, directors, investment bankers, financial advisors, consultants and attorneys who will be directly involved in, or provide advice or representation in regard to, EUA's attempt to acquire or make a tender offer for stock of UNITIL Corporation except to the extent that such person's involvement is limited exclusively to providing testimony, advice or representation in regulatory proceedings before this Commission. Prior to disclosure of "CONFIDENTIAL FINANCIAL INFORMATION" to any EUA attorney, employee or other representative, each such EUA attorney, employee or other representative shall be given a copy of this Order and shall execute a certificate in a form consistent herewith, stating that he or she has read this Order and that he or she will not divulge any "CONFIDENTIAL FINANCIAL INFORMATION", or any portion thereof, or any information derived therefrom, and certifying that he or she will not in the future allow the "CONFIDENTIAL FINANCIAL INFORMATION" to be used to provide advice or representation with regard to EUA's attempt to acquire or make a tender offer for stock of UNITIL Corporation. Prior to production of any "CONFIDENTIAL FINANCIAL INFORMATION" EUA will file with the Commission and the parties copies of all signed certificates in the Form attached hereto as Attachment B, identifying all persons who will be entitled to see "CONFIDENTIAL INFORMATION" pursuant to this Order. All "CONFIDENTIAL FINANCIAL INFORMATION" shall be maintained by each person in a secured location, accessible only to that person, and shall be returned to UNITIL's counsel within ten (10) days of the conclusion of this proceeding or subsequent appellate proceeding."

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D. *Request for Attorney's Fees*

[7] EUA requested attorneys fees for costs associated with this motion. The record does not support EUA's assertions of bad faith, and accordingly we deny the request.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, EUA's Motion to Compel answers to the following data requests: EUA 2-7, 21, 31, 32, 33, 34, 35, 42, 45, 46, 47, 49, 53, 64, 65, 68, 69, 70-75, 78, 88, 95, 101, 103-109, 111, 117, 119, 120, 123, 124, 127, 128, 133, 140, 143, 144, 148, 149, 150, 151, 154, 168, 169, 170, 172, 173, 192 & 193 is denied; it is

FURTHER ORDERED, that EUA's Motion to Compel responses to data requests EUA 2-5, 38 and 39, is granted; it is

FURTHER ORDERED, that UNITIL's request for an amendment to the Protective Agreement is granted; and it is

FURTHER ORDERED that EUA's Motion for costs of attorney's fees is denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1990.

FOOTNOTES

[1]We previously ruled that we will not permit our investigational process to produce a *de facto* result in a financing petition. *In Re Public Service of New Hampshire,* 69 NH PUC 412, 413 (1984). We similarly will not allow this proceeding to be the vehicle by which the takeover may be accomplished without a *de jure* finding by the commission in accordance with the statutory standards.

[2]The information, sought may also be arguably relevant to the adequacy of EUA's tender offer. However, our perspective on this issue is the impact of the tender offer on the public. RSA 374:33. UNITIL's internal evaluation from a shareholder perspective is less relevant and does not outweigh the burden to UNITIL supplying this information to EUA.

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DE 89-236
Order No. 19,884

New Hampshire Public Utilities Commission

July 17, 1990

ORDER imposing a fine for failure to keep an adequate supply of propane on hand at a propane/air system plant.

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1. FINES AND PENALTIES, § 5 — Grounds for imposition — Inadequate operations — Propane/air system plant.

[N.H.] The agent of a propane distributor was fined $1000 for its failure to keep an adequate supply of propane on hand at a propane/air system plant; moreover, the agent was directed to engage a consultant to analyze its plant and to comply with the consultant's recommendations within 60 days, or face additional fines of $25,000 per day for each day of noncompliance. p. 390.

2. GAS, § 5 — Equipment — Propane/air system plant — Inadequate operation.

[N.H.] The operating agent of an inadequately operated propane/air system plant was directed to engage a consultant to analyze its plant and to comply with the consultant's recommendations within 60 days, or face fines of $25,000 per day for each day of noncompliance. p. 390.

APPEARANCES: R. Stevenson Upton, Esq. on behalf of S/G Propane of New Hampshire, Inc.; and Eugene F. Sullivan, III on behalf of the staff of the New Hampshire Public Utilities Commission.

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By the COMMISSION:

REPORT

I. *Procedural History*

On December 5, 1989, the New Hampshire Public Utilities Commission (commission) was notified by its Gas Safety Engineer that operational problems had occurred in the Claremont System of S/G Propane of New Hampshire, Inc. (S/G Propane or company). Preliminary investigation resulted in allegations of both equipment failures preventing satisfactory operation of the plant, a shortage of available propane supply and a shortage of qualified individuals to operate the plant.

The Gas Safety Engineer of the commission advised that shipments of propane were not being received at the plant and that the company was unable to switch from its summer to winter operating mode and that the delivery of gas to its customers was significantly limited by the

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summer operating mode. Additional deliveries of propane to customers were made by operating a manual back up system only after emergency repairs were made to the manual system itself.

Finding that an emergency situation existed, the commission issued order no. 19,633 (74 NH PUC 471) which, among other things, ordered the company to appear at a hearing to be held on December 14, 1989, to report on its resolution of the emergency situation and to show cause why it should not be fined in accordance with RSA 374:7-A.

At hearings held on December 15, 1989, December 27, 1989 and January 5, 1990, the commission heard from both the staff and the company concerning the emergency situation referred to above.

II. *Position of the Parties*

After a presentation of evidence, staff took the position that in light of the company's failures to comply with promises made to the commission in Docket DE 87-256, that the commission impose penalties to make sure that S/G Propane complied with all its promises to update and efficiently manage its Claremont Gas utility. Said penalties being in the form of a fine against Synergy Corporation (Synergy), the parent company of S/G Propane, if all of the representations made by the company concerning improvements to the plant were not taken.

The company took the position that penalties were not necessary and that any non-compliance in Docket DE 87-256 was merely a matter of "slight technical non-compliance" and hardly the cause for the imposition of any kind of fine as the company ought to be taken at its word.

III. *Findings of Fact*

The Commission finds from the record, specifically the testimony of Richard G. Marini and documents supplied by S/G Propane that on December 4, 1989, the company had 19,649 gallons of propane on hand whereas PUC regulations require a seven day supply which amounts to 22,000 gallons of propane.

In fact from the testimony of Mr. Marini the company did not in actuality have even the 19,649 gallons of propane available to its customers as the pump between the two storage tanks was not operating and therefore some indeterminable amount of propane from Tank No. 2 was not available for the utility's operation. (See Transcript page 58 through 64)

The commission further finds that S & G Propane of New Hampshire has been inadequately maintaining its public utility facilities at Claremont, New Hampshire. Both Mr. Marini and Dr. Schmidt testified that the plant was in a state of disrepair.

Mr. Marini testified to a certain incident where there was a lack of qualified personnel on hand in order to address the imminent prospect of failure of the system due to an inability to switch from the so-called summer mode to the so-called winter mode of operation. This inability to switch from the summer mode to the winter mode required the company to bypass manually its jet system in order to maintain a supply of product to its customers. However, this bypass resulted in an extremely rich mixture of propane being sent to the customers which may have resulted in damage to customer

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appliances. This extremely rich mixture of propane was the result of failure on the part of S/G Propane to maintain adequately its plant as it was determined at a later date that the air intake on the manual bypass was clogged with a bees nest due to the failure of the company to ensure a clean air intake or to take preventive measures to ensure that no debris could enter into the air intake.

Both Dr. Schmidt and Mr. Marini testified that maintenance at the plant was apparently non-existent nor was it properly scheduled which resulted in the above-mentioned blockage in the air intake for the manual bypass which led to the high BTU count of the propane being sent to customer appliances and premises.

The commission further finds a general lack of maintenance at the facility specifically demonstrated by corrosion on the liquid line from a storage tank to the boiler, needed replacement of the flex connector at the pump and the needed replacement of a flex connector at the pipe, the poorly placed physical location of certain regulators, a lack of training of personnel on hand, and, finally, the corrosion of certain pipes at the plant.

During the course of the proceeding the flex connector was replaced with a solid pipe. The flex connector as its name indicates is designed to absorb vibrations from the pump; a task that cannot be performed by a solid stationary pipe. Any vibrations from the pump could tend to loosen the pipe causing leaks of gas at the plant. The commission notes that if Mr. Marini and Vermont Safety officer Kenneth Wood had not arrived to lend assistance to the staff of S/G Propane during the above mentioned incident, a severe incident could have occurred due to a lack of training and competent personnel on hand at the plant.

The commission further finds from the transcript and the admissions of Mr. Churchill of Synergy Corporation that Synergy Corporation is the agent of S/G Propane and has what amounts to absolute control over expenditures and operations at the plant.

Finally, the commission finds that the lack of propane at the plant in the first week of December was not due to any condition of weather but was in fact due to Synergy's failure to provide adequate transportation facilities to bring propane to the plant.

III. *Commission Analysis*

[1, 2] Pursuant to RSA 365:42 the commission fines Synergy Corporation, as an agent of S/G Propane, $1,000 for its failure to provide adequate supplies of propane to its Claremont utility. The commission will further require that S/G Propane of New Hampshire, Inc. provide the commission with a list of consultants. The commission will approve or disapprove the list and Synergy shall hire a consultant from the approved list to perform a complete analysis of the plant and its operations, maintenance and staff.

At the completion of the consultant's report, S/G Propane of New Hampshire shall comply with the consultant's findings or Synergy Corporation as its agent shall be fined $25,000 a day pursuant to RSA 365:42. In order to accomplish this end the consultant shall provide the commission with a list of its recommendations and reasonable dates upon which the corrections should be accomplished. The company shall comply with said dates and shall prove to the commission that it has complied with the dates and the recommendations of the consultant or be

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fined $25,000 a day.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Synergy Corporation is fined $1,000 for failure to keep an adequate supply of propane on hand at its Claremont facilities, said fine to be paid within 30 days of the date of this order; and it is

FURTHER ORDERED, that Synergy Corporation shall within 30 days of the date of this order engage a consultant approved by this commission to analyze its Claremont facilities and to make recommendations as to what improvements need to be made in maintenance, plant, operations and staff; and it is

FURTHER ORDERED, that the consultant shall within 60 days of the date of this order

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supply the commission with said recommended improvements and reasonable dates upon which accomplishment of said recommended improvements should be made; and it is

FURTHER ORDERED, that Synergy Corporation as the agent of S/G Propane shall be fined $25,000 a day if it fails to meet the requirements of the consultant's recommendations both in quality and timeliness.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1990.

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NH.PUC*07/17/90*[51044]*75 NH PUC 391*Pennichuck Water Works, Inc.

[Go to End of 51044]

75 NH PUC 391

Re Pennichuck Water Works, Inc.

DR 89-239
Order No. 19,885

New Hampshire Public Utilities Commission

July 17, 1990

ORDER accepting a stipulation establishing the revenue requirement and rate structure for water utility service to a new housing development.

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1. RATES, § 604 — Water — Service to new development — Customer charge.

[N.H.] Pursuant to a commission-adopted stipulation establishing the revenue requirement and rate structure for water utility service to a new housing development, the customer charge was based on the annual property taxes and depreciation costs, with no allowance for consumption. p. 392.

2. RATES, § 597 — Water — Service to new development — Consumption charge.

[N.H.] Pursuant to a commission-adopted stipulation establishing the revenue requirement and rate structure for water utility service to a new housing development, the consumption charge was based upon the difference between the total revenues and that amount assigned to the customer charge. p. 392.

3. RATES, § 597 — Water — Service to new development — Revenue requirement.

[N.H.] The commission accepted a stipulation establishing the revenue requirement and rate structure for water utility service to a new housing development; rates were calculated based on the maximum number of potential customers so that the allowed revenue requirement would be realized only when all of the houses in the development were connected to the system. p. 392.

4. RATES, § 604 — Water — Service to new development — Fixed plant — Additional meters — Rate adjustments.

[N.H.] A water utility that extended service to a new housing development was prohibited from making any rate adjustments for fixed plant associated with additional meters until the staff completes a review and audit of the additions. p. 393.

APPEARANCES: Mary Ellen Kiley, Esquire on behalf of Pennichuck Water Works, Inc; and Eugene F. Sullivan, III, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On December 12, 1989 the commission received a petition from Pennichuck Water Works, Inc. (Pennichuck) to provide water service to a limited area in the town of Milford, New Hampshire situated on Old Brooklyn Road, in a development known as Ashley Commons pursuant to RSA 374:22 and explicitly to establish rates therefore pursuant to RSA Chapter 378.

On January 18, 1990, the commission issued an order of notice setting a prehearing

conference for March 21, 1990 to establish a procedural schedule, address matters of intervention and the Petitioner's request to provide water service to Ashley Commons.

At the prehearing conference, Pennichuck supplied approvals from the Department of

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Environmental Services pursuant to RSA 374:22 III. The Petitioner supplied a letter from the Town of Milford indicating support of Pennichuck's request to serve the area. Staff agreed that Pennichuck has the financial, managerial, technical and legal capabilities required to provide water service to Ashley Commons. Staff and the petitioner were the only parties at the prehearing conference.

On April 16th, 1990, the Commission issued order No. 19,788 (75 NH PUC 224) adopting the stipulation of the parties which granted the proposed franchise to Pennichuck. The order further adopted the proposed procedural schedule.

Throughout the proceeding, the parties engaged in discovery and further consultation on a number of occasions. Staff and the Petitioner stipulated to a revenue requirement and rate structure.

On May 23rd, 1990, a hearing was held before the commission in which the company and staff orally stipulated to the following:

II. *Oral Stipulation of the Parties*

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base $17,363.00
Rate of Return 10.92%

(Pennichuck Water Work, Inc. last determined rate of return)

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Revenue Requirement

Operating Expense	$4,812.00
Depreciation	441.00
Taxes	2,625.00
Rate of Return ($17,363.00 × 10.92%)	1,896.00
Annual Revenue Requirement	$9,774.00
No. of Customers — 29	
Annual Revenue Per Customer	$337.00

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Structure (customer charge)

Depreciation	$ 441.00
Property Taxes	1,398.00
Total	1,839.00

$1,839.00 divided by 29 customers = $153.25 for one year. Divided by 12 = *$5.28 per customer per month.*

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Structure (consumption charge)

Total Revenue Requirement	$9,744.00
Less Annual Customer Charge	1,839.00
	=7,935.00 divided by

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8,000 cubic feet per customer per year
× 29 customers =
2,320,000. cubic feet.
$7,935 + 2,320 hundred cubic feet =
$3.42 per hundred cubic feet.
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[1-3] The above rate structure indicates that the customer charge will be based upon the annual property taxes and depreciation costs. The consumption rate was based upon the difference between the total revenue and that amount assigned to the customer charge. The customer charge contains no consumption allowance.

The development consisted of six customers at the time the petition for authority to provide water service was submitted. At the time of the hearing on the merits on May 23rd, 1990, the total number of metered customers was ten. The schedule establishing the supporting documentation for the revenue requirement was revised subsequent to the hearing to include ten meters in lieu of the six submitted originally. The rates, however, are calculated upon the total development of the system (29 customers). Until the system serves 29 customers, the allowed revenue requirement will not be realized by the petitioner.

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III. *Commission Analysis*

[4] The commission adopts the stipulation of the parties and finds the rate request to be just and reasonable pursuant to RSA 378:7. In regard to any additions to any fixed plant associated with additional meters, any adjustment will not go into effect until staff has had an opportunity to fully review and audit such additions. Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the stipulation of the parties is accepted; and it is

FURTHER ORDERED, that the company submit tariff pages and supporting documentation for the establishment of permanent rates for effect on all service rendered as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of July, 1990.

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NH.PUC*07/18/90*[51045]*75 NH PUC 393*Carleton Water Company Trust

[Go to End of 51045]

75 NH PUC 393

Re Carleton Water Company Trust

DE 89-083
Order No. 19,886

New Hampshire Public Utilities Commission

July 18, 1990

ORDER denying a motion to designate certain members of the commission staff as staff advocates.

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1. COMMISSIONS, § 53 — Membership and personnel — Commission staff — Designation as staff advocate — Discretionary power.

[N.H.] The commission has discretionary power to designate a member of its staff as a staff advocate when that staff member's involvement in a proceeding appears to require the employee to commit to a particular result; the rule does not require staff advocate designation for each staff member who serves as a witness in a proceeding because, unlike parties, staff members are not predisposed toward a particular result. p. 394.

2. COMMISSIONS, § 53 — Membership and personnel — Commission staff — Designation as staff advocate.

[N.H.] The fact that a recommendation of a commission staff member favors one party or another does not necessarily mean that the employee has committed to a particular result and should be designated a staff advocate. p. 394.

3. COMMISSIONS, § 51 — Prejudice or bias — Commission staff — Designation as staff advocate.

[N.H.] In accordance with the rule that empowers the commission to designate a member of its staff as a staff advocate if that staff member appeared committed to a particular result in a proceeding, the commission would designate a staff member as a staff advocate if it were found that the staff member was committed to a particular result and was unable to supply impartial advice to the commission. p. 394.

4. COMMISSIONS, § 51 — Prejudice or bias — Commission staff — Designation as staff advocate.

[N.H.] A motion to designate members of the commission staff as staff advocates was denied, where based on its review of the record and observation of the conduct of its staff, the commission concluded that no circumstances of the proceeding suggested that the staff members were predisposed to a particular position. p. 394.

APPEARANCES: Mary Ellen Kiley, Esq.,

Attorney for Carleton Water Company Trust; Eugene F. Sullivan, Esq., Attorney for Public Utilities Commission; John Rohrbach, Office of the Consumer Advocate; William DeProfio, Robert Carroll and Joyce Carroll on behalf of the Sunrise Lake Association.

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By the COMMISSION:

REPORT

I. *Procedural History*

On May 29, 1990 the Public Utilities Commission (commission) conducted a hearing on Carleton Water Company Trust's (Carleton's) petition for authority to provide water services in the limited areas of the towns of North Conway, Middleton, Tuftonboro and Thornton, New Hampshire. At the commencement of the hearing counsel for Carleton moved pursuant to N.H. Admin. Rules PUC 203.15, to designate as staff advocates commission attorney, Eugene F. Sullivan, III, Esq. and commission witnesses Mary Jean Newell and Robert Lessels. For the reasons set forth below, we are denying Carleton's motion.

II. *Commission Analysis*

[1-4] Pursuant to RSA 363:17-a (1990), the Public Utilities Commission is obliged to act as "the arbiter between the interests of the customers and the interests of the regulated utility". RSA 363:27 (1990), authorizes the commission to hire staff to assist the commission in the fulfillment of its statutory functions. In circumstances in which it appears that a staff member's involvement in a proceeding will require the employee to commit to a particular result, N.H. Rules, P.U.C. 203.15, provides the commission with the discretionary power to designate the affected employee a staff advocate.

The rule does not require staff advocate designation of each staff member who serves as a witness in a proceeding. Unlike the parties, members of the staff are not predisposed towards a particular result. The staff's role is to review the record developed during the proceedings, place on the record additional material facts not otherwise provided by the parties and make recommendations to the commission based on the evidence. The fact that a staff member's ultimate recommendation favors one party or another does not mean that the employee has committed to a particular result and should be designated a staff advocate.

The intent of the rule is to preserve the integrity of the commission process. In accordance with this intent, we will designate an employee a staff advocate if we find that he or she is committed to a particular result and therefore, regardless of the evidence, is no longer able to supply impartial advice to the commission. *See*, *Appeal of Public Service of New Hampshire*, 122, N.H. 1062, 1077 (1982).

During the hearing, the commission had the opportunity to question Ms. Newell on her investigation of the company. Ms. Newell testified that the staff audited the company in the same manner as audits of other public utilities. Ms. Newell also advised the commission that the audit of Carleton was complicated because the company did not have appropriate documentation on certain capital expenditures. It was on the basis of this lack of evidence that the staff made their recommendations.

Staff's conduct during the investigation and in the hearing room convinces us that Carleton's motion must be denied. Contrary to the company's argument, we find no evidence that the staff was predisposed to the ratepayers' position. Rather, the evidence shows that throughout this proceeding staff expended considerable effort to develop a record that would permit the commission to engage in a full and fair consideration of the petition.

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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby

ORDERED, that the motion to designate certain staff members as staff advocates be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of

July, 1990.

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NH.PUC*07/18/90*[51046]*75 NH PUC 395*Continental Cablevision of New Hampshire

[Go to End of 51046]

75 NH PUC 395

Re Continental Cablevision of New Hampshire

DE 90-079
Order No. 19,887

New Hampshire Public Utilities Commission

July 18, 1990

ORDER authorizing a cable television service provider to place and maintain aerial cable over and across public waters.

CERTIFICATES, § 101.1 — Cable television — Aerial crossing — Public waters.

[N.H.] The commission authorized a cable television service provider to place and maintain aerial cable over and across public waters where the crossing was necessary to meet the reasonable requirements for service and, thus, was in the public good.

By the COMMISSION:

ORDER

On May 1, 1990 Continental Cablevision of New Hampshire (petitioner) filed with this commission a petition seeking a license pursuant to RSA 371:17 to place and maintain cable television aerial plant over Wheelwright Pond in Lee, New Hampshire; and

WHEREAS, this plant will consist of a .500 inch coaxial communication cable lashed to a

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1/4 inch steel support strand as detailed on a submitted plan entitled Cable Strand Mapping for Continental Cablevision of New Hampshire on file with this commission; and

WHEREAS, this petition seeks to cross Wheelwright Pond from telephone pole #1610A/9 (existing) on property of James C. and Betty D. Gardner in Lee, N.H. to telephone pole #1610A/10 (existing) on property of Amos R. and Dora C. Townsend in Lee, N.H., 18 inches above existing New England Telephone Company plant; and

WHEREAS, this crossing will be utilized to provide cable television service to the town of Lee, N.H.; and

WHEREAS, the commission finds such crossing necessary for the petitioner to meet the reasonable requirements for service, thus it is in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is hereby

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on the matter before this commission no later than August 13, 1990; and it is

FURTHER ORDERED, that Continental Cablevision effect such notification by publication of this order once in circulation area to be served no later than July 27, 1990; and it is

FURTHER ORDERED, *NISI* that Continental Cablevision of New Hampshire be, and hereby is, granted license pursuant to RSA 371:17 *et seq* to place, operate and maintain cable television aerial plant across Wheelwright Pond as depicted on submitted plan entitled Cable Strand Mapping for Continental Cablevision of New Hampshire, on file with this commission; and it is

FURTHER ORDERED, that all construction meet established minimum safety standards, such as the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective August 17, 1990, unless a hearing is requested as provided herein or the commission so directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1990.

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NH.PUC*07/20/90*[51047]*75 NH PUC 396*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 51047]

75 NH PUC 396

Re Northeast Utilities/Public Service Company of New Hampshire

DR 89-244
Order No. 19,889

114 PUR4th 385

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New Hampshire Public Utilities Commission

July 20, 1990

ORDER approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. CONSOLIDATION, MERGER AND SALE, § 6 — Duties of state commission — Acquisition of bankrupt utility — Statutory requirements.

[N.H.] State statute RSA 362-C required the commission to determine whether the acquisition of Public Service Company of New Hampshire (PSNH) — an electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code — by Northeast Utilities (NU) would be consistent with the public good, whether a proposed agreement between the state and NU relating to the reorganization of PSNH would be consistent with the public good, and whether rates established in connection with the reorganization should be approved as just and reasonable. p. 400.

2. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — State commission approval.

[N.H.] The commission approved an electric rate plan intended to resolve the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH); the plan suspends state law prohibiting rate recovery of construction work in progress, provides for seven annual 5.5% increases in retail rates, and includes a "collar" on equity under the approved rates to hold equity returns between an established ceiling and floor; it was found that the plan would provide sufficient revenues to finance the $2.3 billion bankruptcy compromise to PSNH creditors and equity holders without unduly burdening ratepayers or the New Hampshire economy. p. 415.

3. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Rate base determination — Acquisition premium.

[N.H.] In approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission accepted the rate base determination set forth in the reorganization plan approved by the bankruptcy court; the reorganized PSNH would have a $2.3 billion rate base consisting of $700 million of Seabrook nuclear plant assets, $800 million of non-Seabrook assets, and an acquisition premium of $800 million; the acquisition premium was *not* a payment for utility assets in excess of net book value and, therefore, was not an acquisition premium as the term is normally defined, rather the acquisition premium was the difference between the bankruptcy settlement amount of $2.3 billion and the $1.5 billion in Seabrook and non-Seabrook assets. p. 419.

4. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Rate base determination — Acquisition premium.

[N.H.] The electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire provides for an $800 million acquisition premium representing the difference between a bankruptcy settlement amount and the theoretical

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economic value of the utility's assets; $425 million of the premium would be amortized on a straight line basis and recovered with a return over 7 years beginning with the effective date of the rate plan and the remaining $375 million would be recovered with a return over 20 years from the effective date of the rate plan. p. 419.

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5. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Reasonableness.

[N.H.] In approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that the rates that would have resulted from traditional ratemaking probably would have been higher than the rates resulting from the rate plan. p. 421.

6. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Reasonableness.

[N.H.] In approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that although the resulting rates would be marginally higher than the forecasted price of electricity for the New England region, the rates would not place New Hampshire at a competitive disadvantage. p. 422.

7. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Fairness.

[N.H.] In approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission endorsed the bankruptcy court's finding that the rate plan represented "a fair and equitable settlement and compromise well within a range of results reasonably expected in a litigated rate case." p. 423.

8. VALUATION, § 67 — Ascertainment of cost — Acquisition premium — Grounds for allowing.

[N.H.] The standards justifying the addition to rate base of an acquisition premium relate to: (1) whether the acquired assets may be operated as an integral part of the purchaser's system; (2) whether the purchasing utility may better provide necessary capital to finance the operation of the system; (3) whether the purchasing utility can furnish engineering, accounting and other management services needed by the seller; and (4) whether the purchasing utility can more economically operate the system, particularly where the selling utility is bankrupt. p. 425.

9. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Assignment of acquisition premium.

[N.H.] The commission rejected a proposal to assign to the Seabrook nuclear plant an $800 million acquisition premium included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH); it was found that assigning the acquisition premium to Seabrook, rather than treating it as a regulatory asset in the rate base of a reorganized PSNH as contemplated by the rate plan, would endanger the viability of the reorganization plan approved by the bankruptcy court. p. 425.

10. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Return on equity.

[N.H.] The rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) includes a return on equity "collar" that holds the equity

returns to be earned by the reorganized PSNH between a ceiling of 13.25% and a floor of 8% beginning in 1993, increasing to 9% in 1994, 9.75% in 1995, and 10.5% in 1996. p. 428.

11. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Rate adjustments.

[N.H.] Rate increases included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire were made subject to adjustment to the extent necessary to (1) hold return on equity for the reorganized PSNH between an established ceiling and floor, (2) reflect changes in capital expenditures that were required by legislative or regulatory action, (3) reflect changes required by the Nuclear Decommissioning Finance Committee, to the extent not otherwise covered in the rate plan, (4) reflect revenues required to accomplish programs mandated for a reorganized PSNH by legislators or regulators, and (5) reflect costs associated with conservation and load management programs

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approved by the commission. p. 428.

12. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Sales forecast.

[N.H.] In approving a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Commission of New Hampshire (PSNH), the commission accepted a sales forecast that predicted an annual sales growth rate of 2.7% for the reorganized PSNH over the 7-year period covered by the rate plan. p. 434.

13. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Fuel and purchased power adjustment clause.

[N.H.] The purpose of the fuel and purchased power adjustment clause (FPPAC) included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) is to eliminate the risk that volatility in fuel and purchased power expense could jeopardize the financial condition of a reorganized PSNH or alternatively result in a windfall to the company; the FPPAC countervails those risks through the timely, adequate recovery from or refund to ratepayers of changes in fuel and purchased power expense, without a change to base rates. p. 436.

14. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Fuel and purchased power adjustment clause.

[N.H.] The base reference level for the fuel and purchased power adjustment clause (FPPAC) included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) was designed so that there would be no revenues generated during the fixed rate period under the FPPAC mechanism if the financial and economic assumptions on which the rate plan was based were to occur; under the terms of the FPPAC, PSNH would recover or refund the difference between its actual fuel and purchased power costs and the projected base reference amount of those costs used to set base rates. p. 436.

15. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Fuel and purchased power adjustment clause.

[N.H.] The following costs and expenses were recoverable under the fuel and purchased

power adjustment clause included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH): (1) energy expenses and changing fuel prices; (2) purchased capacity and transmission expense; (3) reductions to small power producer/cogeneration payments; (4) Hydro-Quebec support payments; (5) Seabrook power contract payments; (6) the cost of the New Hampshire Electric Cooperative Seabrook buyback agreement; (7) PSNH's share of joint dispatch savings; (8) the cost of environmental safety backfits, fuel switching or other mandated improvements which would require a capital expenditure of at least $20 million or generate an increase or decrease to annual expense of at least $2 million. p. 436.

16. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Fuel and purchased power adjustment clause.

[N.H.] The substantive difference between the fuel and purchased power adjustment clause (FPPAC) included in a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) and the energy cost recovery mechanism which the FPPAC replaces is that the FPPAC takes into account non-energy costs such as purchased capacity expense and costs incurred under the Seabrook power contract. p. 436.

17. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Seabrook power contract.

[N.H.] Under a commission-approved reorganization agreement and electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New

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Hampshire, PSNH would maintain its current ownership of the Seabrook nuclear plant until the consummation of a merger with Northeast Utilities, whereupon PSNH would transfer its Seabrook interest to a newly formed NU subsidiary to be named North Atlantic Electric Company (NAEC); once PSNH had transferred its Seabrook interest to NAEC, its rights and obligations to Seabrook power would be defined under the terms of a Seabrook power contract; the contract would require PSNH to pay all costs associated with the NAEC Seabrook ownership share, and to assume all risks, regardless of whether such costs and risks were unforseeable or whether Seabrook were operating. p. 438.

18. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Seabrook power contract — Prudence review.

[H.N.] The Seabrook power contract contemplated by a reorganization plan for resolving the Chapter 11 bankruptcy of Public Service Company of New Hampshire (PSNH) would require PSNH to pay *all* costs associated with its share of the Seabrook nuclear plant (which would be transferred to North Atlantic Electric Company [NAEC] under the terms of the reorganization plan), subject to the following exceptions: (1) NAEC must seek commission approval to incur additional costs at Seabrook in excess of $200 million above the initial $700 million value attached to Seabrook; (2) NAEC must seek commission approval to incur any additional costs above the initial $700 million value attached to Seabrook, if the plant is not operating prior to December 31, 1992; (3) parties to the Seabrook power contract have agreed to waive their

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respective rights to seek any change in the cost of service formula before the Federal Energy Regulatory Commission; and (4) any and all Seabrook costs subject to fuel and purchased power clause recovery from PSNH ratepayers would be subject to review by the commission as to their prudence. p. 438.

19. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Investment adder.

[N.H.] In approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that a minimum of $300 million of synergies — cost savings and other benefits — would accrue to a reorganized PSNH if the proposed merger of NU and PSNH were consummated; accordingly, the commission agreed to include an investment adder of $300 million in the rate base of the reorganized utility for the purpose of determining whether the ceiling of a return on equity collar included in the rate plan were reached; if the merger is not consummated, the commission will revisit the issue of whether synergies for a stand-alone PSNH would justify an investment adder. p. 443.

20. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Approval conditions.

[N.H.] Approval of a rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire was *not* conditioned on the consummation of a proposed merger of PSNH with Northeast Utilities; nevertheless, if the merger is not consummated, the commission may reassess whether the rate plan would continue to serve the public good. p. 448.

21. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Reorganization financing.

[N.H.] In approving a plan for financing the reorganization of Public Service Company of New Hampshire (PSNH) — an electric utility operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code — the commission found that the financing would be required to enable the reorganized utility to provide safe and reliable service and that the financing proposal was economically justified when measured against alternatives; moreover, the commission found that the capital structure resulting from the proposed financing

of the reorganization would be supportable by reasonable rates. p. 449.

22. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Affiliate contracts.

[N.H.] In approving a reorganization plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that proposed contracts between affiliated public utilities that would be entered in connection with the plan were reasonable. p. 469.

23. BANKRUPTCY — Chapter 11 reorganization — Electric rate agreement — Structural changes.

[N.H.] In adopting a rate agreement executed by Northeast Utilities Services Company, acting on behalf of its parent company, Northeast Utilities (NU), and the state of New Hampshire, for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH), the commission approved (1) the commencement of business as public

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utilities by North Atlantic Electric Company (NAEC) and another NU subsidiary, which would operate the Seabrook nuclear plant, (2) the transfer of PSNH's Seabrook interests (including land and fuel) to NAEC, (3) the merger of Northeast Utilities Acquisition Corporation (NUAC) with and into PSNH — NUAC would cease to exist when a proposed merger between NU and PSNH took effect, and (4) mortgages over present and future property of PSNH and NAEC. p. 470.

24. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval — Resolution of bankruptcy — Electric utilities.

[N.H.] In reviewing an electric rate agreement for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH), the commission found that the acquisition of PSNH by Northeast Utilities, as contemplated by the rate agreement, would be a pragmatic resolution to the bankruptcy. p. 471.

25. BANKRUPTCY — Chapter 11 reorganization — Electric rate agreement — Grounds for approval.

[N.H.] In adopting an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that the plan would result in just and reasonable rates that equitably balanced the interests of ratepayers and investors, would fairly resolve the bankruptcy, and would establish a workable system for providing reliable electric service. p. 472.

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i. BANKRUPTCY — Chapter 11 reorganization — Seabrook nuclear plant — Electric utility.

[N.H.] Discussion, by the commission, of how the involvement of Public Service Company of New Hampshire in the construction of the Seabrook nuclear power plant, coupled with its inability under state law to recover construction work in progress, lead to financial difficulties and the filing of a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. p. 400.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

A. *BACKGROUND*

[1] [i] This proceeding was initiated by the commission on December 22, 1989 pursuant to a mandate of the N.H. Legislature embodied in RSA 362-C. In that statute the Legislature directed the commission to determine generally, whether the acquisition of Public Service Company of New Hampshire (PSNH) by

Northeast Utilities (NU) would be consistent with the public good, and specifically, whether

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the proposed agreement[1](31) between the State of New Hampshire (State) and NU relating to the reorganization of PSNH would be consistent with the public good and whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved. This agreement and the authorizing legislation were developments in a series of efforts to restore PSNH to financial health and ensure the adequacy, reliability and cost of electric service in New Hampshire. Uncertainties have clouded PSNH's financial health and ability to provide electric service since the liquidity crisis of March 1984 when, reacting to revised estimates for the completion of the Seabrook Nuclear Power Plant (Seabrook), a group of banks announced that they were unwilling to make advances under the terms of PSNH's revolving credit agreement. As a result, PSNH was unable to meet its payments for the costs at Seabrook and suspended construction in April 1984. In response, the Joint Owners entered into a number of agreements, including the establishment of an Executive Committee to oversee the construction budget, and on June 23, 1984 resolved to resume construction of Seabrook Unit I and initiate a phased transfer of construction and operation responsibilities from PSNH to an independent entity. The latter was never accomplished and construction, and thus far operation, have remained the responsibility of the New Hampshire Yankee Division (NHY) Division of PSNH whose management reports dually to PSNH and to the Joint Owners.

Meanwhile, PSNH instituted severe cash conservation measures and proposed a three phase financing plan intended to insure the availability of all funding necessary to complete Seabrook Unit I. In the first phase, PSNH sought and received authority to issue $90,000,000 of short term debt. Docket DF 84-121, orders no. 17,057 (69 NH PUC 275 [1984]) and no. 17,076 (69 NH PUC 326 [1984]). In the second phase, the commission authorized PSNH to raise $425,000,000 through the issuance of debentures and of warrants to purchase shares of stock. Docket DF 84-167, orders no. 17,222 (69 NH PUC 522 [1984]) and no. 17,228 (69 NH PUC 558 [1984]). This second phase financing was intended to enable PSNH to meet all general corporate purposes until the end of 1986 with the exception of Seabrook construction financing. The then anticipated commercial operation date of Seabrook Unit I was between May and August 1986.

The third phase of the financing, referred to as the "Newbrook Plan" by PSNH, was considered in DF 84-200 which the commission opened on August 2, 1984 for the purpose of investigating whether pre-financing the completion of the construction of Seabrook Unit I was in the public good pursuant to RSA 369:1 *et seq.* In this docket, the commission reviewed the terms, conditions and the amount of the third phase financing, the cost to complete and alternatives to the completion of Seabrook Unit I and whether it was financially feasible for PSNH to engage in its proposed construction plan including an evaluation of the level of revenues needed to support the resulting capital structure.

The N. H. Supreme Court considered an appeal from the commission's approval of the first phase of the financing in *Appeal of Seacoast Anti-Pollution League*, 126 N.H. 789, 497 A.2d 847 (1985), and of the second phase in both *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984) and in *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708, 490 A.2d 1329 (1984) and affirmed the orders of the commission.

On April 18, 1985 the commission issued its report and order conditionally approving the third phase of the PSNH financing and authorizing PSNH to issue and sell deferred interest bonds or tax exempt pollution control revenue bonds in amounts up to a total of $525 million.

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Remanded by the N.H. Supreme Court, on November 8, 1985 the commission issued its 15th supplemental order no. 17,939 setting forth the reasonable and probable range of retail rates to assure PSNH a lawful return on investment in Seabrook Unit I. (70 NH PUC 886 [1985]). The N.H. Supreme Court affirmed the orders of the commission in *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 507 A.2d 652 (1986).

On May 29, 1986, PSNH filed with the commission Tariff No. 30-Electricity, which was designed to increase non-energy revenues by approximately $58.9 million. In addition, the petition proposed a step increase in annual revenues of approximately $35 million which was to become effective one year after the effective date of the initial increase. On June 29, 1987, the commission granted PSNH an increase of $20,490,899. *Re Public Service Company of New Hampshire*, 72 NH PUC 237 (1987). Most of the difference between the petition and the commission's findings is attributable to the disparity between PSNH's request for a 19% return on equity, which it asserted represented the appropriate return for the common equity of a company as risky as PSNH, and the commission's finding of 15%. The commission's order was based in part on staff testimony that PSNH was so risky that from an investor perspective, its stock was a speculative investment and that "profits such as are realized or anticipated in . ... speculative ventures" offend the judicial standard as enunciated in *Bluefield Water Works & Imp. Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679, 692-693, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). PSNH appealed the commission's order, and nearly simultaneously petitioned the commission to alter existing rates on account of emergency circumstances. It requested an emergency rate surcharge of approximately $70.98 million in additional revenues, an increase of 15%. In order to expedite consideration and determination of this request, PSNH asked that the commission reserve, certify, and transfer to the N.H. Supreme Court the question of whether a utility that had insufficient cash from internal sources and was unable to attract external capital to meet the requirements of its business and otherwise support its financial integrity, was entitled to rates that would restore its financial integrity consistent with the interests of customers, notwithstanding RSA 378:30-a, the so-called anti-CWIP statute. On September 2, 1987, the court deferred acceptance of the transferred questions until the commission had addressed two issues with findings of basic fact: the claimed need to include some of the Seabrook Unit I investment in rate base in order to make interest payments and expand services to customers, and the dates and amounts of PSNH's investments in Seabrook. The commission submitted to the court a record reflecting findings of fact on both issues on October 16, 1987. Report and sixth supplemental order no. 18,873, 72 NH PUC 485 (1987). In respect to the claimed need for relief, the commission found that it was unlikely that PSNH would be able to meet its obligations from either external financing or current rates, even assuming that its appeal of order no. 18,726 in DR 86-122 were successful. It further found that adjustment of any of the variables of the traditional ratemaking formula designed to provide the requested relief would also be in violation of RSA 378:30-a. On January 26, 1988, the court found that the anti-CWIP statute was constitutional and that the commission was not authorized to ignore the restriction imposed by RSA 378:30-a when it determines that an emergency exists for a public utility. *Petition of Public Service Co. of New Hampshire*, 130 NH 265, 92 PUR4th 546, 539 A.2d 263 (1988). Subsequently, on August 5, 1988, the court also affirmed the

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commission's DR 86-122 order. *Appeal of Public Service Co. of New Hampshire,* 130 N.H. 748, 96 PUR4th 536, 547 A.2d 269 (1988), cert. denied.

B. PSNH BANKRUPTCY PROCEEDING

On January 28, 1988, PSNH filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. In its Form 10K for 1989, PSNH summarized the reasons for its bankruptcy filing as follows, linking the bankruptcy directly to PSNH's investment in Seabrook:

> The financial difficulties that led to the Company's bankruptcy were attributable to a combination of several factors: the magnitude of the Company's investment in the Seabrook Nuclear Generating Station Unit 1 ("Seabrook"), which represents more than half of the book value of the Company's assets on its financial statements; the delay in obtaining approval of the operation of Seabrook from the Nuclear Regulatory

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> Commission ("NRC"); and the prohibition under New Hampshire law to the realization by the Company of any cash income from or return on that investment until Seabrook provides service to customers (the so-called anti-CWIP statute).

Staff late filed Exhibit 20, 1989 Form 10K, p. 1.

PSNH had begun construction of a nuclear power plant at Seabrook, N.H. after receiving a siting certificate in 1974. The Seabrook Nuclear Power Plant was originally planned as a two-unit nuclear reactor plant with a projected total cost of approximately $1.3 billion and with completion projected for Unit 1 in November 1979. On May 7, 1979, the N.H. Legislature enacted the "anti-CWIP" law (RSA 378:30a), prohibiting any recovery in rates for any costs expended by a utility for construction of a plant until the plant was in commercial operation. Partly as a consequence of the anti-CWIP statute, PSNH reduced its original 50% investment in the proposed plant to 35.6% in the early 1980's. By October 1986, only one unit had been completed. The cost of Seabrook including all direct costs and interest charges as of January 1, 1990 had escalated to approximately $6.5 billion due to delays in receiving a commercial operating license from the NRC and the delays caused by the Chapter 11 proceedings. Of that total investment, the amount invested by PSNH was estimated to be $2.9 billion as of January 1, 1990. (Ex. NU 1-E, Disclosure Statement at 71)

During the pendency of the Chapter 11 Reorganization, PSNH has functioned as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code (Disclosure Statement at 17, Ex. NU 1-E), subject to the jurisdiction of this commission in the ordinary course of business.

The State of New Hampshire has been actively involved in the bankruptcy case expressing the interest of the State in the assurance of an adequate source of electric power for its residents at reasonable rates. (Par. 9, Bankruptcy Court General Findings of Fact and Conclusion of Law Re Plan Confirmation Issues Ex. NU 14 (hereinafter Findings). It intervened in the bankruptcy case in hopes of achieving a satisfactory resolution on a consensual basis. It also, in May 1989, created the New Hampshire Energy Authority and empowered it to acquire the assets of PSNH,

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should that prove necessary to resolve the bankruptcy of PSNH, to avoid long term uncertainty concerning the adequacy, reliability and cost of electricity to prevent monopolistic abuses and to make available a governmental alternative to restore the public trust by providing essential electric service to the public. RSA 362-B. The statute gave the State leverage to negotiate a favorable public utility alternative to a governmental takeover.

On June 22, 1988 the Court granted the State explicit party-in-interest status within the meaning of § 1109 (b) of the Bankruptcy Code and authorized the State to intervene generally in the bankruptcy proceedings pursuant to Bankruptcy Rule 2018 (a). The State negotiated with the principal parties concerning the level of rates which the debtor may charge N.H. ratepayers after confirmation of a plan (Disclosure Statement at 19). Negotiations resulted in plans proposed by PSNH management, Northeast Utilities, the United Illuminating Company and the New England Electric System. (Findings, par. 7 Disclosure Statement at 23.)

On November 22, 1989, The Governor and the Attorney General, on behalf of the State of New Hampshire entered into an Agreement with NU intended to resolve the reorganization proceedings. The State also announced that it would enter into a similar agreement with any other party that could produce a plan that would resolve the bankruptcy; however, any alternative plan would require the support of the creditors and shareholders similar to the support accorded the NU plan at the time of the November 22, 1989 Agreement. In December 1989, PSNH management joined NU in support of its reorganization proposal. United Illuminating and New England Electric have withdrawn their plans.

The New Hampshire Legislature approved the Rate Plan on December 18, 1989, subject to NHPUC review and implementation. HB1-FN. RSA 362-C. The Rate Plan, which suspends the Anti-CWIP Law for the PSNH Reorganization provides for seven annual 5.5% increments

in the company's retail rates, commencing January 1, 1990. The first increase was implemented on December 28, 1989. DR 89-219, Report and Order No. 19,655. The amounts collected are currently being held in escrow by the New Hampshire State Treasurer, subject to final approval by the NHPUC.

The negotiations among the various parties in interest to this case with regard to various plan proposals of the parties culminated in the filing on December 28, 1989, of the Third Amended Disclosure Statement of Northeast Utilities Service Company in connection with the Third Amended Joint Plan of Reorganization of NU, PSNH, the Official Committee of Unsecured Creditors, the Official Committee of Equity Security Holders, Citicorp, Consolidated Utilities and Communications, Inc. and Shearson, Lehman Hutton, Inc. This Plan was the subject of the confirmation hearings before the U.S. Bankruptcy Court for the District of New Hampshire (In *Re: Public Service Company of New Hampshire*, Debtor Chapter 11 Case No. 88-00043).

On March 27, 1989 the Plan's proponents mailed a ballot, copies of the Court's notice, the Disclosure Statement, transmittal letter from William Ellis and John Duffett, the chief executive officers of Northeast Utilities and the Debtor respectively, and a return envelope for the ballot accepting or rejecting the Plan, to all creditors and all equity security holders of the Debtor of Record on November 27, 1989. (Findings, par. 19). The Plan was accepted in writing by the

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unsecured creditors and equity holders. A majority of secured creditors have also accepted the Plan. On April 20, 1990, the Bankruptcy Court confirmed the Plan. Order BK No. 88-43. Upon the effective date of the Reorganization Plan (August 1, 1990 or such later date as may be agreed), NU will make approximately $2.3 billion in cash and securities available for creditors and equity security holders. The effective date is contingent on NHPUC approval of the Rate Plan.

In accordance with the provisions of the Reorganization Plan, all directors of the company are deemed to have resigned on April 30, 1990. A new seven-member board (three members approved by the Equity Committee, three members by the Unsecured Creditors Committee, and one member jointly approved by both committees) took office. (Par. 19, order confirming Third Amended Joint Plan of Reorganization)

A separate order of the Bankruptcy Court, entered April 13, 1990, placed in effect a Management Services Agreement between the company and NUSCO as of April 30, 1990. The Bankruptcy Court found that the Management Services Agreement is fair, reasonable, consistent with public policy and the public interest and is in the best interests of creditors and security holders of the Debtor. (Par. 31 Bk No. 88-43 order).

The April 20, 1990 Confirmation Order also approved the merger agreement finding it to be fair, reasonable, consistent with public policy and the public interest, and made it binding on PSNH, NU, NUSCO and NU acquisition corporation without the need for further action by any other entity. In addition, the FERC approved the Management Services Agreement, 50 Fed. Energy Reg. Comm. Rep. (CCN) ¶61, 266 at 61, (1990). The SEC has not rejected the Management Services Agreement. SEC File No. 70-7695.

C. DR 89-244

The instant proceeding was opened by an order of notice on December 22, 1989 to consider the petition of Northeast Utilities Service Company (NUSCO) acting on behalf of its parent NU for Approval and Implementation of the Agreement Between the Governor and Attorney General of the State of New Hampshire and NUSCO. Larry M. Smukler, Esq., who was the State's chief negotiator for the Rate Agreement was confirmed Chairman of the N.H. Public Utilities Commission on December 20, 1989. Subsequently John N. Nassikas was appointed Special Commissioner and Presiding Officer after Mr. Smukler recused himself from this proceeding.

The order of notice set a prehearing conference for January 10, 1990 at which the parties would address issues of scope, procedure, intervention and schedule, and granted full party status to all parties to DR 89-219, the

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Temporary Rate proceeding. At the procedural hearing, the State presented Stipulated Recommendations of the Parties regarding Scope, Procedure and Schedule. Subsequently, the parties presented more detailed recommendations regarding scope. On January 19, 1990, the commission issued report and order no. 19,674 granting all motions for intervention and limited intervention that had not been previously granted, adopting the recommendations of the parties regarding procedures and schedule, and setting forth the scope of the proceeding.

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NUSCO's Petition also requested waivers of certain provisions of the requirements of N.H. Admin. Rule Puc 1603.03 (the tariff filing requirements), arguing that certain information and materials were either not available to NUSCO or were not relevant due to the unique and special nature of this proceeding. The parties met on January 11, 1990 and on January 18, 1990 filed a document entitled "Stipulation on NUSCO's Requests for Waivers of Certain Filing Requirements." By report and order no. 19,673 the commission accepted the stipulation finding that the purpose of the commission's rules would be fulfilled by the information and data to be provided by NUSCO and PSNH in accordance with the Stipulation. Order no. 19,677 waived requirements regarding notice and ordered NUSCO to consult with the parties on the issuance of a bill insert describing and explaining to customers the Rate Agreement and Plan for Reorganization of PSNH.

During the course of the proceeding, parties have filed petitions and the commission has issued orders in three areas: scope, discovery and late interventions. On January 25, 1990, John V. Hilberg (Hilberg) filed a motion requesting the commission to clarify and/or amend its order no. 19,674 regarding scope, and on February 20, 1990 filed a second motion requesting reconsideration. On February 8, 1990 the Office of the Consumer Advocate (OCA) also filed a motion requesting clarification or amendment of the order. On February 8, 1990, the Hydro Intervenors filed a motion for rehearing. The commission denied Hilberg's motion in report and order no. 19,703, finding that contrary to Hilberg's assertions, the standards for the commission's review must be the result of the ratemaking process rather than a comparison with a set of alternative rates that would obtain in other circumstances, and that consideration of whether the Agreement and proposed rates represented a reasonable resolution of the PSNH bankruptcy did not entwine the commission with the judgments of the Bankruptcy Court as the roles of the Bankruptcy Court and the commission were separate and distinct. The commission denied Hilberg's second motion in order 19,726 on the grounds that it was untimely and alleged essentially the same assertions as his first motion.

In report and order 19,714, the commission clarified its order in response to the OCA to emphasize that it did not believe that it could find that the Plan of Reorganization would serve the public good independently of finding whether or not the rates required under the Rate Agreement were just and reasonable, and to state that it was well aware of the "constitutional calculus" defined by the U.S. Supreme Court in *Permian Basin Area Rate Cases,* 390 U.S. 747 at 769, 75 PUR3d 257, 20 L.Ed.2d 312, 88 S.Ct. 1344 (1968), cited at p. 639 of the *Appeal of CLF, Op. Cit.* and intended to apply it in balancing the interests of ratepayers and investors. The commission denied the motion of the Hydro-Intervenors in report and order 19,715, finding that the actual reduction of the rates in the long term rate orders of the small power producers was not an integral part of the Rate Plan and consideration of that issue could be appropriately deferred until there was a issue before the commission requiring resolution.

Second, the commission has responded to a series of motions regarding problems of discovery. In response to motions filed by staff and PSNH, the commission by order no. 19,727 amended the procedural schedule to allow additional time for the completion of discovery. The OCA filed a motion to compel responses to data requests on March 1, 1990, but withdrew it on March 8th. Order no. 19,736 and order no. 19,742 granted requests by staff, NUSCO, and PSNH for protective orders for confidential, commercial or financial information. In response to

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objections to these orders by the Hydro and the Bio-mass Intervenors and SES

Concord, the commission issued order no. 19,767 requiring NUSCO and PSNH to file comments on whether counsel of those intervening parties should be permitted to review the studies covered by the protective orders. When NUSCO and PSNH, the only parties that could be prejudiced by wider review of the studies, stated that they did not object to the relief requested by the Hydro and the Bio-mass Intervenors and SES Concord, the commission granted the motions for reconsideration by order no. 19,781.

By order no. 19,812, the commission granted the motion of PSNH for a protective order to afford proprietary treatment to a list of employees who were to be terminated from PSNH in conjunction with the newly assumed NU management of PSNH. Order no. 19,829 granted a motion by NU for a protective order regarding the Seabrook budget study information on the grounds that premature public dissemination and disclosure of the information could adversely affect the morale of NHY employees thereby impairing NHY's ability to bring Seabrook to commercial operation. On May 22, 1990, the commission by order 19,834 denied the motion by the Hydro Intervenors requesting that NU provide financial forecasts using NU's financial model and output formats but incorporating alternate assumptions proposed by the Hydro Intervenors and other related information. The commission found that provision of the information requested would be unduly burdensome to produce, would be of minimal value, was untimely and would disrupt the orderly proceeding of the docket.

Third, the commission dealt with several instances of late intervention. On April 9, 1990, the commission granted from the bench a motion to intervene by the New Hampshire Electric Cooperative, Inc. (NHEC). On May 2, 1990, by order no. 19,811 it made the New Hampshire Yankee Division of PSNH, the managing agent for the construction and operation of the Seabrook Nuclear Power Plant, a mandatory party to the proceedings so far as its interests may appear.

Finally, dissident stockholder Robert C. Richards (Richards) filed motions to intervene out of time on April 25 and 26, 1990, and petitions for intervention on behalf of Martin Rochman and Edward Kaufman (Rochman and Kaufman) on May 7, 1990. The stated purpose of these interventions was to challenge the constitutionality of RSA 362-C and the rates that may be established pursuant thereto. The Official Committee of Equity Security Holders of PSNH, PSNH, NU, the State and the BIA opposed the interventions. The commission denied the untimely petitions, and Richards' motion for rehearing of May 11th, finding that the interventions will not serve the interests of justice and will impair the orderly and prompt conduct of the proceedings. Report and orders no. 19,814, no. 19,830 and no. 19,831. On May 16, 1990, Richards filed a petition with the N.H. Supreme Court on behalf of himself, Kaufman and Rochman for a Writ of Prohibition to the New Hampshire Public Utilities Commission. On June 18, 1990, the N.H. Supreme Court denied the petition for writ of prohibition without prejudice.

Hearings on the merits were held between April 9 and May 5, 1990, and hearings on rebuttal and supplemental testimony were held on May 22 through 25, 1990. There were 21 hearing days.

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Parties filed briefs on June 8, 1990. The commission granted requests by the State, the BIA and Hilberg for extensions until June 18, 1990 for the filing of their trial briefs.

On June 6, 1990, Counsel for NU filed, per its agreement with the State and staff, an opinion to the effect that the waiver of rights of set-off under Section 6 of the Seabrook contract will not preclude PSNH as buyer under the contract from pursuing all rights and damages arising from the Seabrook contract.

On June 8, 1990 the Hydro Intervenors also filed a motion for rehearing on their request for further discovery. On June 21, 1990, the commission denied the motion by order no. 19,859, on the grounds that the alternatives proposed by the Hydro Intervenors could result in substantial changes to the Rate Agreement, that the commission clearly established within its previous scoping orders in this docket that it will apply applicable law in determining whether or not the proposed rates are just and reasonable, that the requested information would have minimal probative value, and that

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the Hydro Intervenors had presented no factual or legal arguments that had not been already considered by the commission prior to its issuance of order no. 19,834.

On June 22, 1990, NU and the State filed joint recommendations appended to this report.

II. POSITIONS OF THE PARTIES

A. NORTHEAST UTILITIES

NU avers that the rates under the Rate Agreement are just and reasonable under all the standards identified in the commission's scoping order. The rates under the Rate Agreement are likely to be more favorable than rates that could be foreseen under traditional ratemaking whether PSNH becomes an affiliate of NU or remains a stand-alone company. It argues that the Rate Agreement fairly balances the interests of PSNH investors and ratepayers, in that the rates are the minimum reasonably required to raise amounts necessary to satisfy PSNH's creditors and equity holders while not unduly burdening ratepayers or the New Hampshire economy. Under the Plan, by the end of the ten year period, real rates are projected to be lower in New Hampshire than they are today. The rates will be competitive with those expected for other New England utilities, close to the expected price of electricity of other NU subsidiaries, only slightly higher than those forecasted for the New England region, and substantially lower than those forecasted for United Illuminating, the second largest owner of Seabrook. NU notes that there is no other alternative plan of reorganization to which rates under the Rate Plan can be compared.

NU contends that the Acquisition Premium is in the public interest. It is a regulatory asset created by the Rate Agreement, representing the portion of NU's investment after subtracting the value assigned to Seabrook and the book value of PSNH's non-Seabrook assets. The concept was developed so that PSNH could use certain tax benefits more effectively and apply an asset amortization schedule tailored to the specific financial demands and rate recovery limits imposed on the reorganized PSNH. Thus, it serves the overall goal of achieving a viable balance between the creditors' and shareholders' demands for prompt recovery of their investment and the ratepayers' interest in minimizing rate increases. NU argues that the exclusive interest of the

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Hydro Intervenors in this proceeding is in recharacterizing the Acquisition Premium to make Seabrook power as expensive as possible, regardless of how such changes affect ratepayers. NU believes that since the accounting treatments of various PSNH assets under the Rate Agreement further the interests of New Hampshire ratepayers and conform with Generally Accepted Accounting Principles, the commission should reject any attempts to undermine those accounting treatments to further the interests of the Hydro Intervenors.

NU avers that the Fuel and Purchased Power Adjustment Clause (FPPAC) fairly balances the interests of investors and ratepayers. FPPAC is based on traditional ratemaking principles, including ongoing prudence review of the cost components. Its purpose is identical to that of PSNH's current Energy Cost Recovery Mechanism (ECRM) in that it provides for a periodic and consistent adjustment of electric rates to reflect certain of PSNH's costs. It is also designed to reflect the unique agreement by PSNH to fix base rate increases for seven years without regard to inflation or fluctuation of sales and operation and maintenance (O&M) expenses not related to fuel costs. The basic difference between FPPAC and ECRM is that FPPAC provides for the recovery of long-term purchased capacity costs, including those under the Seabrook Power Contract, in addition to fuel and energy costs. NU notes that the issues that have been raised concerning FPPAC revolve around the assumptions in establishing PSNH's fuel and purchased power cost projections rather than the design of the mechanism. NU argues that the assumptions underlying the FPPAC "BA," FPPAC's baseline fuel and purchased power expense projections, are balanced and reasonable and characterizes them as a set of individually reasonable assumptions that, in the aggregate, were likely to balance each other over the life of FPPAC and under various factual circumstances, including fossil fuel prices, regulatory changes, Seabrook O&M and

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performance variations and changes in the market cost for capacity. NU accepts the inclusion of interest and a trigger mechanism in FPPAC as proposed by staff, but argues that incorporating a Seabrook performance mechanism would substantially alter a fundamental term of the Rate Agreement and would be inherently unfair to PSNH because better than anticipated performance would provide no benefit to PSNH if it resulted in the return on equity (ROE) exceeding the equity collar (13.25%) to balance the potential loss if performance were worse than anticipated. NU also contends that such a condition might jeopardize the reorganization financing and the Nuclear Regulatory Commission (NRC) approval of NU becoming managing agent for Seabrook, and is not needed because NU has an incentive to contain costs in order not to lose customers to self-generation.

On other issues regarding FPPAC, NU avers that it has satisfied the concerns raised by staff about the capacity and energy costs to PSNH ratepayers of NU's off-system capacity sales. It notes that neither the renegotiation of the NHEC buy-back of Seabrook capacity or of the power purchase arrangements with certain small power producers (SPPs) need be an immediate concern as Rate Agreement may be reopened to address the buy-back arrangements, and renegotiations of the SPP power purchase arrangements can serve only to reduce rates.

NU avers that the Seabrook Power Contract, designed to minimize financing costs and ensure the safe operation of Seabrook, is in the public interest. While PSNH's obligations to

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North Atlantic Energy Corporation (NAEC) are essentially unconditional, ratepayers' obligations to PSNH are not; NU and NAEC's waiver of any provision of law that would preclude commission review of prudence of Seabrook costs will last as long as the payments under the Seabrook Power Contract are treated in a manner similar to their treatment under FPPAC. NU agrees that nothing in the Contract would foreclose any cause of action that PSNH would otherwise have against NAEC or diminishes existing commission powers with respect to replacement power costs. NU also notes that the Seabrook Power Contract avoids rate shock by incorporating a qualified phase-in plan for PSNH's Seabrook investment and that the Seabrook cancellation recovery provision is at least as favorable as any likely outcome under traditional ratemaking.

NU contends that the Investment Adder, defined as "the capitalized synergies, efficiencies or other cost savings or benefits brought by NU to the acquisition of PSNH" (Ex. NU 1-E at D-85-86), is justified by the synergies, which it calculates to exceed $515 million (PSNH's share of Seabrook O&M expenses at $188 million, the fossil steam unit availability estimated from three years of actual data and two years of projected data at $98 million, the NEPOOL related synergies at $146 million, and the Administrative and General (A&G) expense and coal purchasing synergies at $86 million). NU argues that the NEPOOL synergies are not at risk of other members eliminating the savings by modifying the NEPOOL Agreement because such changes pertain to some of the most basic energy and capacity allocation formulas in the NEPOOL Agreement and are therefore not likely to attain the necessary consensus among NEPOOL members. NU argues that under the Rate Agreement the commission cannot revisit the quantification of the synergies to adjust the Investment Adder after the merger but retains its authority to examine the reasonableness of the O&M costs incurred by PSNH after the affiliation. NU expects only to recover prudently incurred costs, but cannot offer to be a guarantor of the projected synergies.

NU argues that the ROE Collar fully protects ratepayers from PSNH receiving excessive returns in that it caps PSNH's cumulative net present value return on equity (CUM NPV ROE) during the fixed rate period at 13.25% based on NU's $2.3 billion investment in PSNH. It states that the Collar provides only limited protection for investors as the same calculation for the floor is actually a 2.8% ROE.

NU contends that the Base Rate modifications authorized under Section 5(a)(v)(A) of the Rate Agreement (Ex. NU 1-E at D-14-16) are reasonable and necessary. This section allows for adjustments for legislative or

regulatory changes which require capital expenditures of at least $20 million (or an increase of annual expense of at least $2 million), changes in the required payments to the Nuclear Decommissioning Fund, funding for mandates by legislative or regulatory authorities, recovery of costs of conservation and load management (C&LM) programs undertaken with commission approval and changes to the accounting standards. It notes that it is undisputed that the definition of the term "costs" includes direct program costs, and that the issue of whether it also includes lost revenues and incentives will be resolved in docket DR 89-187. Therefore, NU requests that the commission define the term "costs" in this docket consistent with its findings in DR 89-187.

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NU has clarified that this section did not intend to permit double recovery for the same expenses in both base rates and FPPAC, has agreed that it was not the intent of the Rate Agreement that either PSNH or ratepayers should be disadvantaged by PSNH's pursuit of least cost planning measures, and has adopted the proposal that additional revenues obtained from the 5.5% compounding effect of reimbursing PSNH for C&LM expenses through base rate increases will be spent on additional C&LM efforts.

NU states that the Rate Agreement provides substantial non-rate benefits to ratepayers and the State of New Hampshire which are further reasons to determine that its implementation is consistent with the public good. These benefits include the strength of NU management, the application of NU's expertise to foster the safe and economical operation of Seabrook, assured capacity resources over the next two decades at embedded cost and the establishment of financially viable electric utilities (PSNH and NAEC) to serve New Hampshire reliably and without substantial risk of another bankruptcy. The viability is indicated by the financial ratios, the evidence that the reorganization financing will be successful and the reasonableness of NU's sales forecasts.

NU presented comprehensive testimony relating to the terms and conditions of the first step financings required to finance the $2.3 billion reorganization plan confirmed by the Bankruptcy Court. NU is not seeking approval at this time of second step financing.

Finally, NU argues that it is not necessary for the commission to condition its finding that the Rate Agreement is in the public good with a requirement that the merger take place. NU first argues that mutual termination, a breach by either PSNH or NUSCO of the Merger Agreement, or the emergence of a new suitor are all unlikely events. It notes that the evidence of the financial ratios indicates that while Stand-alone PSNH would initially be an unattractive investment, it would be financially viable and would improve over time. If Seabrook failed to achieve commercial operation or were cancelled, Stand-alone PSNH would still be able to service its debt and preferred stock, finance necessary construction expenditures and remain viable over time. NU notes that NUSCO will be obligated to provide management services to reorganized PSNH for six months after the termination of the Merger Agreement and assist with the transition, and must continue to provide management services for Seabrook (assuming that NRC and Joint Owner approval have been received) for up to five years. While there will be impacts on rates if the NU synergies are not achievable by Stand-alone PSNH, savings like the A&G, coal purchasing, fossil steam unit availability improvements and Seabrook operating efficiencies could continue to accrue to PSNH as a result of the lessons learned during NU's management. Even acknowledging the increase in rates compared to the merged PSNH, NU argues that the fundamental issue is whether New Hampshire ratepayers would be better off facing such increases under the Rate Agreement or the return of PSNH to the uncertainties of the Bankruptcy Court. In addition to its arguments that an unconditioned approval is justified by the evidence, NU also argues that a finding of public good conditioned on the merger would make it impossible to finance the step one reorganization and therefore would preclude the timely resolution of the bankruptcy.

NU concludes by requesting the commission to make the ancillary findings regarding the financings, the affiliate contracts and the structural changes required by the Joint Plan.

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B. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

PSNH stated that it joined in and supported the Brief and Requests for Findings and Approvals filed by NU in this proceeding.

In a letter dated June 15, 1990, PSNH responded to two points raised by the OCA to clarify its position. It argues that as there has been no disallowance for Schiller outage costs and the docket concerning those costs has been closed, that issue is not appropriately within the scope of these proceedings. In regard to the OCA recommendation that the commission finding that the Rate Agreement is in the public good be contingent on the merger, PSNH argues that such a condition would be a major substantive change in the terms of the Rate Agreement which was intended, among other things to prevent chaos in the event a merger failed to take place. It contends that such a condition was likely to make PSNH's Step 1 financing impossible, and that in the case of unilateral action by PSNH to prevent the merger, the commission would have continuing jurisdiction over PSNH under RSA 365:5 and RSA 374:1 to examine the prudence of any such action, especially if the commission had previously determined that the acquisition of PSNH by NU was in the public good.

C. NEW HAMPSHIRE YANKEE

NHY addressed the issue of the discrepancy between the estimates of NHY and NU regarding the cost of operating Seabrook. It concluded that with NHY as a stand-alone entity it was confident that the 1991 operation and maintenance costs at Seabrook would be $157.5 million or less and accepted that NU believed that NU would be capable of operating Seabrook as part of a multi-unit organization for $113 million or less. However, the differences in the two estimates could only be resolved by a jointly conducted, detailed analysis which could be reasonably initiated only after Seabrook had attained commercial operation.

D. STATE OF NEW HAMPSHIRE

The State of New Hampshire, by and through the Attorney General, stated that the record evidence indicates that the rates required under the Rate Agreement are just and reasonable and that the NUSCO plan for reorganization will serve the public good. After setting forth the standard of reasonable rates by citing *Appeal of Conservation Law Foundation, op. cit.,* the State requests the following findings of fact based on the evidence it cites:

1. The resolution of the PSNH Bankruptcy is in the public good.

2. The Rate Agreement is fair, reasonable, consistent with public policy and the public interest, and is in the best interests of ratepayers and shareholders.

3. The Annotated Rate Agreement and accompanying glossary submitted by the State Ex. (AG2) are adopted as the authoritative reference guide to the Rate Agreement.

4. The rates proposed under the Agreement are just and reasonable, will serve the public good and effectuates a reasonable settlement of the PSNH bankruptcy.

5. The 5.5% annual rate increases for the first seven years will provide a fair rate of return to a financially viable PSNH/NU, based on the efficiencies stemming from the

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synergies included in the Rate Agreement.

6. The 5.5% rate track will produce a stable source of power and assurances to customers of known and measurable rates and rate increases.

7. PSNH as a reorganized stand-alone corporation will exist as a financially viable business entity.

8. The commission's traditional ratemaking authority resumes at the end of the seven year rate plan, at which point it can adjust rates as it deems appropriate.

9. The commission will have regulatory authority, although not ratemaking authority, over North Atlantic at the end of the seven year rate plan.

10. FPPAC is in the public good and its base assumptions and recovery mechanisms, as adjusted by the Second Joint Recommendation of the State and NU, are reasonable and just.

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11. During the period of FPPAC's existence, PSNH and NAEC will be subject to prudence review by the commission of the recovery from ratepayers of any and all payments made under the Seabrook Power Contract. Following the expiration of the FPPAC, the commission can establish whatever kind of fuel recovery mechanism it deems to be appropriate for PSNH at that time.

12. C&LM issues need not be resolved before the commission issues a final order regarding the Rate Agreement. Should the commission elect to reject the Joint Recommendation of the State and NU of June 22, 1990 on this point, the commission can deal with those issues in a subsequent proceeding.

13. The structure of the Rate Agreement, which incorporates an Acquisition Premium, is a benefit to ratepayers, particularly as it allows effective use of available tax credits and amortizes a large part of the Acquisition Premium, and therefore NU's acquisition price, within the fixed rate period.

14. The Return on Equity collar is fair, just and reasonable, assuring ratepayers that investors do not earn unreasonably high returns and protecting investors with a minimum floor for their returns.

15. The rate arrangements between PSNH and the SPPs are not affected by the Rate Agreement and changes to them will require separate proceedings.

16. The 20 year load and resource plan and the assumptions included in it are just and reasonable and provide adequate assurances that NUSCO will be able to supply the energy needs of New Hampshire customers at reasonable cost.

17. The capitalized values presented by the plan are not unduly burdensome to New Hampshire ratepayers.

18. There are no alternative reorganization plans being offered to the commission which will resolve the PSNH bankruptcy and will result in the same or lower costs and

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risks to the ratepayers and the State of New Hampshire.

19. NU has met its burden of proving that its underlying assumptions regarding the Rate Agreement and its financial forecasts are reasonable and that the 5.5% increases are achievable.

20. In approving the Rate Agreement, the commission is approving both a rate plan for reorganized PSNH and the merger of PSNH and NU, on terms and conditions established by the record in this docket. To the extent the terms and conditions are modified prior to the merger, these modifications would, by definition, present a merger different from the one considered by the commission, and would require further review and approval by the commission before a merger could occur.

The State also noted that there was an outstanding issue regarding reimbursement of NU's bankruptcy fees and expenses. The State and NU were negotiating treatment of these items at the time the Requested Findings was filed and the State expected to achieve an agreement on the point by the end of the week of June 25, 1990. On July 12, 1990, the State filed a Supplemental Proposed Finding of Fact informing the commission that the parties had been unable to agree, and requesting the following finding of fact:

All fees, expenses and obligations incurred by Northeast Utilities in the resolution of the PSNH bankruptcy and proposed acquisition, whether paid or not, on or before the First Effective Date shall be included in the $2.3 billion Capitalization ceiling of PSNH. All fees and expenses paid by Northeast Utilities in furtherance of the merger of PSNH and NU between the First and the Second Effective Dates may be included in the Acquisition Premium, up to a total of $45 million. All fees, expenses and obligations of NU attributable to the reorganization and merger of PSNH and NU shall be subject to review and determination by the Commission that they are just and reasonable.

E. OFFICE OF THE CONSUMER ADVOCATE

The statement of the position of the OCA is organized according to the Staff recommendations put forth in Staff Exhibit 1C. The OCA

agrees with Staff that the issues of the parachute payments, the Schiller "disallowance" and NU's non-incremental expenses of the acquisition have receded in importance. However, the OCA states that to the extent that there is flexibility in the timing of the parachute payments, they should be made before the First Effective Date, and that prior to the First Effective Date the commission should fine PSNH an amount equal to the Schiller disallowance. It states that payments should be made toward the NU non-incremental expenses prior to the effective date if feasible, but that its concerns had been tempered by the provision that ratepayers will share in a number of benefits they would not ordinarily receive. The OCA is satisfied with the explanation that the Rate Agreement intended that the NHPUC retain prudence review of Seabrook costs as long as its purchased power costs are collected through a fuel type clause, but adds that it believes that the commission would retain this regulatory oversight even without such an agreement. Similarly, the OCA believes that the commission retains jurisdiction over replacement power costs in the event of negligence at Seabrook.

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The OCA believes that NU has satisfactorily addressed the issues of the PSNH cause of action at law for damages against NAEC in the event of mismanagement at Seabrook by NUOP, of the flows of capacity revenues and costs through FPPAC, of FPPAC costs and revenues from off-system sales, of the formula for FPPAC, of the recoverability of discretionary capital expenditures for least cost planning measures of less than $20 million through FPPAC, and of reporting requirements.

In contrast to staff, the OCA believes that the 25%/75% sharing of the load diversity synergy is reasonable in conjunction with New Hampshire's 50% share of the energy synergy. Also, from its perspective the issue of wholesale cost and revenues is not a major issue in this docket as the NHEC will be submitting a rate plan at which time the parties can balance the interests of PSNH and the NHEC ratepayers. The OCA notes that it still has serious concerns that NU will not be able to attain all of the synergies it predicted, and recommends the implementation of a deferred banking mechanism to hold increases to 5.5% annually. On C&LM, it observes that increased sales growth tends to mitigate rate increases. Therefore, it cannot support C&LM unless a specific program is available for analysis, and that discussion on such specific programs should be deferred to a separate proceeding. Further, it argues that any program that attempts to shift revenue responsibility is "rate design" requiring legislative approval, and that the commission should find that the burden of the 5.5% base rate increases should be borne equally by all customer classes, and that the recovery of lost revenues occurring because of C&LM programs would be double recovery since NU rather than ratepayers receives the benefit from all capacity sales.

Finally, the OCA contends that the commission should approve the Rate Agreement only in the event that PSNH merges with NU. It states that a Stand-alone PSNH operating under the Rate Agreement would exceed the 5.5% annual increases by approximately $500 million because of the loss of NU synergies and therefore would be a viable alternative only if the value for Seabrook were significantly less than $1.5 billion, a contingency that the OCA believes is at best speculative.

F. GRANITE STATE HYDROPOWER ASSOCIATES, INC., PENACOOK HYDRO ASSOCIATES, ERROL HYDROELECTRIC LIMITED PARTNERSHIP, BRIAR HYDRO ASSOCIATES, PEMBROKE HYDRO ASSOCIATES, AND GREGG FALLS HYDRO ELECTRIC ASSOCIATES (HYDRO INTERVENORS)

The Hydro Intervenors argue that the commission's determination of the reasonableness of the proposed rates, including its calculation of the rate base component, must be based on some rational method. They state that New Hampshire's statutory basis for calculating rate base (RSA 378:27 & 28) is the original cost of the utility's "used and useful" property, less accrued depreciation, and that RSA 362-C does not supersede those ratemaking principles. Specifically, they argue that no rational basis

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has been identified for the $700 million cost assigned to Seabrook and the $800 million Acquisition Premium was simply the residual after the Seabrook value was assigned. The Acquisition Premium can only be explained as additional Seabrook cost and therefore should be identified as such in a relatively straightforward manner. They warn that the inclusion of such a large unassigned value would violate the requirements that rates be designed to produce a return on the company's investment in property and place the commission's order at risk of being reversed or remanded.

G. BIOMASS INTERVENORS

The Biomass Intervenors, while represented in the hearing room, did not present a witness, perform cross examination, file a brief or otherwise indicate a position on the issues currently before the commission.

H. BUSINESS AND INDUSTRY ASSOCIATION

The BIA notes that the protracted struggle to bring PSNH out of bankruptcy was the product of hard negotiations among all the affected interests in the state. Apart from the other standards which the commission must employ in determining whether to approve the Rate Plan, the BIA contends that the commission should accept the collective judgment of the parties to this proceeding that the Plan represents the most fair and equitable resolution of the issues before it.

The BIA argues that by approving the Rate Plan as proposed in DR 89-244, the commission will provide ratepayers with rate certainty which has been absent for years and which will enable New Hampshire commercial and industrial customers to make strategic plans incorporating a known and predictable cost of electricity. In addition, the BIA cites their study of electricity prices for commercial and industrial customers as indicating that a significantly high proportion of those customers would respond to prices above those in the Rate Plan by reduced consumption or complete migration from the system, resulting in substantial loss of load for PSNH. The effects of rate increases similar to those in the plan are not as adverse.

The BIA believes that the proposed rate plan meets all of the tests the commission should use. It provides revenues to NU which will assure that the utility providing electricity to New Hampshire ratepayers will remain a viable business entity, and competent management by NU which will assure the efficient and economical operation of Seabrook and economies of scale.

The BIA notes that the issue of C&LM recovery should be addressed in the commission's generic investigation, but appends its position in that case. Generally, the BIA believes that C&LM programs have not received adequate attention by New Hampshire utilities, and by PSNH in particular, and that such programs offer an effective means to help ratepayers minimize the economic impacts of the proposed rate increases. However, the BIA believes that special attention should be paid to the impact of the design of C&LM programs on the need for additional revenues, and that therefore incentives are inappropriate. The BIA argues that if C&LM programs are cost effective they should be implemented as part of the utility's obligation to provide service in a manner that is least cost. A more appropriate strategy for promoting C&LM programs would be to develop an all source bidding approach, which the BIA prefers because it would not violate the rate cap and relies on the market to ensure that only the most

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cost effective programs are pursued. While believing that there are some programs, like the promotion of energy efficient construction through design research and dissemination of information on energy devices and practices, it prefers private sector programs based on a shared savings approach.

I. JOHN V. HILBERG

Hilberg urges the commission to reject the Rate Agreement, stating the reasons for the rejection and sketching the characteristics of a plan that the commission would find acceptable, including commission treatment of any

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Seabrook rate case that could eventuate instead of a new plan. He states that NU has not met its burden of proof in the following areas:

that either Seabrook should be valued at $1.5 billion or there is some other compelling reason to recognize a regulatory asset of $800 million;

that the NH share of the synergies are worth at least $300 million;

that PSNH's bankruptcy is harmful to the degree that regulatory oversight of PSNH should be replaced for seven years and of Seabrook permanently by the terms of the Agreement;

that the ironclad, irreversible provisions of the Agreement represent a balancing of interests;

that the seven year 45.6% rate increase is just and reasonable and the best achievable alternative for New Hampshire; and

that the NU plan has replaced uncertainty with rate stability, given the likelihood of rate increases due to failure to attain all the synergies (especially at Seabrook), the probability of self-generation by large customers, and the fallibility of load forecasts.

Hilberg argues that evidence in the bankruptcy court indicates that this Agreement represents the "best interests" of the investors and therefore it cannot also reflect the best interests of consumers. He states that no rate plan that guarantees rate increases for seven years and creates the danger of severe damage to the state's economy can be considered just and reasonable unless the commission assumes that the alternative rate case would find the regulatory value of Seabrook at twice its economic value, and that in the current record, no substantial basis exists for placing any specific value on PSNH's share of Seabrook. He argues that there is little value to the consensual resolution of the bankruptcy, as the Bankruptcy Court could be expected to act expeditiously now that it has completed the fact finding aspect of the case; and or to NU's assurance of adequate long-term supply of power, as with Seabrook on line PSNH is expected to have sufficient capacity of its own for a decade. He criticized the Agreement for encouraging energy profligacy, for the bias in FPPAC whose treatment of off-system capacity sales renders PSNH indifferent to whether or not New Hampshire retail customers can afford to buy electricity, and for its miscalculation of real rate increases, and he makes the specific recommendation that the commission should disallow the "golden parachutes" in any case.

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Hilberg delineates the characteristics of a plan that the commission could find acceptable, proposing that the new plan could be structured like the Rate Agreement but with an Acquisition Premium no larger than the synergies that can be demonstrated to skeptics. He suggests that the resulting regulatory value would be as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Non-Seabrook Assets:	$ 800 million
Seabrook:	700 million
Regulatory Asset (synergies)	250 million
Total	$1,750 million

Should no new plan be presented, the commission could state that the Seabrook rate case would be heard within the framework that no synergies would be recognized, Seabrook recovery would be based on an economic value of $700 million plus whatever other prudent costs the owner can demonstrate and any recovery beyond $700 million would be subject to the rule that rates would not be allowed to be destructive.

Alternatively, Hilberg proposes a New Hampshire Plan in which the commission would first establish the primacy of the criterion that rates cannot be destructive, defined as creating widespread pain when customers leave the system or avoid entering the system, in such numbers that total sales drop. He proposes that the commission establish a rate base that includes Seabrook's found economic value, which he estimates to be in the neighborhood of $700 million. The company would be allowed traditional recovery on this rate base. He then suggests that the commission calculate the prudently incurred costs of Seabrook in excess of its economic value, which would be placed in a deferral account where they would accrue interest and be amortized on a straight line over the expected life of the asset. These costs would be

subject to a non-economic prudent costs recovery adjustment. He proposes that annually or semi-annually, for the life of the plant, the commission would ascertain whether the rates being charged were destructive, and estimate the highest level of rates that could be charged during the upcoming period without becoming destructive. In years in which rates could be raised without becoming destructive, PSNH would be allowed to draw down the deferral account until the threshold was reached.

III. *COMMISSION ANALYSIS*

A. RATES PRESCRIBED BY THE RATE AGREEMENT ARE JUST AND REASONABLE RATES

Rate Agreement

[2] The Rate Agreement of November 22, 1989 (Ex. D, NU 1-E) between NUSCO acting on behalf of its parent NU, and the Governor and Attorney General of the State of New Hampshire is a rational plan contemplating the resolution of the reorganization proceedings of Public Service Company of New Hampshire under Chapter 11 of the Federal Bankruptcy Code. The purpose of the Agreement is to express the obligations of NU and the State with respect to NU's

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proposed acquisition of PSNH and the consummation of NUSCO's Plan of Reorganization for PSNH. NU agrees to undertake good faith efforts (i) to restore PSNH's financial stability to permit Reorganized PSNH to provide continued service to its ratepayers, (ii) to provide residents of the State of New Hampshire with needed electric capacity, and (iii) to negotiate with the joint owners of Seabrook authorization for an NU system company to assume responsibility for the operation of Seabrook.

The Plan provides for acquisition by NUSCO of all common stock of PSNH by the First Effective Date (originally July 1, 1990, now August 1, 1990). Conditions for NUSCO's takeover by August 1, 1990, including regulatory approvals of NRC, the SEC, FERC, and tax rulings from the Internal Revenue Service, will not be granted in time for consummation of the Plan by the First Effective Date. Accordingly, NU plans to consummate the reorganization plan by the second effective date, pursuant to a merger agreement between NU, NUSCO and a new N.H. corporation to be created by NU. NU acknowledges that based on delays at the FERC the plan will be accomplished under the two-step method, where PSNH will emerge from bankruptcy as a Stand-alone company committed to merge with an NU company after FERC approval of the part of the plan under its jurisdiction, largely Seabrook, wholesale rates and transmission. The merger agreement was approved by the Bankruptcy Court's confirmation order April 20, 1990 and made binding on PSNH, NU, NUSCO, and NU acquisition corporation without need for further action by any person or entity.

Based on total average retail rates of 9.02 cents per kilowatt hour in effect on September 15, 1989, the Rate Agreement prescribes seven annual increases of 5.5% commencing with a temporary rate increase as of January 1, 1990 to become permanent on the First Effective Date, and further increases of 5.5% on January 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, and January 1, 1996. The increases total in the aggregate for the seven-year period approximately $271,000,000 (Wiater Tr. April 16 at 108) and, on a compounded basis, increase base rates by 45% over the 9.02¢ per KWH level.

Average retail rates under the Rate Plan are as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	¢ KWH
1989	9.02
1990	9.52
1991	10.04
1992	10.59
1993	11.18
1994	11.79
1995	12.44
1996	13.12

Source: NU 3J, att. 1, State 3, att. III, Chart 1, p. 2.

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The Rates Equitably Balance
Investor and Consumer Interests

In the commission's scoping order we stated that we will determine "whether the rates

equitably balance investor and consumer interests so that the rates will produce a reasonable return to investors without imposing an undue burden on ratepayers and the economy of the state of New Hampshire." Our analysis and review of substantial evidence in this proceeding compels the conclusion that the rates are just and reasonable, fairly balancing the interests of investors and ratepayers.

The compromise rate plan yields the minimum rates necessary to finance the payment of the $2.3 billion bankruptcy comprise to PSNH creditors and equity holders without unduly burdening ratepayers or the N.H. economy. Real rates (compared to nominal rates) are forecasted to rise one percent per year over inflation during the fixed period.

Mr. John J. Reed, consultant testified in behalf of the N.H. Business and Industry Association (BIA) that the acquisition of PSNH by NU is in the public interest, that the rate agreement negotiated between the state and NU is reasonable, and that "... the rates which will result from the reorganization plan and the rate plan will be sustainable and bearable from the consumer's perspective, and will result in a viable utility after reorganization." BIA-1 at p.3. Mr. Reed reinforced his conclusion with an Electrical Price Study (BIA 2) and concluded that the rate plan avoids the higher level of rate increase evaluated in the study which would result in major load losses and significant economic impacts. BIA-1 at p. 19. The level of rates being known for the fixed rate period offers a measure of predictability to ratepayers, which enables N.H. firms to project their cost for electric service in competing with out-of-state companies and thus provides a competitive benefit to the N.H. economy. BIA-1, at 19-20.

Comparison of Rate of Return to Cost of Capital Under the Rate Agreement

Mr. Eugene Sullivan, Finance Director of NHPUC presented an analysis of Rate of Return compared to cost of capital for the following four cases. Cost of capital was determined from projected cost of debt, preferred and equity apportioned according to the resulting capital structures.

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[Graphic Not Displayed Here]

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In case 1, NU's base case, Reorganized PSNH-Seabrook Operates, it will be noted that in four years 1990-1994 the rate of return is projected to be less than the cost of capital. From 1994-1996 the rate of return is greater than the cost of capital. On average for the seven year fixed rate period, the rate of return is 10.23% compared to 11.64% cost of capital. In case 2, Reorganized PSNH-Seabrook Cancelled, the rate of return exceeds the cost of capital from 1992-1996, but is less than the cost of capital for 1990-1991. Application of Mr. Busch's supplemental testimony on financing costs, NU 5-B to costs of capital results in an average cost

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of capital for seven years of 11.2% and, if 100 basis points are added to cost of non-plan financing over the seven-year period, would increase on average to about 11.73%. In case 3, Stand-alone PSNH-Seabrook Operating, and case 4, Seabrook-Cancelled, the rate of return is substantially less than the cost of capital.

The assumptions used for projected financial statements, balance sheets and income statements are summarized at pp. 1-6 of Busch Att. 2, NU5. Detailed assumptions are summarized in the Financial Viability section *infra.* Among the assumptions are:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Peak Load Growth	2.3% compound growth.	
Seabrook Capacity Factors	1990	60%
	1991	63%
	1992-5	67%
	1996	70%
O&M Expenses:	5.3% Compound Growth	

Compound Growth Rates for Fuel Expenses (1990-1996)	
#6 Oil at Newington and Schiller	7.9%
Coal at Merrimack	3.3%
Coal at Schiller	4.1%
#6 Oil at Wyman	6.8%
#2 Oil	6.8%
Jet Kerosene	6.7%

Determination of the level of just and reasonable rates by traditional ratemaking methodology, is precluded by the Rate Agreement's prescribing the level of retail rates over the seven year fixed rate period. Revenue requirements are normally determined or derived by application of a formula:

$$R = 0 + (B \times r)$$

where R is the utility's allowed revenue requirement; 0 is its allowed operating expense; B is its rate base defined as cost less depreciation of the utility's property that is used and useful in the public service, (RSA 378:27) and r is the rate of return allowed in the rate base. *Appeal of Conservation Law Foundation of New England, Inc.,* 127 N.H. 606, 633-634, 507 A.2d 652, *Appeal of Public Service Company of N.H.,* 125 N.H. at 49. However, in this instance, the allowed revenue requirement is fixed for seven years by the rate agreement subject to prospective demand for electricity by PSNH ratepayers and wholesale customers over the seven-year period. NU 1-E at Pp, D-12-13.

[3, 4] Here, the rate base (or its investment equivalent) is determined by the Reorganization Plan approved by the Bankruptcy Court to be $2.3 billion consisting of $800 million of non-Seabrook assets, $700 million of Seabrook assets, and an acquisition premium of $800 million. The Acquisition Premium is the difference between the settlement amount of $2.3 billion and the $1.5 billion total of non-Seabrook assets and Seabrook assets. The amortization of the Acquisition Premium affects rate base substantially during the seven-year fixed rate period, since $425 million of the Acquisition Premium will be amortized on a straight line basis and recovered with a return over seven years beginning on the First Effective Date. The balance of about $375 million will be recovered with a return over 20 years from the First Effective

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Date. NU 1-E, Ex. D (b) D-14.

Operating expenses are a product, *inter alia*, of volatile costs and expenses, the impact of projected synergies upon costs, the likelihood that Seabrook will operate successfully at full power at anticipated capacity factors, and cost of fuel. Projections of operating expenses over seven years appear to be reasonable to the extent synergies and cost efficiencies are attained. To limit so far as possible attrition in ROE through unanticipated levels of operating expenses, the commission will exercise continuing oversight of the impact of operating expenses on net income, including prudence review.

Comparison of the Rate Agreement Plans with those Proposed by PSNH During the Bankruptcy Proceedings

During the negotiations in bankruptcy, the state compared the NU plans first against plans proposed by PSNH's management under a series of regulatory scenarios:

(1) Reorganization of PSNH into a holding company, a generation and transmission company subject to FERC jurisdiction, and a distribution company subject to NHPUC jurisdiction. Such reorganization would have permitted PSNH to seek from FERC a one-time rate increase of 89% to recover its costs of Seabrook followed by annual rate increases of 5% equal to the projected rate of inflation. By 1998 rates would have exceeded 25¢ per kwh. PSNH recognized that this plan would have a negative impact on the state's economy and could not be sustained. The State opposed the 89% increase.

(2) As an alternative, PSNH postulated a maximum one-time increase of 31% plus annual rate increases equal to inflation as sustainable under the N.H. economy. The State objected to PSNH's proposed solution to its financial difficulties. A 31% increase plus 10 increases of 5% would result in rates of 17¢ — 18¢ per kwh in 1998 and 1999.

See Kessler, State 1, Vol. 1 pp. 4-5.

The forecasted rates under the NU Plan, compared to rates under traditional ratemaking resulting from an assumed $1.8-2.9 billion of Seabrook investment, and compared to an 89% one-time increase (for $2.9 billion) and a 31% increase (for $1.8 billion) are summarized in Table 3 below.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

TABLE 3

NORTHEAST UTILITIES PLAN VERSUS POTENTIAL RATE CASE OUTCOMES
AVERAGE RETAIL RATES
CENTS/KWH

YEAR	NU PLAN	1.8B	89% ONE TIME INCREASE	31% ONE TIME INCREASE
1990	9.52	9.74	17.05	11.82
1991	10.04	10.33	17.90	12.41

1992	*10.59*	*10.81*	*18.80*	*13.03*
1993	*11.17*	*11.48*	*19.73*	*13.68*
1994	*11.79*	*12.11*	*20.72*	*14.36*
1995	*12.44*	*12.8*	*21.76*	*15.08*
1996	*13.12*	*13.56*	*22.85*	*15.83*
1997	*12.85*	*13.74*	*23.99*	*16.63*
1998	*13.40*	*13.91*	*25.19*	*17.46*
1999	*13.30*	*13.83*	*26.45*	*18.33*

Source: Attachment III, Chart 1, p.2 of 2 Volume III, Direct Testimony of Alan Kessler. State 3C.

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Comparison of Rates Under the Rate Agreement with Foreseeable Rates Under Traditional Ratemaking

[5] Rates resulting from traditional ratemaking would probably be higher than under the Rate Agreement. Clearly we cannot predict the precise level of rates under traditional ratemaking for Stand-alone PSNH. Nor is such determination required to determine whether the Rate Plan serves the public good with just and reasonable rates over the fixed rate period.

Assuming PSNH becomes a NU affiliate under the merger agreement and including PSNH's Seabrook investment and the acquisition premium in rate base, NU estimates that an initial rate increase of 20% followed by 2.5% increases annually over the remainder of the fixed rate period would be required. Ex. NU 3 J at 13-15, Att. 1 pp. 1-3. The increase summarized below would be required to maintain a 13.25% return on common equity.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	RATE PLAN	*TRADITIONAL RATEMAKING*
Year	*Average Retail Cents per kwh*	*Average Retail Cents per kwh*
1989	9.02	9.02
1990	9.52	10.80
1991	10.04	10.73
1992	10.59	11.07
1993	11.18	11.52
1994	11.79	11.77
1995	12.44	12.18
1996	13.12	12.45
1997	12.86	12.87
1998	13.40	13.41
1999	13.30	13.31
2000	13.05	13.02

Cumulative retail revenues and cumulative net present value of retail revenues through the fixed rate period and the year 2000 are higher with traditional ratemaking than under the Rate Plan. Since the seven 5.5% increases under the Rate Plan are not controlled by a requirement that each year produce a 13.25% ROE, the Rate Plan avoids rate shock by providing for a gradual increase in rates producing a cumulative ROE of 11.75% by 1997, less than the market based ROE required by traditional ratemaking principles.

If PSNH were to remain a stand-alone entity, rates would be higher under traditional

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ratemaking because the synergies resulting from the merger would not apply and financing costs would increase, assuming that, 1. PSNH's rate base will equal the $2.3 billion investment base resulting from the NU acquisition, and 2. Seabrook value of $1.5 billion ($2.3 billion minus non-Seabrook assets of $800 million) hypothetically allowed by NHPUC in rate base.

There is substantial evidence supporting a possible commission allowance of $1.5 billion for Seabrook in Stand-alone PSNH's rate base although the theoretical economic value of Seabrook for purposes of this proceeding is $700 million:

• Testimony of Eugene Sullivan estimating Seabrook investment for a rate case between $1.4 billion and $1.9 billion and offering his opinion that after a prudency review of Seabrook costs a value higher than $1.5 billion might be allowed in rate base (pp. 8 & 17, Staff 4), possibly between $1.8 billion and $2.9 billion. Tr. May 4 at 99-100.

• Testimony of Alan Kessler, (Ernst & Young) expert consultant for the State estimates Seabrook investment in a rate case at $1.5 billion. Tr. May 1 at 59-60.

• Report of Paul L. Gioia, Examiner,

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regarding a Seabrook rate case as an alternative to proposed Plan of Reorganization established a range of Seabrook recoveries at the high end of $1.6-$1.9 billion with total company values of $2.5 to $2.7 billion; and a low end of Seabrook recoveries from $1.28 to $1.56 billion with total company values from $2.18 to $2.46 billion. Mr. Gioia concluded that "this range compares with a Seabrook recovery of $1.4 billion and a total company value of $2.3 billion under the proposed plan." Ex. Hydro 3 at p. 26.

• The Examiner also concluded that the percentage of Seabrook assets allowed after a prudence review, if applied to PSNH, would yield about $1.5 billion. Ex. NU 3J at 14-15.

• Mr. Noyes testified that the probable result of a Stand-alone PSNH Seabrook rate case would be a Seabrook value between an approximate range of $1.4 to $1.8 billion. The upper range of $1.8 billion was consistent with the assessment by PSNH's management that competitive pressures make recovery of a higher value unlikely without risking substantial losses in sales. Mr. Noyes also pointed out that PSNH management has written down its Seabrook investment to $1.8 billion (from $2.9 billion). Mr. Noyes estimated the lower boundary at $1.4 billion. NU 3J at pp. 13-16.

• Mr. Andrew Herf of Arthur Andersen & Co. testified before the Bankruptcy Court that the $2.3 billion value of PSNH under the NU Plan of Reorganization was within the reasonable range of outcomes of a litigated rate case. Ex. NU 20 at 33 and 36.

• PSNH's estimate of the value of Seabrook in its financial statements was $1.8 billion. NU 1-E at Ex. C, p. 38, Note 3 to financial statements of PSNH in Form 10K for the year ended December 31, 1989, Staff Ex. 20.

Comparison of Rates Under the
Rate Agreement with Rates Forecasted
for Other New England Utilities

[6] We are mindful of established law in this jurisdiction that "[o]f itself, the evidence relating to rates elsewhere has no conclusive probative force." *Appeal of Conservation Law Foundation,* 127 N.H. 606, 646, 507 A.2d 652 (1986) citing *Company v. State,* 95 N.H. 353 at 363, 78 PUR NS 67, 64 A.2d 9 (1949). We have determined that the rates under the Rate Agreement are just and reasonable based on record evidence and detailed analysis of all aspects of the compromise plan. We have examined resulting rates in comparison to rates elsewhere in New England to determine whether the compromise rates are competitive with those of other New England utilities. The evidence showing that rates under the rate agreement are marginally higher than the price of electricity forecasted by Data Resources for the New England region, and substantially lower than prices forecasted for UI, the second largest owner of Seabrook, supports the conclusion that New Hampshire will not be disadvantaged competitively by PSNH's electric rates. Ex. NU 9, HO CAD03 Q-OCA-075 at Table 5. Reasonably stable rates are predicted for PSNH after the fixed rate period. Table 5, Ex. NU 9.

We cannot accept Mr. Talbot's testimony that by 1996, PSNH's rates may be 48% higher than average New England utility rates. A 1 — 1.5% growth rate in the future, predicated on zero inflation, flat oil prices accompanied by huge sales growth is not a realistic forecast. Noyes-Sabatino Rebuttal Testimony. Ex. NU 3J, at 26-28.

A comparison of NEPOOL nominal rate projections for 1991-1996 with nominal rates forecasted under the Rate Agreement shows that NEPOOL rates are forecasted to be on average marginally equivalent to the rates under the NU plan.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

COMPARISON OF NEPOOL AND RATE AGREEMENT PROJECTIONS NOMINAL RATES

Year	Rate Agreement ¢ per kwh	NEPOOL ¢ per kwh
1989	9.02	8.30
1990	9.52	9.19
1991	10.04	9.72
1992	10.59	10.42
1993	11.18	11.03
1994	11.79	11.52
1995	12.44	12.01
1996	13.12	12.55

Source: NEPOOL Electric Price Forecast for New England, 1988-2004, p.2, Ex. 1.

Comparison of Rates Under the Rate Agreement With Rates Under Alternative Rate Plans

In its Report and Order on Scope (Order No. 19,674), the commission stated that in judging the reasonableness of the level of rates, it would examine, pursuant to RSA 362-C:5, alternative reorganization plans that were filed in the PSNH bankruptcy case and would result in the same

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or lower costs and risks to ratepayers and the same or greater benefits to the state as those resulting from the NU plan. No such alternative reorganization plan as defined by RSA 362-C:2, was presented to the commission.

Hilberg has proposed in brief a "New Hampshire Plan," structured like the NU Rate Plan but containing a Regulatory Asset of an estimated $250 million representing synergies, rather than an acquisition premium of approximately $800 million. He proposes that if no party presents such an alternative plan, the commission should state that the Seabrook rate case would be heard within a framework that no synergies would be recognized and that the value of Seabrook would be recognized as $700 million plus whatever additional prudent costs that would not result in destructive rates. (Hilberg's specific objections to the NU Rate Plan are addressed elsewhere in the Commission Analysis).

Consideration of Hilberg's "New Hampshire Plan" by the commission is beyond the scope of this proceeding. It was not presented in the Bankruptcy Court and, while such a plan could conceivably result in lower costs and risks or greater benefits to ratepayers and the state, there is no evidence to indicate that it would affirmatively resolve the bankruptcy case that it would withstand judicial review of the proposed treatment of the costs of the Seabrook investment or that without merger with NU the plan would be workable and serve the public good. Hilberg is in essence asking for a reconsideration of our scoping order, already denied by order No. 19,703. He proffers hypothetical rate plans and outcomes of rate proceedings as standards of just and reasonable rates against which to measure the NU Plan. However, substantial evidence has been presented in this proceeding and before the Bankruptcy Court relating to the reasonably possible rates resulting from a Seabrook rate case considered under traditional ratemaking. The Bankruptcy Court concluded, and our own analysis confirms, that the rates under the Rate Agreement represent "a fair and equitable settlement and compromise well within the range of results reasonably expected in a litigated rate case." Ex. NU 14 at 12; Ex. NU 20 at 54.

The Bankruptcy Court's Confirmation
of the Fairness of the Compromise
Reorganization was Reasonable

[7] Our evaluation of the Bankruptcy Court's confirmation of the reorganization plan leads to the conclusion that in resolving the PSNH bankruptcy the public interest will be served by our independent analysis of the appropriate implementation of the rate agreement.

The Bankruptcy Court found that the rate agreement is fair, reasonable, consistent with the public policy and the public interest and is in the best interests of creditors and equity security holders of the Debtor.

The Bankruptcy Court denied the contention of Messieurs Rochman, Kaufman and Richards — dissident stockholders — that greater value would be realized by stockholders

in a litigated rate case before the NHPUC as opposed to the compromise embodied in the Rate Agreement under the plan. The Bankruptcy Court concluded:

The sum total of the evidence before the court on the issues supports a finding —

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here made — that the rate increase results under the Rate Agreement represents a fair and equitable settlement and compromise well within the range of results reasonably expected in a litigated rate case. Ex. NU 14 at 12; Ex. NU 20 at 54.

The court further stated that the plan must provide each holder of a claim or interest that has not accepted the Plan with an amount equal to or greater than the amount such holder would receive under Chapter 7. The Court evaluated the liquidation value of the debtor looking first to the breakup value of PSNH. The record evidence suggested that the value of the pieces is less than the Debtor's going concern value. Moreover, the question would remain as to who would bear the responsibility to serve PSNH customers. The Court concluded that if PSNH would be sold in pieces, it would bring less than the amount offered under the plan.

An alternative liquidation analysis would be the value of PSNH sold as a going concern. The Court found that the liquidation value of the debtor is no higher than the value that is proposed under this Plan. The bankruptcy was, in effect, an auction of PSNH, which has been highly publicized and generated national attention and substantial and serious bidders, particularly United Illuminating Company, New England Electric Company, and PSNH Management, as well as Northeast Utilities. (Par. 62 Findings cited at p.6, Memorandum Opinion, NU 20).

The Rate Agreement adds value to the Debtor so that in the absence of a Rate Agreement, the debtor would not command as high a price in a Chapter 7 liquidation. The relative certainty of rates and the revenues generated without the delay and cost of litigation are also important considerations favoring the compromise settlement.

The Court also analyzed a "non-normal liquidation scenario." It compared the return to the estate under the Plan with the return the Debtor or its successors could expect to receive under a traditional ratemaking proceeding for its interest in the Seabrook plant. Par. 69, Findings cited at p.8 NU 20. An indicated one-time increase of approximately 89% would be necessary to support a $2.9 billion addition to PSNH's rate base (p.72 NU 1-E). Even if for rate purposes the Seabrook investment was reduced to $1.8 billion, the resulting rates sought from the NHPUC would be excessive in comparison to the Rate Plan. (p. 73 NU 1-E, p. 25-26, NU 20) The Court rejected RKR's objection contending that a litigated rate case would result in more value for the Debtor than that proposed under the Plan.

The Bankruptcy Court found that the proponents have shown by a preponderance of the evidence that there is a reasonable likelihood Reorganized PSNH will in fact be able to perform its obligation under the Plan as projected. In determining that the Reorganization Plan met the feasibility test (Code 1129(a)(11)) the Court considered the adequacy of the capital structure, the earning power of the business, economic conditions, and the ability of management. In *Re Agawam Creative Marketing Ass'n., Inc.,* 63 B.R. 612, 619-620 (Bankr. Mass. 1966). The court concluded that based on record evidence, particularly the testimony of the financial advisers upon confirmation, the Debtor will be able to satisfy its obligations under the Plan. P.30, General Findings of Fact and Conclusions of Law Re Plan Confirmation Issues, Bankruptcy Court. Ex. NU 14.

The applicable legal standard for a bankruptcy reorganization court to evaluate a substantial compromise as part of the Plan of Reorganization was outlined in *Protective Committee v. Anderson,* 390 U.S. 414 (1968). Essentially, the reorganization court must closely examine and

review the proposed compromise to determine whether the compromise is a fair and equitable Reorganization Plan, comparing the terms of the compromise with the likely rewards of litigation. There are practical limits to the Court's examination of the details underlying the controversy: "A district court, in reviewing a settlement proposal, need not

engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial." *Greenspun v. Bogan,* 462 F.2d 375, 381 (1st Cir. 1974), Citing *United Founders Life Ins. Co. v. Consumer's National Life Ins. Co.*, 447 F.2d 647 (7th Cir. 1971); *Florida Trailer & Equipment Co. v. Deal,* 284 F.2d 567, 571 (5th Cir. 1960).

The discretionary power of the Bankruptcy Court to approve or disapprove compromises or settlements resides in Bankruptcy Rule 9019. In approving a settlement amount of $3 billion of a claim by Pennzoil against Texaco in the amount of $11.3 billion pursuant to a Plan of Reorganization, the Reorganization Court emphasized the benefits of settlement to avoid expensive and protracted litigation; the proportion of class members affirmatively supporting the Plan, the extent to which the settlement is the product of "arms-length" bargaining, the likelihood of success of the parties in a litigated case limited to concrete benefits of a settlement without the expense of a trial and subsequent appellate procedures. *In Re Texaco, Inc.* 84 B.R. 893 (Bankr. S.D. N.Y. — 1988), appeal dismissed, 92 B.R. 38 (S.D. N.Y. 1988).

In addition to the hypothetical inclusion in rate base of Seabrook investment at about $1.5 billion, under traditional ratemaking rate of return is essential for a forecast of rates. Under the Rate Plan, PSNH will earn less than the cost of money on average over the seven-year fixed rate period. See Cases (1), (2), (3) and (4), supra. A traditional rate case would require a rate of return at least equal to the cost of capital under test year principles. *Appeal of Cheshire Bridge Corp.,* 126 N.H. 425, 431, 432 (1985), *Conservation Law Foundation,* 127 N.H. at 635, 507 A.2d 652. Cost of capital and rate of return may be determined by the commission based on the evidence before it. *New England Tel. & Tel. v. State,* 104 N.H. 229 at 232, 44 PUR3d 498, 183 A.2d 237 (1962), *New England Tel. & Tel. v. State,* 95 N.H. 353, 361, 78 PUR NS 67, 64 A.2d 9 (1949).

Revenue requirements under the Rate Agreement are less than under traditional ratemaking which would require rates of return produced by rates equal to the cost of capital. Financing costs underlying the Rate Agreement are estimates of actual embedded costs and therefore are in accord with traditional ratemaking principles. Hypothetical Stand-alone PSNH would probably incur higher costs since investors would not have the assurance of the Rate Agreement. Ex. NU 6, Curley pre-filed direct testimony at 20.

B. BASE RATES

[8, 9] The rate base which forms the investment basis for base rates (as opposed to FPPAC) consists of the $800 million book value of PSNH's non-Seabrook assets plus the Acquisition Premium. The commission will require PSNH to file a detailed accounting of the reorganization, including severance payments to employees and senior management. That accounting should provide the calculation of net book value and the Acquisition Premium at the First Effective Rate. At that time, the commission will address the issue raised by the State in its Supplemental Proposed Finding of Fact, of whether all fees, expenses and obligations incurred by NU in the

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resolution of the PSNH bankruptcy and proposed acquisition, whether paid or not, on or before the First Effective Date shall be included in the $2.3 billion capitalization ceiling or added to the Acquisition Premium.

The Acquisition Premium
Serves the Public Interest

The Acquisition Premium is equal to the difference between NU's $2.3 billion acquisition cost for PSNH and the sum of the $700 million assigned value of Seabrook plus the $800 million book value of PSNH's non-Seabrook assets at the First Effective Date. ($2.3 billion minus $1.5 billion = $800 million) Ex. NU 1-E D-5, D-6). The result of this calculation creates the Acquisition Premium as a regulatory asset approximating $800 million in the rate base of PSNH. The precise amount of the Acquisition Premium will be established at the First Effective Date, Ex. No. 1E at D-6, Ex. E to Rate Agreement, D-110. The Acquisition Premium in this procedure is not a payment for PSNH assets in excess of net book value and

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therefore is not an acquisition premium as the term is normally defined in traditional regulation.

The acquisition adjustment is not depreciable for income tax purposes. As part of the rate plan, the acquisition adjustment is amortized over twenty years, $425 million of the acquisition premium is amortized over 7 years and the remaining $364 million is amortized over 20 years.

Mr. Sullivan testified that "in terms of traditional ratemaking it would be more appropriate if the acquisition adjustment were assigned to the Seabrook investment to arrive at a value of $1.489 billion, or a per KW value of $3,640 per KW. The Seabrook investment would then be depreciated 40 years and benefit from accelerated depreciation. Seabrook's costs would be more matched with the use of that power if the costs are spread over its life." Sullivan Staff 7 at 12-B. Mr. Sullivan also testified that the plan in effect assigns the acquisition value to non-Seabrook assets inconsistent with a realistic appraisal of Seabrook and non-Seabrook assets. He acknowledged, however, that assigning the acquisition adjustment to the value of Seabrook would increase the FPPAC because additional depreciation and capital costs would be flowed through to ratepayers and cash flow to NU would be reduced since the acquisition adjustment would be recovered over the life of the plant (40 years) instead of twenty years. Staff 4 at 13. Also, if the rate plan was structured to add the acquisition adjustment to Seabrook value on the North Atlantic Company overall capital costs, debt and equity, would be higher. Mr. Sullivan testified that with Seabrook running, rates are just and reasonable.

Mr. Sullivan concluded that changing the structure of the plan would cause disruption of a carefully constructed compromise.

The Acquisition Premium, as a regulatory asset in PSNH's rate base enables PSNH to utilize tax benefits more effectively (Kessler Tr. May 1 at 179-80) and to schedule asset amortization consistent with financial requirements and limits on rate recovery by reorganized PSNH. Noyes Transcript April 17 at 147-53. Robust cash flow reduces external financing and financing costs, and therefore, rates over the longer term. Tr. April 19, at 35-36. The commission is persuaded that the Acquisition Premium meets the policy goal of the reorganization to balance expeditious

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recovery of creditors' and shareholders' investment with minimal rate increases anticipated by ratepayers.

Mr. Neil H. Talbot, Senior Economist with the Energy Systems Research Group (ESRG) of TELLUS Institute (witness for the Consumer Advocate) testified that the Acquisition Premium should not be allowed in PSNH's rate base unless NU will guarantee claimed cost savings due to the merger. Ex. OCA 1, Talbot pre-filed direct testimony Exhibit C (NT-2) at 8, 16-19. Mr. Talbot relies on a treatise by James C. Bonbright, *Principles of Public Utility Rates* (1961) pp. 176-178, which postulates that an acquisition premium should not be allowed in rate base unless the acquirer can justify the premium above the net book value of total assets. Mr. Talbot's argument is inapposite to the acquisition adjustment in this case, since NU is not paying a premium above the net book value of PSNH assets. As we have seen, reduced to simplest terms, NU pays a total of $2.3 billion for PSNH assets recorded at $3.7 billion on PSNH's regulatory books and $2.6 billion on its financial books. Ex. NU 3-J, Noyes/Sabatino Rebuttal Testimony at 8. In the traditional sense as used by Bonbright there is no true acquisition premium requiring justification by a demonstration of the public good.

Assuming, *arguendo,* that the Acquisition Premium is a payment in excess of net book value, N.H. law would permit recovery of the regulatory asset. If the acquisition price for PSNH's assets serves the public good — as we find herein — the total purchase price, including the Acquisition Premium, may be included in rate base. *Public Service Co. v. New Hampton,* 101 N.H. 142, 150-151 (1957); *Accord Appeal of Public Service Co. of New Hampshire,* 124 N.H. 479 (1984), citing *Greenville Electric Lighting Company and Public Service Company,* 56 NH PUC 188, 192-95 (1971) and *N.H. Electric Coop and Franconia Paper Co.,* 56 NH PUC 253 at 261 (1971).

The standards justifying the addition to rate base of an acquisition premium relate to:

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(1) whether the acquired assets may be operated as an integral part of the acquirer's system;

(2) whether the purchasing utility may better provide necessary capital to finance the operations of the system;

(3) whether the purchasing utility can furnish engineering, accounting and other management services needed by the seller; and

(4) whether the purchasing utility can more economically operate the system, particularly where the selling utility is bankrupt.

NUSCO articulates these standards in its brief at p. 28, and states that NUSCO has proven that its acquisition of PSNH meets these criteria.

First, NU and PSNH complement each other's system due to diversity of seasonal peaks and operating efficiencies in the joint operation and dispatch of electricity from their system. Second, NUSCO has demonstrated its ability to refinance PSNH by providing capital necessary to resolve the PSNH bankruptcy and restore financial stability to PSNH, *infra.* Third, the Management Services Agreement approved by the Bankruptcy Court and the FERC, will supply

PSNH — before and after the merger — with strong management and access to financial, engineering, administrative, accounting and operational resources. Ex. NU 2, Ellis, Pre-filed Direct Testimony at 47-52; Tr. April 11 at 43, 122-24; Ex. NU 7 Opeka Pre-filed Direct Testimony at 37-52; Tr. April 24 at 9-10, 42-47, 50-56. Substantial economies in the operation of PSNH will accrue through implementation of various synergies outlined *infra.*

The Acquisition Premium is not related to the Investment Adder. The State incorporated in the rate agreement the precept that rates would not be prescribed to support an investment of more than $2 billion to settle the bankruptcy, unless any amount up to $300 million over the $2 billion was justified by capitalized ratepayer benefits caused by NU through the reorganization. Tr. April 12 at 262-63. If NU demonstrates to the commission efficiencies or cost synergies to justify the $300 million increase to the investment base, the Investment Adder increases the ceiling calculation of the ROE collar to allow a return on $2.3 billion, before the ROE on such investment would cause a rate reduction. The $300 million Investment Adder would not affect any component of Seabrook or non-Seabrook rate base or assets or the Acquisition Premium. The Acquisition Premium is a regulatory asset unaffected by benefits brought to the reorganization by NU.

Mr. Talbot's direct testimony asserts that "it would not be proper from a ratemaking standpoint to allow the acquisition premium or the `investment adder' which is part of it in the rate base, unless there were a strong justification on the grounds of the public interest." Talbot, OCA-1 at pp. 4-5; See Report to the State of New Hampshire Office of the Consumer Advocate, pp. 2-3. Mr. Talbot is in error in relating the synergies to the Acquisition Premium as the "ultimate rationale for the acquisition." p. 3, Report, OCA-1.

We find that the Acquisition Premium of $789 — $800 million is a regulatory asset amortized in accordance with generally accepted accounting principles and serves the public interest.

Fred H. Balluff, CPA consultant for the hydro intervenors testified that the entire Acquisition Premium should be considered as an additional cost related to Seabrook. Hydro 1A, p. 2, and depreciated over the designated useful life of 39 years. Hydro 1A, p. 3. Mr. Balluff offered three alternative accounting changes to the acquisition adjustment to the Seabrook investment:

(1) Transfer the $789 million acquisition adjustment to North Atlantic as a cost of the Seabrook plant and depreciate the investment over 39 years.

(2) Transfer the $789 million acquisition adjustment to North Atlantic as an acquisition adjustment to be amortized by North Atlantic in the same manner proposed for PSNH.

(3) Consider the acquisition adjustment part of the cost of power from Seabrook, but keep the $789 million on the books of New PSNH as deferred cost as proposed by NU except classify the amortization as purchase

power cost. (Account 555 in FERC Chart of Accounts).

Both staff and the state oppose the adoption of Mr. Balluff's suggestions. Ex. Staff 4,

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Sullivan Pre-filed Direct Testimony at 12-14, state request for findings #13.

There is no rational justification for the requested changes. The Rate Agreement's accounting treatment of the Acquisition Premium is consistent with generally accepted accounting principles. Sullivan, Tr. May 4 at 60-63. The Acquisition Premium is the remainder of the value not assigned to Seabrook and PSNH's non-Seabrook assets, as a result of the negotiated settlement inscribed in the Rate Agreement. Options (1) and (2) above constitute a substantive change in the rate agreement requiring approval of the creditors and equity committees and the Bankruptcy Court. The two options do not enhance the compromise reorganization plan and would endanger its viability.

Mr. Balluff's third option characterizing the Acquisition Premium as a "deferred purchase power cost" could disrupt a fundamental provision of the Rate Agreement without adding substance to agreement. Tr. May 1 at 220-27. Change in accounting treatment or redefinition of the Acquisition Premium would probably require approval of the parties and the Bankruptcy Court and would delay PSNH emergence from bankruptcy while unnecessarily risking its ultimate success. In the absence of compelling need — not here demonstrated — the commission does not believe the rate plan should be drastically compromised by assigning the acquisition adjustment to Seabrook.

Return on Equity
ROEs for Reorganized PSNH and North Atlantic Energy Company

[10, 11] Reorganized PSNH expects to earn a cumulative net present value ROE of 11.75% over the fixed rate period, or 150 basis points below the ROE collar cap. Ex. NU 1-E at D-81; Ex. NU 3, Noyes Pre-filed Direct Testimony at 14. The Seabrook Power Contract establishes an ROE for NAEC of 13.75% for ten years, and thereafter at the average of allowed ROE's of the Yankee Companies. FERC has disallowed such automatic adjustment. (Ex. A to the Rate Agreement, Ex. NU 1-E D28). The 13.75% ROE for NAEC is reasonable for a newly capitalized company. NAEC will be a single asset company owning a controversial nuclear power plant at Seabrook, with a single customer, New PSNH. There will also be the regulatory risk of two prudence reviews, by NHPUC and the FERC for the duration of the power contract. The 11.75% ROE for PSNH is below the market return for a hypothetical Stand-Alone PSNH.

According to Mr. Curley (NU financial witness), the anticipated ROE's of 11.75% and 13.75% are below the 13% to 14% market-required ROE's for electric utilities. Tr. April 20 at 86-87. PSNH's emergence from bankruptcy would require a return even higher than the market rate due to higher debt costs and risk premium for equity. TR. April 20 at 87-88.

Mr. Kessler's testimony that the Rate Agreement will produce a fair return to investors supports the proposition that the ROE's under the Rate Agreement are reasonable. TR. May 1 at 235-36.

The ROE Collar Stabilizes Just and Reasonable Rates Over the Fixed Rate Period

The ROE Collar limits the range of return on equity to be realized by the rates during the fixed rate period by:

(1) Capping PSNH's CUM NPV ROE at 13.25% based on NU's investment in PSNH; and

(2) Prescribing a floor on CUM NPV ROE, beginning at 8% in 1993, 9% in 1994, 9.75% in 1995, and 10.5% in 1996. Att. 2, Staff Ex. 1, Ex. NU 1-E at D-12 and Exhibit B.

ROE Ceiling

The ROE ceiling is calculated based on PSNH earnings and average common equity balances to the extent the New Hampshire Public Utilities Commission finds that Reorganized PSNH has justified an investment adder of at

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least $300 million above an investment of $2 billion. Rates paid by PSNH ratepayers will grant PSNH the opportunity to earn up to 13.25% on its $1.6 billion investment ($800 million non-Seabrook assets + $800 million acquisition premium) and will allow NAEC to recover its $700 million investment for Seabrook in the purchase power contract. Allowance of the $300 million Investment Adder is predicated on the NHPUC's finding that NU will cause operational savings and other synergies to result in a reduction in revenue requirements on a net present value basis of at least $300 million. The overall impact of synergies will tend to offset the adder through operational efficiencies so that ratepayers will be providing an equivalent of a return on $2.0 billion. The calculation of the ROE ceiling based on the forecast of PSNH's financing (Schedules in Volume II of NU's initial filing) indicates that the net income return on equity, cumulative net present value (NI ROE—CUM NPV) will provide low returns in the early years of the fixed rate period and higher returns in the later years as shown by the following Schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	1990	1991	1992	1993	1994	1995	1996
NI ROE—CUM NPV	0.53%	4.39%	6.40%	7.69%	9.15%	10.42%	11.75%

It will be noted that the NI ROE CUM NPV is 11.75%, or less than the 13.25% ROE required to trigger a rate decrease.

ROE Floor

The ROE floor protects ratepayers against significant increases in base rates over the fixed rate period by guaranteeing NU a return on only the first $2 billion of its total $2.3 billion investment. The risk associated with the return on acquisition price in excess of $2 billion in effect is transferred to NU investors by reducing the acquisition price by $300 million through elimination of the Investment Adder. For purposes of the floor calculation the ROE is computed based on a $2.0 billion investment. This hypothetical ROE would then be measured against the "nominal" floor trigger points of 8% in 1993, 9% in 1994, 9.75% in 1995 and 10.5% in 1996 to determine if the 5.5% increased rate level should be further increased; the CUM NPV ROE for floor is 14.78% in 1993, 15.56% in 1994, 16.12% in 1995 and 16.72% in 1996. Rodier Att. 2, p. 6, Staff Ex. 1. The "nominal" floor trigger points do not activate an increase above the floor, since they are measured against a hypothetical ROE assuming the acquisition price for PSNH

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was $2.0 billion instead of $2.3 billion.

PSNH's actual ROE measured against total investment would be considerably lower than the "nominal" ROE. "Effective" trigger points based on PSNH's earned return on its entire investment of $2.3 billion would be (0.3%) in 1993, 0.8% in 1994, 1.8% in 1995 and 2.8% in 1996 prior to triggering additional rate increases. Att. 2, p. 3, Staff 1; Case 9, Ex. 6, Case 10, Ex. 6, Staff 4.

Staff's low growth forecast (Staff Ex. 6) and staff's conservation and load management case do not project a rate increase as a result of the decreased net income level as shown by the following tabulation: (p. 11, Staff Ex. 4)

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	19901991	*1992*	*1993*	*1994*	*1995*	*1996*
Effective Floor				-.27%	.81%	1.77% 2.84%
Low Growth		.53	2.69 4.37	5.46	6.73	7.776 8.90
CLM		.53	2.47 3.72	4.56	5.79	6.92 8.28

Base Rate Modifications
under Section 5(a)(v)

Other than the annual 5.5 percent increases and any changes due to the operation of the ROE Collar, the only changes to base rates permitted by the Rate Agreement would be pursuant to Section 5(a)(v) as follows:

(A) legislative or regulatory changes such as changes to federal or state tax or environmental regulations that require capital

expenditures of at least $20,000,000 or an increase or decrease in annual expense of least $2,000,000 (To the extent not otherwise covered in "EA" of FPPAC).

(B) changes required by the Nuclear Decommissioning Financing Committee in the level of monthly payments. (To the extent not otherwise covered by Section 8 of the Rate Agreement, page D-17).[2](32)

(C) revenues to accomplish programs mandated for Stand-alone PSNH or NUNH by legislators or regulators.

(D) costs associated with Conservation and Load Management programs that have been undertaken with the specific approval of the New Hampshire Public Utilities Commission.

To the extent any new accounting standards or rules are promulgated during the Fixed Rate Period Stand-alone PSNH shall be entitled to the same general rate treatment accorded to other New Hampshire utilities by the New Hampshire Public Utilities Commission for such new accounting standards or rules. Ex. NU 1-E at D-13 to D-14; Ex. NU 3-I at 1.

During the course of the hearings, a number of important issues emerged regarding the interpretation and implementation of base rate adjustments under Section 5(a)(v) of the Rate

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Agreement:

1. "EA" of the FPPAC formula Ex. NU 1-E at D-103 as defined on page 13 of Exhibit C appears to substantially overlap with the provisions of Section 5(a)(v)(A) above, with regard to recovery of safety and environmental backfits raising at least the theoretical possibility of a double recovery, but in any event creating ambiguity as to recovery of certain expenditures, such as Merrimack SO_2 scrubbers. Ex. Staff 1 at 19.

2. With regard Section 5(a)(v)(A) and EA of the FPPAC formula it is not clear what capital expenditures are recoverable if they are discretionary and undertaken voluntarily. It is clear that mandated expenditures over $20 million are recoverable, but is not clear whether a voluntary expenditure of over $20 million is recoverable or whether NUNH would be willing to voluntarily undertake expenditures of less than $20 million since they are not recoverable, even if such an expenditure would be the least cost option. NU's financial motivation may be to undertake only those projects that require capital expenditures greater than $20 million or that involve cleaner, more expensive fuels that can be recovered under FPPAC on a dollar-for-dollar basis. (Id. at 19 and 20).

Moreover, the potential impact of Section 5(a)(v)(C) is also not clear. For example, NU could argue that a capital expenditure of less than $20,000,000 stemming from a legislative or regulatory change is recoverable under Section 5(a)(v)(C) ("revenues to accomplish programs mandated for Stand-alone PSNH or NUNH by legislators or regulators").

3. Under Section 5(a)(v)(D), the "cost" of conservation and load management (C&LM) programs is fully recoverable. The term "cost," however, is not defined by the rate agreement. NU stated repeatedly during the hearings that it contemplates such "costs" to include not only direct costs (*e.g.*, material and labor associated with installing a water heater wrap) but also a revenue erosion allowance to offset lost sales and a financial incentive. Many of these programs may also be in the best interest of NU's stockholders to the extent that they help forestall conversions from electricity to substitute fuels for end uses such as water heating. *Id.* at 20.

4. According to NU, not only is C&LM implementation contingent upon the foregoing cost recovery, the rate agreement also proposes to allow NU to add such costs to the ongoing base rate level which is subject to the 5.5% annual increases. This would result in NU's stockholders benefitting additionally (including the financial incentive) due to the compounding effect of the 5.5 percent annual increases on the initial amount of C&LM cost recovery. *Id.* at 21.

The framework for our evaluation of each of the issues arising under Section 5(a)(v) is whether the risks have been fairly apportioned and whether the interests of ratepayers have

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been properly balanced. The Staff concurred in the Joint Recommendations[3(33)] of NU and the State, appended hereto, with the exception of limiting the commission's authority to impose additional substantive conditions. The commission adopts the Joint Recommendations and its

proposed remedies and finds that incorporating the recommendations as part of its report will fairly apportion risks and properly balance the interests of investors and ratepayers in implementing the Rate Agreement. However, the commission reserves its right to impose such substantive conditions as may be necessary to serve the public good.

Recovery of Safety and Environmental Backfits Under "EA" of FPPAC

Staff recommended that the language of Section 5(a)(v)(A) should be modified to make it clear that the annual cost of safety and environmental backfits will not be recovered under Section 5(a)(v)(A) but rather under the term "EA" of FPPAC, in order to eliminate any hypothetical double recovery or confusion and ambiguity as to which provision is applicable. Ex. Staff 1-C, Recommendation No. 11a.

NU and the State have proposed that, to the extent that Section 5(v)(A) of the Rate Agreement allows recovery for the cost of compliance with environmental orders, regulations, and laws, it should be interpreted to apply only to such costs incurred in connection with PSNH's non-production facilities. All such costs incurred by PSNH for production facilities shall be recovered through FPPAC, pursuant to the definition of the term "EA." Joint Recommendation at ¶ 6(i)

We find that staff's recommendation has been satisfactorily addressed. Moreover, the proposal does not solely address the relatively innocuous "double recovery" issue discussed by NU in its Brief at 76. It also remedies two other very substantial staff concerns discussed *infra.*

Implementation of Least Cost Measures

Staff recommended that PSNH implement least-cost measures without an NHPUC mandate in order to counteract the strong disincentive under Sections 5(a)(v)(A) and (C) of the Rate Agreement to voluntary implementation of least cost capital expenditures of greater or less than $20 million since they are not recoverable under either provision. Ex. Staff 1-C, Recommendation No. 11b.

In response NU and the State have recommended the following:

> The parties acknowledge that the intent of the Rate Agreement is that *neither* PSNH *nor* ratepayers should assume risks or costs (beyond the requirements of Section 5(v) of the Rate Agreement) from any determination made by PSNH as to whether or not to pursue least cost measures. Toward that end, and consistent with the parties' desire not to exceed the projected rate path, the parties agree to cooperate in achieving their mutual goal by recommending, as needed, innovative mechanisms to permit rate stability and implementation of least-cost measures without adversely affecting the financial assumptions upon which the Undersigned Parties relied in agreeing to the 5.5 percent rate path. Such innovative mechanisms could include retention by PSNH of any fuel expense savings until the capital costs incurred by PSNH for such measure are repaid...

Joint Recommendation at ¶ 6(ii).

The foregoing proposal of NU and the State may be irrelevant to the extent it appears to contemplate recovery of fuel switching expenditures under Section 5(a)(v) since costs related to fuel switching are clearly designated by the Rate Agreement for recovery under EA of FPPAC,

not Section 5(a)(v). We will also state our understanding of the Rate Agreement that the types of costs recoverable under Section 5(a)(v)(A) and Section 5(a)(v)(C) are mutually exclusive. For example, a capital expenditure of less than $20 million selected by PSNH as its least cost option in response to a generic legislative or regulatory change would clearly not be recoverable under Section 5(a)(v)(A) and would also not be eligible for recovery under Section 5(a)(v)(C). The types of costs recoverable under Section 5(a)(v)(C) would be only

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those associated with new programs specifically mandated hereafter for PSNH.

Neither the cost of safety and environmental backfits under the term "EA" of FPPAC (Joint Recommendation at 6(i)), nor least cost expenditures of less than $20 million mandated by the NHPUC can be recovered by NU, since there is no provision under "EA" of FPPAC comparable to Section 5(a)(v)C.

Effect of Compounding 5(a)(v)
Base Rate Adjustments by the
5.5% Annual Increases

Staff recommended that rate adjustments authorized under Section 5(a)(v)(A) through (D) should not increase the ongoing base rate levels which are subject to the 5.5 percent annual increases. Ex. Staff I-C, Recommendation No. 12. In response, NU and the State have proposed that all incremental C&LM costs recovered under Paragraph 5(a)(v)(D) of the Rate Agreement in one year shall be increased by NU by 5.5% annually for the remainder of the fixed rate period. The intent of this proposal is that compounding of the 5.5% increases in allowed C&LM costs will be matched by corresponding increases in C&LM expenditures and will not be retained by PSNH as income. Joint Recommendation at ¶ 7(ii)

This proposal satisfactorily addresses the problem of compounding C&LM expenditures. In addition, the Joint Recommendation at ¶ 6(i) which provided for recovery of environmental and safety backfits through FPPAC rather than base rates eliminates the compounding effect of the 5.5% annual rate increases on these expenditures and thus reduces the ultimate impact on customer rates.

Threshold Level of C&LM Expenditures
and Recovery of Lost Revenues

Staff recommended that NU undertake threshold C&LM activities consistent with least cost integrated resource planning principles within the 5.5% rate projections. According to staff, C&LM has an essential role to play in prudent utility management and it is expected that NU will do that C&LM necessary to comply with existing commission orders without awaiting further commission approval or mandate. NU should obtain the approval it needs for additional cost recovery for C&LM (*e.g.,* lost revenues) in a proceeding separate from DR 89-244. Ex. Staff 2A.

In response, NU and the State have proposed that if the commission orders PSNH to implement any C&LM programs in excess of the base level included in the current projections for the Rate Agreement, PSNH shall be entitled to recover fully the sum of any and all

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incremental direct program costs. In addition, PSNH shall be entitled to recover fully all other costs (including lost fixed costs) and incentives related to C&LM programs only as may be permitted either in this or any other commission proceeding. Joint Recommendation at ¶ 7(i).

The NHPUC staff agreed to use its best efforts to facilitate the issuance of a report and order of the commission in docket DR 89-187 relating to cost recovery and incentives for C&LM on or before the issuance of a report and order in this docket. Joint Recommendation at ¶ 7(ii).

The base level for C&LM programs included in the current base rate projections for the rate agreement are the programs approved by the commission totaling approximately $1.167 million in annual 1989 costs to PSNH. Rate WI and other interruptible program costs (which in 1989 had cost approximately $750,000 of the $1.167 million) shall be recovered as Purchased Capacity Expense under FPPAC. Joint Recommendation at ¶ 7(ii). We find this reasonable given that the design and costs of the Rate WI programs is uncertain and that $1.167 million is a more appropriate level for other C&LM programs to be included in the base rate projections than $400,000 ($1.167 million minus $750,000).

Load and Resource Plan

In section 3(d), the Rate Agreement states that "prior to the First Effective Date, NU will file with the NHPUC for its approval a load and resource plan for a period of 20 years reasonably demonstrating that the ratepayers of New Hampshire will be provided with safe and

adequate electric service at just and reasonable rates." (NU 1-E, p. D-10) In compliance with this section of the Rate Agreement, NU filed a Twenty Year Forecast of Loads and Resources, Ex. NU 4-C on January 24, 1990.

NU states in its Brief at 82 that it has presented evidence that "[t]he Twenty Year Resource Plan demonstrates [its] ability to provide concrete, reasonably priced generation supply options to PSNH over the next twenty years, whether or not Seabrook operates. Ex. NU 4-C at 5-13; Ex. NU 4 at 23-62; Ex. NU 4-A; Tr. Apr. 11 at 184-204; Ex. NU 8, HSTAF01 Q-Staff-052; Ex. NU 9, HSTAF01 Q-OCA-007, 008, 009. In its request for findings, NU avers that the commission can approve the Twenty Year Load and Resource Plan in accordance with section 3(d) of the Rate Agreement if it finds "that the 20 year Load and Resource Plan submitted by NUSCO provides adequate assurances that NU will have available sufficient supply side options at reasonable cost to meet the energy needs of New Hampshire for 20 years." (Requested findings, p.2) NU further argues that the Load and Resource Plan "demonstrates that PSNH will be able to conduct effective least cost planning pursuant to New Hampshire law by giving PSNH access to sufficient, attractively priced generation supply options." (Brief at 83)

Staff testified that "the NU Twenty Year Forecast of Loads and Resources demonstrates that there are adequate resources to meet both PSNH's and the Combined System's needs for the ten year term of the rate plan." Ex. Staff 2A at 8; Ex. Staff 2 at 34-36; Tr. May 1 at 171-173; Tr. May 3 at 114-116. However, with respect to section 3(d) of the Rate Agreement and the nature of the commission approval required by that section, staff noted that "NU has acknowledged that the Twenty Year Forecast of Loads and Resources is not a least cost resource plan and does not meet the commission's requirements for least cost planning." Ex. Staff 2A at 9. Further, staff

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testified that it believed that

> "resource planning in accordance with the principles of least cost planning and the commission's least cost planning requirements is necessary to establish that any rates that result are just and reasonable ... Therefore, [it] recommends that the commission indicate in any approval of the load and resource plan that the approval goes to the extent that the load and resource plan demonstrates that there are sufficient resources to meet PSNH's needs, but not to approval of specific resources at this time. The commission should make it clear that NU needs to comply with the commission's least cost resource planning requirements during the rate plan period and beyond in order to demonstrate that rates will be just and reasonable."

Ex. Staff 2A, Summ. at 9.

The issue before the commission is whether the Twenty Year Forecast of Loads and Resources filed by NU "reasonably demonstrate[s] that the ratepayers of New Hampshire will be provided with safe and adequate electric service at just and reasonable rates" so that the commission approval required by the Rate Agreement at section 3(d) can be granted. The Load and Resource Plan is not a least cost integrated resource plan. NU notes that "[a]ll the parties have repeatedly stated that the Twenty Year Resource Plan does not relieve PSNH from New Hampshire's least cost planning requirements." (Brief at 82) The commission accepts this commitment by NU to abide by our existing and any future least cost planning requirements. Therefore, it is left to us to determine whether the showing of adequate capacity resources in the Twenty Year Load and Resource Plan along with NU/PSNH's commitment to plan in accordance with least cost planning principles and the commission's least cost planning requirements is sufficient to demonstrate that ratepayers will be provided service at just and reasonable rates.

The Joint Recommendation for (¶ 10) suggests that it is sufficient. NU/PSNH and the State recommend that section 3(d)

> "be interpreted consistent with the intent of the parties negotiating the Rate Agreement that the 20 year load and resource plan filed by NUSCO provides adequate assurances that NUSCO will have available sufficient

> supply side options at reasonable cost to meet the energy needs of New Hampshire for 20 years. Further, the Commission's acceptance of the 20 year load and resource plan shall not relieve NUSCO from its obligation to implement least cost planning as specified by the Commission, or limit, in any way, the right of the Commission to set just and reasonable rates."

Joint Recommendation at 6. We find that this interpretation of Section 3(d) is in fact necessary. The Twenty Year Load and Resource Plan as filed does not provide a sufficient basis for finding that the rates which result will be just and reasonable. In order to make such a finding, we will require NU/PSNH to comply with all existing and any future least cost integrated planning or any other resource planning requirements of the commission.

In addition, our approval of the Twenty Year Load and Resource Plan should not be

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interpreted to be a finding now that the capacity outlined in that plan is priced at market rates. Such a finding can only be made in the context of PSNH's ongoing resource planning and our review of it in PSNH's least cost planning filings.

NU's Sales Forecasts

[12] NU forecasts electricity sales to grow at a compound annual growth rate of 2.7% per year between 1988 and 1998, covering the period of the rate plan. Ex. NU 3, The NU Sales Forecast for PSNH, 1988-89, p. 45. The corresponding compound annual growth rate for 1990 through 1996, the period of the 5.5% projected rate increases, is 2.3%.

NU forecasted sales by assuming that sales are equal to the economic trends, multiplied by the kilowatt hours (kWh) per unit of the economic driver, multiplied by the cumulative price effect, minus supply switching [(the economy × kWh × price) - (supply switching)]. Ex. NU 3, The NU Sales Forecast for PSNH, 1988-98, p. 2.

NU used forecasts of economic and demographic trends for New Hampshire from a variety of sources including "Data Resources Incorporated (DRI) Regional Information Service (RIS) Summer 1989 forecast for the state of New Hampshire." Ex. NU 3, The NU Sales Forecast for PSNH, 1988-98, p. 2. The DRI RIS forecasts were adjusted upwards by DRI at NU's request to correct what NU saw as inconsistencies. NU response to Q-Staff-204.

The cumulative price effect was derived from price elasticities that were adjusted from PSNH estimates. NU halved elasticities presented by PSNH in its 1989 Edition Load Forecast after comparing them to elasticities from other sources including DRI and Arthur D. Little (ADL). Ex. NU 3, The NU Sales Forecast for PSNH, 1988-98, p. 3.

Lastly, NU estimated the amount of supply switching (self generation and cogeneration) that would take place under various price scenarios and incorporated an estimate, corresponding to its price projections, into the sales forecast. NU assumed that it would be able to make some rate design changes for what it called "vulnerable" customers. (NU response to Q-TSR-007)

Staff expressed the concern that the uncertainties in NU's sales forecast for PSNH all work in the direction of leading to an overestimation of sales rather than counterbalancing each other. (Ex. Staff 2, p. 5) Staff questioned NU's upward adjustments to the DRI RIS economic and demographic forecasts, NU's adjustment to PSNH's price elasticity estimates and NU's assumptions about rate design changes and self and cogeneration. (Ex. Staff 2, pp. 4-20) While staff concluded that the NU sales forecast was not unreasonable, it was concerned that it might be optimistic. An overly optimistic sales forecast could threaten the financial viability of the rate plan and lead to additional rate increases for customers.

NU responded by arguing that it has established the reasonableness of its sales forecasts and points out that "NU and its investors, not New Hampshire ratepayers, bear the risk of optimistic sales projections over the Fixed Rate Period... unless the floor of the ROE Collar is triggered." (Brief at 90) Both Staff and NU testified that it was unlikely that the floor of the ROE Collar will be triggered even under a low sales forecast scenario. Ex. Staff 4, Response to

Q-Staff 154.

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NU has stated that "the primary determinant of sales growth is economic growth in New Hampshire, which is essentially independent of electric price" Brief at 91. NU has adjusted the DRI economic and demographic forecasts to be consistent with a manufacturing employment forecast it believes to be accurate. Staff has expressed its concern that manufacturing employment may not be the key driver for nonmanufacturing employment, and hence population growth, and that NU's adjustment may not be appropriate. Staff Ex. 2 at 9. We note further that NU has assumed steady growth in nonmanufacturing employment and population even when growth in manufacturing is projected to fluctuate, remaining virtually flat in some years, declining in others and increasing in some. Ex. Staff 2, Attach. JGB-1, pg. 1 of 4.

NU has also incorporated rate design changes in the PSNH sales forecast to protect "vulnerable" customers. At the same time, NU argues that its sales forecast is not "overly dependent" on its assumptions about rate design. Brief at 91. However, both the BIA and NU testified that it was important that NU/PSNH be able to make some rate design changes. Ex. BIA 1, p. 17; Ex. NU 3, The NU Sales Forecast for PSNH, 1988-89, p. 3. The rate design assumptions NU has actually incorporated into the sales forecast for PSNH do not appear to have much impact as NU has modeled them: overall sales increase slightly if revenue reallocation is precluded and no additional self or cogeneration is assumed. NU responses to Q-TSR-004. Nevertheless, we find it important to investigate rate design further and order the company to consult with staff and propose a schedule for a rate design proceeding by January 1, 1991.[4(34)]

Our greater concern, however, is with NU's price elasticity assumptions and its use of them. NU argues that "it should be stressed that real electric prices are relatively flat under the Rate Agreement" (Brief at 91) and in a footnote at p. 21 states that it "believes ratepayers understand the difference between real and nominal prices." This commission does not need to determine the question of whether ratepayers respond to real or nominal prices. At least in the short term, ratepayers respond to the prices they see on their bills. In this situation ratepayers will be responding to a series of known price increases over a period of seven years. It is acknowledged that these price increases will exceed the projected rate of inflation, if only by a small amount. The commission's concern is with the magnitude of ratepayer response to these price increases during the seven year period and with the nature of ratepayer response at the end of this seven year period. It seems clear that seven years of known price increases should have some cumulative effect.

The results of the BIA's survey of New Hampshire's businesses and industries for their reactions to electricity price increases supports the conclusion that there is a threshold effect in responses to long term price increases. Ex. BIA-1. Businesses and industries, as well as residential consumers, will make decisions on the purchases of equipment and appliances and the design of buildings and heating and process systems which may last beyond the seven year period of the rate plan. To the extent that price increases trigger such customer investment decisions, these sales are lost to the PSNH system for the life of those investments. Steady price increases known over a period of time which drive customers from the system may result in discontinuity of demand that does not reverse itself in equivalent fashion when prices stabilize. We are facing a path of sustained price increases above the rate of inflation. Failure by PSNH to recover its lost sales when these price increases end will have an impact on rates beyond the seven year period of 5.5% increases and on PSNH's financial health.

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Despite the concerns that have been raised about the implications of errors in the forecast, we note that no party has argued that the NU sales forecast is unreasonable. The commission finds that the NU sales forecast for PSNH is within the bounds of reasonableness, but we believe it is at the upper end of those bounds.

C. FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE

Description of FPPAC

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[13-16] The purpose of FPPAC, which will be in effect for ten years after the First Effective Date, is to eliminate the risk that volatility in fuel and purchased power expense could jeopardize the financial condition of Reorganized PSNH or alternatively result in a windfall to the company. FPPAC countervails these risks through the timely, adequate recovery from or refund to ratepayers of changes in fuel and purchased power expense, without a change to base rates.

The base reference level to be used for the FPPAC has been designed so that there would be no revenues generated during the fixed rate period under the mechanism if the financial and economic assumptions on which the Rate Agreement was based were to occur. Under the terms of FPPAC, PSNH will recover or refund the difference between its actual fuel and purchased power costs and the projected base reference amount of those costs used to set base rates. Ex. NU 1-E at D 91-106. The following costs and expenses are recoverable under FPPAC:

—Energy expenses and changing fuel prices
—Purchased capacity and transmission expense
—Reductions to Small Power Producer/Cogeneration payments
—Hydro-Quebec support payments
—Seabrook Power Contract payments
—Cost of NHEC Seabrook Buyback Agreement
—PSNH's share of NEPOOL interchange expenses net savings
—PSNH's share of the Joint Dispatch Savings
—Cost of Environmental Safety Backfits, fuel switching or other mandated improvements which require a capital expenditures of $20,000,000 or generate an increase or decrease to annual expense of $2,000,000.

Ex. NU 31 at 2.

Each December and June, the company would file for an FPPAC rate effective for the next six months, beginning with January and July, respectively.

FPPAC will replace PSNH's current adjustment mechanism (ECRM) and reconciliation from prior ECRM periods may affect FPPAC's first period calculation. There are two major differences between FPPAC and ECRM. One is chiefly a difference in form while the other is a difference in substance.

The difference in form is that the two mechanisms work in different ways to accomplish the same goal, the recognition of actual expense incurred. FPPAC examines total expense and

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applies a surcharge or surcredit (i.e., the FPPAC rate) to base rates so that the sum of the two components of revenue, FPPAC adjustment and base rate reference level, reflects the actual expense incurred. In contrast, ECRM acts as an integral component of base rates that adjusts base rates to reflect the actual expense incurred. The FPPAC method is desirable following the reorganization of PSNH because the fluctuations in base rates that would result under the ECRM approach are not compatible with the fixed schedule of seven annual base rate increases established by the Rate Agreement.

The substantive difference between FPPAC and ECRM is that FPPAC takes into account non-energy costs that ECRM did not consider, such as purchased capacity expense and the Seabrook Power Contract, in order to make its operation more compatible with the principles and requirements of the Rate Agreement.

FPPAC addresses several major contingencies. As noted above in the Base Rate Modification Section, if there are environmental backfits, safety backfits or fuel switching capital expenditures required that involve at least a $20 million total investment or that cost at least $2 million annually, the annual costs will be included for recovery in FPPAC. There are also deferral mechanisms designed to maintain the annual 5.5% rate increases provided for in the Rate Agreement. These mechanisms specifically address the renegotiation of certain of the small power producer (SPP) contracts, the possibility of premature retirement of Seabrook during the fixed rate period and negotiations with the New Hampshire Electric Cooperative (NHEC).

The FPPAC base has been designed to

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reflect current SPP contract rates. The FPPAC formula provides that customers will receive 90 percent of any reduction in the cost of power from the eight designated SPPs and 100 percent of any cost reductions from the remaining SPPs. Thus, if the renegotiations are unsuccessful, there would be no additional impact on rates resulting from the higher cost of power under existing agreements.

In the event Seabrook operates commercially, but is prematurely retired, the combination of replacement power costs and continuing payments under the Seabrook Power Contract might lead to rate adjustments under FPPAC during the fixed rate period that cause total rate increases in a particular year to exceed 5.5 percent. The deferral mechanism prevents this during the fixed rate period by limiting the amount of these costs that can flow through FPPAC.

In the event that a combination of events relating to the SPP contracts, NHEC arrangements and premature Seabrook retirement would result in a total rate increase in a particular year of more than 5.5 percent, an additional deferral mechanism will defer such amounts as required to bring the rate increase down to the 5.5 percent level. Ex. NU 1-E B(K) at p. D 102.

Analysis of FPPAC Issues

There were five issues relating to FPPAC that emerged during the hearing: the reasonableness of the assumptions underlying the FPPAC BA reference level, interest on over and under recoveries and a trigger mechanism, off-system purchases, sales and exchanges, rate effects of negotiations with NHEC and the SPPs, and the Seabrook Power Contract.

Reasonableness of the Assumptions Underlying the FPPAC BA Reference Level

In order to design a viable cost recovery mechanism that would protect both PSNH and ratepayers over the fixed rate period, it was necessary to define and project a baseline fuel and purchased power cost reference level using the best data available at the time. Staff and OCA asserted that some of these reference level assumptions may be overly optimistic. Staff recommended that the FPPAC be modified in order to allow the recovery of Seabrook O&M costs exceeding FPPAC assumptions only if Seabrook exceeds performance expectations (Ex. Staff 113, Recommendation No. 9), and the OCA extended this concept to other synergies that affect costs recovered through the FPPAC. Ex. OCA 1, Talbot Pre-filed Direct Testimony at 10.

However, it is important to note that, in the event the assumptions underlying the FPPAC BA reference level are realized in the aggregate (individual assumptions may well vary so long as they are offset by other charges) over the life of the FPPAC, the FPPAC mechanism would result in no change to ratepayers' bills. BA is the base assumptions for FPPAC costs included in the 5.5% rate increases. It appears that the cost assumptions incorporated in the FPPAC, taken as a whole, were reasonable when they were first negotiated and continue to balance utility and consumer risks. Upon extensive evaluation, we find that the assumptions underlying the FPPAC BA, taken in their entirety, are reasonable and stabilize prices for electricity to maintain the projected reasonable rate level found by the commission to balance investor and consumer interests.

Interest on Over and Under Recoveries and Trigger Mechanism

Staff recommended, and NU agreed, that the commission add to the FPPAC mechanism provisions for interest on over and under FPPAC recoveries, and a trigger mechanism to allow for mid-course changes to FPPAC rate adjustments. Ex. Staff 1B, Recommendations Nos. 5a and 5b. Joint Recommendation at ¶ 3. These recommendations do not affect ratepayers and investor risk allocations, and do not change the structure of the FPPAC or its baseline assumptions. According to NU, they would not require NU to go back to the Legislature, PSNH equity security holders, unsecured creditors or the Bankruptcy Court for approval.

We find that these recommendations serve the interests of both ratepayers and investors. We also note that interest on over and

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underrecoveries not only keep ratepayers and investors whole when actual costs diverge from the FPPAC rate being billed, but also have the benign effect of encouraging the estimates on which the FPPAC rate is based to be as objective as possible, since there is no incentive for an inflated FPPAC rate resulting in an "interest free" loan from ratepayers.

Off-System Sales, Purchases, and Exchanges

Staff and OCA pointed out two ways in which the Rate Agreement might be used to

disadvantage PSNH ratepayers to the benefit of NU stockholders. First, because the FPPAC automatically passes all purchased power costs through to ratepayers while all capacity sales revenues go to stockholders, Staff was concerned that NU will have an incentive to sell PSNH short of capacity and then require PSNH to purchase power from NU. Ex. Staff 1B, Recommendation No. 6. Staff and OCA also expressed concerns that the certain sales will increase energy costs to PSNH ratepayers recoverable under FPPAC. *Id.* at Recommendation No. 7. NU satisfied these concerns by agreeing that the FPPAC will be interpreted so that energy and power costs flowing through to ratepayers will not include (i) the cost of any purchase of capacity made in order to replace a portion of PSNH capacity sold that causes PSNH to be unable to meet its allocated capability responsibility or (ii) the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date. Joint Recommendation at ¶ 4; Tr. May 25 at 86-89.

We find that the remedial actions taken by NU in accordance with the Joint Recommendation at ¶ 4 to address the deficiencies pointed out by Staff and OCA are desirable and will result in substantial monetary benefits to ratepayers over the seven-year life of the rate agreement.

New Hampshire Electric Cooperative; SPP Negotiations

According to NU, the rate agreement provides a flexible approach to addressing any result that may arise from negotiations between NU and NHEC concerning the so-called "Seabrook buy-back contract." Tr. April 18 at 141-42. Under Section 12 of the Rate Agreement, NUSCO has agreed to undertake its best efforts to renegotiate the buy-back arrangement with NHEC. Ex. NU 1-E at D-20. Section 12 of the Rate Agreement expressly provides that when the result of those negotiations is finally determined, either the State or NUSCO may reopen the Rate Agreement to address that result. This flexible approach was specifically intended to permit the commission to approve the Rate Agreement without having to resolve the buy-back issue. Tr. April 9 at 44-46; Tr. April 18 at 129-34. Moreover, Section 12 of the Rate Agreement provides that any successful renegotiation is subject to the approval of the commission. Ex. NU 1-E at D-20. Therefore, the rate agreement ensures that the State and the commission will determine both during the fixed rate period and thereafter whether the negotiated buy-back arrangement serves the public good.

Similarly, Section 12 of the rate agreement provides that NUSCO will use its best efforts to renegotiate power purchase arrangements with certain SPPs. Ex. NU 1-E at D-20. The current PSNH rate projections do not assume any reduced power purchase costs due to these renegotiations. Ex. State 1, Kessler Pre-filed Direct Testimony at 19-20. In the event such renegotiations provide for reduced purchased power costs, as noted above such cost savings will be shared pursuant to Rate Agreement Exhibit C, Paragraph B.D. Thus, successful SPP renegotiations can only serve to decrease rates.

We find that the flexibility built into the Rate Agreement regarding future negotiations with NHEC and the SPPs are desirable and a positive factor in the determination of the public good.

Seabrook Power Contract

[17, 18] PSNH currently owns approximately 35.6% of Seabrook.[5(35)] Absent the Agreement, PSNH's share of the Seabrook costs

could not be included in rates until it is actually providing service to customers pursuant to the so-called anti-CWIP statute, RSA 378:30a, which provides as follows:

> 378:30-a Public Utility Rate Base; Exclusions. Public Utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

In light of the Supreme Court's holding in *Petition of Public Service Company of New Hampshire*, 130 NH 265, 92 PUR4th 546, 539 A.2d 263 (1988) that the so-called anti-CWIP statute, RSA 368:30-a precludes inclusion of CWIP in rates even in emergency circumstances, the legislature passed RSA 362-C to authorize the commission to examine the rate agreement and determine whether, taken as a whole and in the context of the joint plan, it is "consistent with the public good." RSA 362-C:3. The legislature further directed that if the commission finds the rate agreement to be consistent with the public good, it shall,

> "notwithstanding any other provision of law, establish and place into effect the levels of rates, fares, or charges in the fuel and purchased power adjustment clause to be maintained for Public Service Company of New Hampshire, or its successor, in accordance with, and during the time period set forth in, the Agreement.... " [Id.]

Thus, to the extent that the commission finds the plan to be in the public good, it can implement the plan notwithstanding such contrary provisions of law as RSA 378:30a, which would otherwise bar inclusion of Seabrook costs in PSNH's rates.

The reorganization plan provides that PSNH will maintain its current ownership of Seabrook after the First Effective Date and until the consummation of the merger. Ex. NU 1-E at 24. After the second effective date, when the PSNH merger with NU is consummated, PSNH will transfer its Seabrook interest to a newly formed NU subsidiary, referred to in the plan as NEWCO, but subsequently named North Atlantic Electric Company (NAEC). Once PSNH has transferred its Seabrook interests to NAEC, its rights and obligations to Seabrook power will be defined primarily under the terms of the Seabrook Power Contract which the commission is being asked herein to approve. Id.

The Seabrook Power Contract was designed to minimize financing costs and to ensure the safe operation of Seabrook through NU management. Tr. April 11 at 64 and Tr. April 30 at 38-39. It also entitles PSNH to all of NAEC's share of the output of Seabrook in consideration of what has been described in this docket as a "bullet-proof" obligation to pay NAEC pursuant to a cost-of-service formula specified in schedule I to the Seabrook Power Contract.[6(36)] The contract provides that PSNH's obligations to pay NAEC for Seabrook are, "absolute and unconditional and shall not be affected by any circumstances ... ." Seabrook Power Contract, Ex.

NU 1-E at D-39—D-40. The Contract, with certain exceptions, thus requires PSNH to pay all costs associated with the NAEC Seabrook ownership share, and to assume all risks, regardless of whether such costs and risks are now foreseeable or unforeseeable, or whether Seabrook is operating. Testimony of Staff Witness Rodier, Ex. Staff-1 at 11.

There are several exceptions to and mitigations of this "unconditional" obligation of PSNH to pay NAEC under the Seabrook Power Contract. One is that NAEC must seek the approval of this commission to incur additional costs at Seabrook in excess of $200 million (above the initial $700 million value attached to Seabrook), or if Seabrook is not operable by December 31, 1992. *Id.* at 12 and Rate Agreement, Ex. NU 1-E, Ex. D at D-4 and D-5. The

Seabrook expenditure of the initial $700 million and additional expenditures up to $200 million are to be deemed prudent so long as they are incurred prior to December 31, 1992, or such later date as this commission approves. Ex. NU 1-E at D-97.

Second, the parties to the Seabrook Power Contract have agreed to waive their respective rights to seek any change in the cost of service formula and the components under the formula before FERC. For example, in paragraph 12 of the Seabrook Power Contract, (Starting at Ex. NU 1-E at D-47) North Atlantic agreed not to unilaterally file under Section 205 of the Federal Power Act to change any rate or charge without the prior written consent of PSNH and the State of New Hampshire. The parties to the contract also waived any rights they may have to file a complaint with respect to the rates charged under this Agreement or any other provisions of the Agreement pursuant to Section 206 of the Federal Power Act without the prior written consent of each of the other parties. The parties further agreed that the FERC shall not change the rates charged under this Agreement "unless such rate is found to be contrary to the public interest." *Id.*

A third exception regards PSNH's ability to recover Seabrook costs via the fuel and purchased power adjustment clause (FPPAC). FPPAC, designed under the Agreement to be in effect for ten years, is the vehicle for recovery of all of PSNH's Seabrook related expenses. Section BE(4) NU 1-E at D-98 of the FPPAC provides:

> [T]he recovery of any and all costs which are the subject of this FPPAC with respect to payments to [NAEC] under the Power Contract will be subject to review by the NHPUC as to the prudence of their incurrence. [PSNH] waives any provision of law that would preclude NHPUC review of the prudence of Seabrook costs incurred by [NAEC] or [PSNH].

Thus, whether or not PSNH is obligated under the Seabrook Power Contract to pay NAEC for specific costs, the NHPUC will have the right to review the prudence of said costs to determine whether they should be passed on to ratepayers by operation of the FPPAC. This waiver is intended to preclude any dispute in future proceedings as to whether the imprudence of NAEC or the Seabrook operators can be imputed to PSNH for ratemaking purposes by this commission.

This right of the NHPUC to review the prudence of Seabrook costs was originally presented as a part of FPPAC and thus would have ended with the expiration of the FPPAC after ten

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years.[7](37) During the proceedings, staff established a concern, shared by the commission, that the waiver by PSNH did not extend for the full forty year life of the Seabrook Power Contract. NU subsequently, by stipulation with the State, agreed to extend the waiver to the full forty year life of the Seabrook Power Contract on condition that Seabrook costs will continue to flow through an adjustment clause in a manner "substantially identical to the recovery of such payments allowed under the fuel and purchased power adjustment clause.

NU also, as part of the Joint Recommendation extended the waiver of rights to NAEC in compliance with a recommendation by the staff and by the State. Although the commission is of the opinion that it has the authority to impute the imprudence of NAEC and the Seabrook operator to PSNH for ratemaking purposes, this extension of the waiver of rights to include NAEC precludes the parties from challenging said authority in related subsequent proceedings.

The stipulation provides that the recovery through retail rates of

> "any and all such payments made by PSNH under the Seabrook Power Contract will continue to be subject to prudence review by the NHPUC, except for the initial incurrence of the $700 million dollar cost established for Seabrook as of the effective date of PSNH's reorganization and the additional costs, if any, relating to Seabrook, up to $200 million incurred prior to December 31, 1992, in placing Seabrook in commercial operation. *Id.* at 2.

The term "prudent expense" was defined in

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the original FPPAC, (applicable only to expenses incurred under the Seabrook Power Contract), as:

> An expense that a reasonable utility management would have made, in good faith, under the same circumstances, and at the time the expense was actually incurred or at the time the utility became committed to incur the expense.[8](38)

In accepting this definition of imprudence as applied to the Seabrook Power Contract provision we construe it broadly so that the NHPUC may, under this definition, disallow all expenses incurred by PSNH as a result of an imprudent act in the operation or maintenance of Seabrook. For example, if an imprudent act in the operation or maintenance of Seabrook causes an outage of substantial duration, PSNH would lose the benefit of Seabrook power and would thus have to purchase relatively expensive replacement power and pay whatever cost it is obligated to pay to repair the damage at Seabrook and bring it back on line.[9](39) PSNH may be precluded by the commission from recovering from its ratepayers any of such costs in excess of what they would have paid but for the imprudent act, including, *inter alia*, the incremental costs of replacement power and O&M expenses incurred as a result of the initial imprudent act. Replacement power during a prolonged Seabrook outage could be a substantial expense from which the commission should be able to shield ratepayers.[10](40) The State and NU both asserted in these proceedings that the waivers of rights and establishment of NAEC were designed to retain current levels of NHPUC jurisdiction over PSNH and Seabrook. To construe the agreement of the parties otherwise would be to render meaningless the reserved prudence review powers of the NHPUC.

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We also hold PSNH accountable to take whatever actions are appropriate to avoid or recover any costs claimed by NAEC which may not be legally owing. NU agreed as part of its stipulation in Ex. NU 23 that the no "set-off" language in the Seabrook Power Contract would not foreclose any cause of action that PSNH would otherwise have against North Atlantic. NU Trial Brief at 48; Tr. May 25 at 77; Ex. NU 24. Although we recognize that PSNH's options in this regard are restricted by the Seabrook Power Contract, which defines PSNH's obligation to pay as "unconditional," circumstances may occur which would justify legal or other action by PSNH to minimize said costs. Tr. Apr. 11 at 67-68; State's Legal Memorandum on the Seabrook Power Contract, Ex. NU 23 14. This is consistent with the Agreement, which provides that nothing contained in the "absolute and unconditional" language describing PSNH's obligations to make payments to NAEC "will prohibit Buyer (PSNH) from pursuing such other remedies as it may possess against Seller with respect to such amounts owed or claimed to be owed to Buyer." Seabrook Power Contract, Ex. NU 1-E at D-39 to D-40.

Although the financial viability of NAEC and PSNH is not ensured by the Seabrook Power Contract, the record supports a finding that even if Seabrook were canceled, both PSNH and NAEC would probably be financially viable. As long as PSNH is able to make its payments under the contract, NAEC will recover its cost of service and a return of and on its investment in Seabrook. NU Trial Brief at 86 citing Ex. NU 5, Busch Pre-filed Direct Testimony at 84 and 92-93. If Seabrook were canceled, PSNH could incur higher replacement power costs, to the extent that the commission allows such costs to be passed on to ratepayers, but PSNH could also accrue certain tax benefits from Seabrook more quickly thereby at least partially offsetting its payments to NAEC. *Id.*

Ratepayers benefit from the Seabrook Power Contract in several ways. The contract requires NAEC to sell to PSNH all of its entitlement to Seabrook while PSNH is obligated to purchase that entire entitlement. Tr. Apr. 9 at 143. As long as Seabrook remains operational, the contract offers power at competitive and reasonable prices both in the short term and long term. Tr. Apr. 30 at 22-23. As mentioned above, the Seabrook Power Contract minimizes financing costs and addresses safety concerns. It also avoids rate shock by incorporating a qualified phase-in plan to account for the

investment in Seabrook on NAEC's books. Tr. Apr. 9 at 143. In the event that Seabrook is canceled, the recovery of costs from PSNH ratepayers is nonetheless reasonable and compares favorably with the likely recovery under traditional ratemaking. Under current policy, FERC would probably grant 50% of prudent Seabrook investment over a 10 year period in the range of $1.45 billion (1/2 of $2.9 billion dollars) or $700 million dollars (1/2 of $1.4 billion) depending on the level of investment found to be prudent.

The Power Contract also allows recovery of the Seabrook investment in 39 years rather than 10 years with a maximum recovery of $700 million dollars out of a $2.9 billion dollar investment by PSNH.

Staff and OCA recommended that the commission impose a performance incentive for Seabrook based upon availability, although staff ultimately indicated that such a provision is no

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longer necessary in its opinion for a finding that the agreement is in the public good. Ex. Staff 1B, Rec. 5c; Tr. May 25 at 70-71, 133-34, 206-12. NU strenuously objected to the imposition of a performance incentive mechanism regarding Seabrook because, *inter alia*, such performance incentives would alter "some very fundamental assignments of risk" under the agreement and "would not be permissible, even if NU were willing unilaterally to agree to it, which we are not. Additionally, Mr. Opeka stated such a change would not be acceptable to the NRC." Ex. NU 3-K at 5-6, Tr. May 22 at 55.

We do not believe that a properly designed performance incentive would alter fundamental assignments of risk under the Rate Agreement. The achievement of the projected 5.5 percent rate track depends a large part on achievement of the Seabrook synergies and the establishment of performance incentives would be consistent with this goal. Also, the Agreement is structured so that even where PSNH must pay NAEC for certain costs, the commission has the authority to disallow said costs from being passed on to PSNH's ratepayers to the extent that they were imprudently incurred. Performance incentives are consistent with this authority.

NU's representation that such an incentive would "not be acceptable" to the NRC is at best overstated if not inaccurate. NU substantially softened its assertion in this regard in its June 28, 1990, letter to the commission in which NU states:

> [W]e certainly did not mean to convey to the New Hampshire PUC that the NRC in any manner prohibits the implementation of incentive programs. I think it is more accurate to say that the NRC Commissioners continue to have reservations about how such programs are fashioned and whether they provide incentives or disincentives to safe performance of nuclear power plants.

Ex. Staff 21 at 2-3.

Nonetheless, we agree with staff that it is not necessary at this time to establish a performance incentive program for Seabrook as a condition to approval of the agreement. We may impose such a performance incentive program, however, if it appears in the future that the expected Seabrook synergies are not being achieved. We would do so only on finding that performance incentives would be constructive in minimizing rate increases and improving efficiencies without compromising the Seabrook safety concerns.

On balance, the Seabrook Power Contract appears to be beneficial to New Hampshire ratepayers. Given the benefits of the contract cited above, including the scope of the continuing prudence review powers of the commission and the concessions by NU to extend its waivers of rights applicable to both PSNH and NAEC for the full 40 year period of the contract, the commission will find that the Seabrook Power Contract is in the public good. Although there remain substantial risks to ratepayers that rates could increase substantially if Seabrook does not go on line or if there is an extended outage, there are also substantial potential ratepayer benefits under the contract if the Seabrook synergies are achieved and if Seabrook maintains a capacity factor of 60% or more. Given the record evidence that Seabrook is likely to attain commercial operation in the near future and maintain a capacity factor of 60% to 87%, we find that the potential ratepayer benefits under the Seabrook Power Contract

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outweigh the potential risks to ratepayers. We will accordingly approve the Seabrook Power Contract as being in the public interest.

D. INVESTMENT ADDER IS JUSTIFIED BY THE SYNERGIES

[19] The Investment Adder is "the capitalized synergies, efficiencies or other cost savings or benefits brought by NU to the acquisition of PSNH, but not including any benefits resulting from general economic factors that would be applicable to any bidder for PSNH's assets." Ex. NU 1-E at D-85 to D-86. The significance of the Investment Adder is restricted to the determination of whether the upper limit, or ceiling, of the ROE collar is reached, thereby requiring a base rate decrease. The floor of the ROE collar reflects a two billion dollar value of PSNH. The Investment Adder feature provides that the ROE ceiling must be determined as if the combined capitalization of PSNH and NAEC at the First Effective Date is two billion dollars plus the so-called Investment Adder of $300 million dollars. NU Trial Brief in Support of Its Petition dated June 8, 1990, at 51-52, Ex. NU 1-E at D-85 to D-87; Ex. NU 3, Noyes Pre-filed Direct Testimony at 15-16.

This differentiation between the value of PSNH at the floor of the ROE collar as opposed to its value at the ceiling was the result of a compromise between NU and the State negotiators. The State negotiators were unwilling to allow recovery from ratepayers of more than $2 billion and the creditors insisted on a value of $2.3 billion to resolve the bankruptcy. NU witness Noyes described the situation in terms of a market transaction where "you had a bid of $2 billion dollars and an asking price from the creditors of $2.3 billion. And the negotiations were basically at an impasse." Tr. April 18 at 6. NU's position in the negotiations was that "... where we are a typically prudent investor we are not going to put money in that we can't earn a return on." *Id.* at 7. The State insisted that ratepayers should not be put at risk and thus offered that in order to support the seven consecutive 5.5% increases at the top of the ROE collar, NU would have to demonstrate to the commission that NU brings a minimum of $300 million dollars in additional value to PSNH that wouldn't be there on a stand-alone basis. *Id.* Thus, ratepayers are only at risk for a $2 billion investment at the low end of the ROE collar while NU is afforded an opportunity to earn the maximum ROE on $2.3 billion at the top end of the collar. Id. at 11; Ex. NU 1-E at D-23.

The plan provides that

> "NU shall have the burden of justifying the Investment Adder amount in a proceeding to be held before the NHPUC to the extent the aggregate value of the Plan Value exceeds $2 billion prior to the First Effective Date, *there shall be no retrospective review and modification by the NHPUC of the Investment Adder amount for (PSNH) as determined in (this) proceeding.*"[11](41) (emphasis added)

NU has identified and quantified six categories of synergies that fit within the definition of the investment adder. These synergies include the Seabrook O&M expense synergy, the fossil-steam unit availability synergy, the energy expense synergy, the peak load diversity synergy, the A&G synergy and the coal purchasing synergy. The total synergies claimed by NU exceed $515 million. The commission need only find, for purposes of establishing the investment adder, that a minimum of $300 million dollars of synergies will accrue as a result of

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the NU merger with PSNH.

Seabrook Synergy — Approximately $188 Million

The agreement contemplates that, as part of NU's acquisition of PSNH, an NU subsidiary will assume the management and operation of Seabrook. NU's original estimate was that it could reduce, through its management of Seabrook, the O&M and A&G costs from the NHY budgeted amount of $157.5 million dollars down to $95 million dollars. After testimony from NHY witness Brown that NU underestimated various costs (in particular costs associated with the evacuation plan pertaining to Massachusetts communities within a 10 mile radius of Seabrook), NU increased its cost

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estimate to $113 million a year. This revised amount is only $2 million more than the PUC staff estimate of $111 million. Mr. Brown of NHY indicated that he could not further reconcile NU's estimates with NHY's budget because NU organized its budget differently from NHY precluding Mr. Brown from performing "any meaningful analysis." Tr. May 25 at 7

Commission analysis of the Seabrook synergy is further complicated by the fact that an in depth "bottoms up" analysis of Seabrook's cost and staffing requirements cannot be completed until Seabrook achieves commercial operation and the operating license is transferred from PSNH to NU sometime beyond the close of these proceedings. The Joint Owners of Seabrook requested that NU not begin its more detailed study, referred to as a "one-on-one study," until after NHY has completed the critical phase of the power ascension of Seabrook so that the NHY employees can devote their full attention to their primary task.

The record evidence is sufficient, however, to support NU's revised claim that the investment adder component attributable to PSNH's share of the Seabrook O&M expense synergy will be approximately $188 million dollars. The Joint Recommendation increased the assumed Seabrook budget amount under NU management from $95 million up to $113 million for 1991, escalated at 5.5% per year thereafter.[12(42)] It further provides that the base assumption for nuclear fuel expense be reduced to reflect revised projections offsetting the increase in O&M expense described above of $18 million (NU's revised Seabrook estimate of $113 million minus NU's original Seabrook budget estimate of $95 million). NU has thus increased its projected Seabrook budget to a more realistic level of $113 million without increasing, on average, the assumptions underlying the 5.5% per annum rate increase projections. This agreement results in a net cumulative present value benefit of $7 million additional protection against FPPAC related increases (Second Recommendation at 3), mitigating concerns expressed by the commission and various parties during these proceedings regarding the ability of NU to achieve the Seabrook synergy, especially during the first two years under the rate plan.

Achievement of the projected Seabrook savings depends primarily on NU aggressively pursuing its represented course of action to reduce Seabrook expenses to projected levels. The commission's Chief Engineer, Dr. Edward Schmidt, concluded that, based on his analysis of the currently available information, and assuming NU's best efforts, it is likely that NU will be able to achieve a Seabrook budget of approximately $111 million, $2 million better than NU itself

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predicts. Tr. May 3 at 65. NU has a record of excellence in the area of nuclear operations and a commitment to meeting its public service in nuclear safety obligations while simultaneously seeking cost effectiveness. Ex. NU 7-B Opeka Rebuttal Testimony at 24. It is currently utilizing in-house capabilities to operate four nuclear plants demonstrating substantial economies by relying less heavily than does NHY on outside contractors. NU witness Fakonas indicated that the NU analysis is reliable to the point that he "would be extremely surprised" if the ultimate, more detailed, analysis resulted in a substantial change from the current projections. Tr. May 22 at 287. NU witness Opeka testified that the NU experience with Millstone 3, a comparable plant to Seabrook, provides further evidence that NU can operate Seabrook within the projected budget of $113 million. See footnote 11, *supra.* NU's overall administrative capabilities lend further credence to their claims that Seabrook operation under NU management will result in a significant decrease in the O&M costs for Seabrook.

Based on the record evidence, we find that the cumulative net present value of the projected Seabrook synergy should approximate NU's contention of $188 million.

Steam Unit Availability Synergy
— Approximately $98 Million

This synergy represents the total savings that are expected to result when the average availabilities of PSNH's fossil steam generating units are improved to levels comparable to NU's fossil unit performance. By improving plant availabilities, NU projects two kinds of

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savings totaling $98 million:

1. Improved availability will reduce the total amount of capacity that PSNH must support in order to meet its NEPOOL obligations. Ex. NU 4 at 9-10.

2. Improved availability will also reduce the energy costs thereby displacing the need for the operation of more expensive generating units to meet PSNH's energy requirements.

Staff witness Schmidt challenged this synergy on the basis that, in his view, NU would bring only $34 million in fossil steam unit availabilities synergies because the rest of the projected savings could be obtained by PSNH on its own. If we were to accept Dr. Schmidt's analysis, then we must set this synergy at $34 million as opposed to NU's alleged $98 million since a synergy, as defined in the plan, must be attributable to NU's management of the company. NU asked the commission to put more credence in its analysis than in Dr. Schmidt's analysis because Dr. Schmidt "relied on only one year of availability data to project future performance (NU Trial Brief at 64) whereas NU utilized a full four years of data. The record is clear, however, that Dr. Schmidt utilized the same four years of data used by NU except in a form which Dr. Schmidt felt was more realistic than the averaging technique used by NU. Ex. Staff-3A, Summary of testimony of Dr. Edward J. Schmidt at 1. NU correctly points out, however, that more recent data than was available to Dr. Schmidt would result in $7 million in additional capacity related savings (Ex. NU 7-B, Opeka Rebuttal Testimony at 48) in addition to Dr. Schmidt's estimate of $34 million. Ex. Staff-3B, Schmidt Revised Direct Testimony at 6-7.

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More importantly, the commission agrees with NU's projections of Stand-alone PSNH's availability prospects and that the entire $98 million of projected savings should be attributed to NU's management of the company. NU has a history of achieving a capacity weighted average availability in excess of NEPOOL targets in each year that such targets have been in existence. Ex. NU 8, HSTAF01 Q-Staff-033. PSNH has historically fallen short of such targets. NU's programs, primarily through use of in-house resources, designed to minimize the number and duration of outages can, in combination with PSNH's expertise and resources, substantially improve the availability of PSNH's fossil steam units. We will accordingly assign the full value asserted by NU of $98 million to the fossil steam unit availability synergy.

NEPOOL-Related Synergies — Approximately $146 Million

There are two kinds of NEPOOL-related synergies asserted by NU. The energy expense synergy consists of the savings to PSNH, and ultimately to PSNH's ratepayers, that result from lower energy costs for the combined system under the NEPOOL agreement. Ex. NU 4, Sabatino Pre-filed Direct Testimony at 12-15 and 49-59. NU projects total energy expense savings to PSNH of over $109 million attributable to PSNH or NU being able to operate a relatively low cost generating unit as opposed to a relatively expensive generating unit that the other would have to run on a stand-alone basis. The savings are the difference in cost of operating the less expensive unit under the combined system and the cost that would have been incurred without the merger to operate the more expensive unit. NU Trial Brief at 67. These savings will be divided equally between NU and PSNH. Section 4 of the Rate Agreement at 7.3 of the Sharing Agreement. Ex. NU 4 Att. 1, Direct Testimony Sabatino.

The second of the NEPOOL-related synergies is the peak load diversity synergy, projected by NU to be nearly $37 million for PSNH. These savings accrue because the PSNH and NU system peaks fall at different times. For example, NU's summer peak and PSNH's winter peak partially offset each other thereby reducing their combined peak load, which in turn causes a reduction in the capacity that the combined system must support under the NEPOOL agreement, ultimately resulting in overall savings to the combined system.

The savings from the peak load diversity synergy, unlike the savings from the energy expense synergy which is divided equally

between PSNH and NU, are divided so that one quarter of the capacity related savings would be allocated to PSNH and 75% would be allocated to the initial NU system. Section 4 of the Rate Agreement, to be implemented pursuant to Section 3.3 of the Sharing Agreement. NU and the State argue that this 75%-25% allocation is appropriate since the amount of capacity a utility must support is a function of its peak load and the initial NU system's peak load is about three times that of PSNH. Staff initially took issue with the proposed 75-25 split and argued that the savings from the peak load diversities synergies should be divided equally between NU and PSNH as is the energy expense synergy. Staff subsequently qualified its concern, and the commission agrees, in that the 75-25 split of the peak load diversity synergy is mitigated by PSNH receiving 50% of the energy expense synergy. Given concerns expressed by Connecticut

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regulators that each synergy should be divided 75-25, the relative divisions of savings appears to be a reasonable compromise reflecting the interests of both jurisdictions.

Staff witnesses expressed concerns that the synergies are not reliable because NEPOOL rules can be changed or other NEPOOL participants might combine causing increased costs to PSNH. The latter scenario could occur whether or not NU acquires PSNH and, given current NEPOOL rules, PSNH would still benefit from its affiliation with NU even though its savings would be diminished by other combinations of NEPOOL participants. It is also unlikely that the applicable NEPOOL rules will substantially change. NU Trial Brief at 68-70. Accordingly, we find that the Investment Adder component attributable to NEPOOL related synergies can be quantified at NU's projected $146 million.

A&G Expense Synergy and
the Coal Purchasing Synergy —
Approximately $84 Million

These two remaining synergies consist of savings attributable to economies of scale derived from the combination of the two companies, the ability of the combined companies to obtain bulk purchasing discounts, NU's efficient and low cost management capabilities and operating efficiencies. NU projects A&G cost reductions in:

- Reorganization of the existing PSNH Board of Directors;
- Elimination of certain expenses currently incurred by PSNH, including cost of preparing an annual shareholders report and other reports, holding an annual meeting and complying with proxy requirements established at approximately $500,000 per year; and
- The changes resulting from evaluation of potential staff reduction over time.

NU has presented credible evidence that these synergies can occur and recommends that the commission accept the proposed values. NU's assertion in relating to these synergies are consistent with their experience in the initial system and there was no contrary evidence presented on the record. Accordingly, we accept NU's argument that the A&G expense synergy and the coal purchasing synergy will likely add approximately $84 million dollars in value to PSNH as a result of its affiliation and merger with NU.

Total Projected Synergies

Based on the above analysis, we conclude that NU will bring at least $300 million in synergies to PSNH as a result of the proposed acquisition and merger. Specifically, we find that NU, acting prudently, should be able to achieve the estimated savings attributable to Seabrook synergies of $188 million dollars, the fossil steam unit availability synergy of $98 million, NEPOOL related synergies of $146 million, and the A&G expense and coal purchasing synergies of $84 million dollars, totaling $516 million dollars in savings. Accordingly, we grant NU's request for an investment adder of $300 million to the investment base of $2 billion for purposes of calculating the ceiling of the ROE collar as being consistent with the public good.

The Importance of Synergies to
Maintain Just and Reasonable Rates

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The importance of synergies extends beyond the Investment Adder. Attainment of the savings levels attributed to the synergies by NU is essential to the maintenance of the 5.5% per year rate projections and reasonable levels of rates thereafter. Some of the synergies affect FPPAC and others affect the ceiling and floor calculations under the ROE collar. Ex. NU 16. As discussed elsewhere in this report, it is unlikely that there will be any increase to base rates via a trigger of the floor of the ROE collar. Thus, much of the risk of failing to achieve those synergies which affect the ROE collar (i.e., the peak load diversity synergy, the PSNH A&G synergy and part of the fossil steam unit availability synergy) falls on investors. However, the risk of not achieving those synergies which affect FPPAC is borne by ratepayers. For the annual rate increases to be limited to 5.5% per annum, NU will have to achieve all of the projected synergies.

Those synergies which affect FPPAC are:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

(000's $)

Year	Seabrook O&M Expense	Energy Expense	Fossil Steam Unit Availability Energy Impact	Coal Purchasing	Total
1990 (1/2 Yr.)	0	6,113	0	1,061	7,174
1991	22,233	5,418	280	2,053	29,984
1992	21,870	7,948	749	2,229	32,796
1993	20,889	3,702	800	2,330	27,721
1994	23,486	4,025	1,300	2,459	31,270
1995	24,777	3,448	1,810	2,723	32,758
1996	26,264	4,397	2,510	2,674	35,845
Total	139,519	35,051	7,447	15,529	197,548

Ex. NU 16, NU response to Staff Record Request HDO6-023 dated April 18, 1990.

NU's failure to achieve these synergies within the time frames projected would erode the likelihood that the rate projections would remain in the 5.5% range. Accordingly, the commission will hold PSNH strictly accountable in subsequent rate proceedings to demonstrate that they have exercised their best efforts to achieve the projected levels of synergistic savings before any rate proposals are approved. NU and the State agreed that rates will be reduced below 5.5% in the event that the resultant costs through FPPAC or base rates are lower than those projected for the 5.5. Tr. April 19 at 21, May 1 at 83 and 89. The commission will accordingly scrutinize any proposed rate increase in this regard, whether it is more than or less than 5.5%.

Synergies for Stand-alone PSNH

As we found above, the extent to which Stand-alone PSNH can achieve the projected synergies was not quantified on the record. By definition, the synergies are attributable to NU's management of Seabrook and PSNH and, thus, would generally not accrue absent a merger of the two companies. In the absence of a merger it is therefore likely that FPPAC charges will cause the annual rate increases to exceed 5.5%.

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Nonetheless, there is some record evidence that Stand-alone PSNH could achieve a portion of the synergies even if the ultimate merger with NU is not achieved. It is possible that some savings would accrue to a Stand-alone PSNH as a result of lessons learned from NU's interim management. NU Trial Brief at 96. Some of the A&G, coal purchasing and fossil steam unit availability related savings may accrue with a Stand-alone company because of organizational changes made by NU under the Management Services Agreement. The Management Services Agreement will continue in

effect until the consummation of the merger or the termination of the merger agreement and provides that NU will be obligated to provide management services to PSNH for up to six months after the termination of the merger agreement to assist PSNH in the transition to new management. NU 1-E at 68. NU has also agreed to continue its management services to PSNH regarding the Seabrook Nuclear Power Plant for up to five years after the Management Services Agreement became effective. *Id.*

However, this evidence relating to the possibility that some synergies can be achieved in the absence of a merger cannot sustain a finding that synergies will justify an Investment Adder for Stand-alone PSNH. Accordingly, to the extent that we must find in this proceeding a value for the Investment Adder for a Stand-alone PSNH, we will find that it has no value. The plan provides, however, that this issue be revisited in the event that the PSNH merger with NU does not occur subsequent to the First Effective Date. At that time this commission will determine what, if any, portion of the investment adder calculated herein will have continuing value after the Termination Date and which, if any, other amounts should be included in an Investment Adder for Stand-alone PSNH. Ex. NU 1-E at D-86.

E. OUR FINDING OF PUBLIC GOOD IS NOT CONDITIONED UPON A MERGER WITH NU

[20] We believe that a merger of PSNH with NU as contemplated by the joint reorganization plan and the Rate Agreement lends fundamental support to a finding of the public good. We have approved the acquisition of PSNH by NU based on performance of the merger agreement.

Despite the possibility of the achievement of some synergies by Stand-alone PSNH, it is fair to assume that the savings would be substantially less on a stand-alone basis than with a merger resulting in an increase in rates above the 5.5% per year level. Even though the commission would be able to make an adjustment to the Investment Adder should the merger not occur, there remains a substantial concern that the rate plan may not be in the public good if this contingency materializes. NU indicated that it shares this concern and favored a one-step-only reorganization with a resolution of the bankruptcy being coincidental with the merger, but was not successful in persuading the creditors and equity holders. NU Trial Brief at 97.

However, if we condition our acceptance of the agreement to serve the public good on the achievement of a merger, the PSNH reorganization cannot be financed at step one. Imposition of a condition that a merger is essential for a finding of public good would be a major substantive change in the terms of the rate agreement suspending financing and implementation until the

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merger was in fact consummated. Such a condition could delay resolution of the bankruptcy and result in less favorable rates for New Hampshire ratepayers. We would accordingly consider imposing this condition only if there were a substantial possibility of being left with a Stand-alone PSNH.

Currently, PSNH and NU are committed to merge under the merger agreement as ruled by the Bankruptcy Court's confirmation order. We fully anticipate that the merger will in fact be consummated. However, we also recognize that the merger agreement by its terms may be terminated after the First Effective Date by mutual consent of PSNH and NUSCO or by unilateral action of either party for (1) failure to receive an unconditional regulatory approval or failure of other conditions to the merger, (2) the merger does not take place by December 31, 1991, or (3) acceptance by PSNH of an unsolicited offer by a "white knight." Ex. NU 1-E at 66. The reason these termination provisions loom in importance is because there is a likely lag of almost two years between the issuance of this Commission's report (the First Effective Date) and a final order of the FERC currently not anticipated until the latter part of 1991 or even into 1992. There may also be other regulatory approvals which may trigger the termination date unless such date is extended by mutual agreement of the parties. During this Interim Period, Stand-alone PSNH will be owned by the creditors and equity committees under the terms of the reorganization plan with a Board of Directors designated by these committees

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subject to management services of NU and capacity arrangements continuing for five years of the rate period.

However, we are mindful of various reasons why the merger should in fact take place: 1) a mutual termination or breach by either PSNH or NUSCO is unlikely, 2) the emergence of a new suitor is similarly unlikely since the "auction" probably produced all serious bidders; 3) there is a $25 Million termination fee and PSNH would also face $45 Million reimbursement of NU's expenses as well as a probably protracted law suit by NU, 4) an unsolicited acquisition offer appears to be remote given that no bidder would currently be prepared to pay more than the $2.3 Billion incorporated in the Rate Agreement to entice PSNH creditors and equity holders; 5) the commission must review any amendment to or deviation from the merger agreement (including any alternative acquisition), and based on the evidence presented at that time, could rule that the public good will not be served without a merger; and 6) it is unlikely that PSNH would act unreasonably in preventing the merger from occurring in that PSNH will continue to be regulated by this commission and any costs resulting from PSNH's actions leading to a failure to achieve synergistic savings will be subjected to strict prudence review.

In summary, we find that the benefits associated with facilitation of the financing proposals and termination of the bankruptcy outweigh the risk to the public associated with a Stand-alone PSNH. Further, since we find that the merger is likely to occur, and that we will have continuing review power in the event that the Plan's benefits are threatened because of conditions placed by other regulatory agencies, we find that the Agreement's provision for termination of the merger agreement does not place the Agreement as a whole outside the realm of public good. Accordingly, our finding that the rate plan will serve the public good is not conditioned on a merger between PSNH and NU. If the agreement is changed by FERC or another regulatory

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agency so as to threaten the merger, or if subsequent changes result in the merger agreement being terminated, this commission may reassess whether the agreement continues to serve the public good.

F. FINANCING THE REORGANIZATION

[21] Table I summarizes NU's financing request to raise the necessary capital to pay the creditors and equity holders of PSNH in accordance with the reorganization plan. This payment will take place after the First Effective Date, i.e. the date of the commission's report and order. Subject to later merger of NUAC into Stand-alone PSNH, Reorganized PSNH operates during the interim period under a new board of directors and management with the continued benefit of the Rate Agreement, the Management Services Agreement and capacity arrangements. Merger of NUAC into PSNH results in PSNH becoming a wholly owned subsidiary of NU and Seabrook is transferred to NAEC.

Table II (Busch Ex. 2) reflects the current application of amounts between public debt issuances and an Interim Bank Loan Facility, if needed. Busch Supplemental Direct Testimony NU 5-B. The $487 million term facility consists of $350 million Interim Loan Facility and a $200 million Revolving Credit Facility with a syndicate of banks. p.45 NU 5-A. Under the Term Facility the banks will loan $487 million to PSNH on the effective date of the Plan to be used to satisfy a portion of the cash requirements of the Plan. To the extent banks make loans under the Interim Facility, an equal principal amount of first mortgage bonds will be issued to secure the Term Facility, Interim Facility and Revolving Credit Facility. PSNH will grant the banks a second mortgage and a Seabrook mortgage to be filed with the commission at a later date.

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"... There will be three kinds of securities of PSNH to be issued to existing security holders of PSNH. These securities have not changed since my prior testimony and are as follows:

> Approximately 32,350,000 shares of PSNH common stock to be issued to current unsecured creditors, preferred stockholders and common stockholders of PSNH. The exact number of shares will be determined subsequently in accordance with the terms of the Plan, and accordingly, we ask the Commission to authorize PSNH to issue shares of common stock as required by the Plan, including the shares to be issued as stock dividends under the Plan.
>
> up to $205,000,000 of Contingent Notes of PSNH to be issued to current preferred and common stockholders of PSNH.
>
> contingent warrant certificates to be issued to current preferred and common

stockholders of PSNH."

Busch Supplemental Direct Testimony NU 5-B at 5-6.

The securities to be issued for cash are summarized as follows:

"up to $400,000,000 aggregate principal amount of first mortgage bonds, to be issued in one or two series and sold to the public.

up to $120,000,000 aggregate principal amount of a series of tax-exempt pollution control revenue bonds to be issued by the IDA in one or more series and sold to the public. These pollution control revenue bonds, like the others referred to below, will be secured by first mortgage bonds issued by PSNH.

up to $232,500,000 aggregate principal amount of tax-exempt pollution control refunding revenue bonds to be issued by IDA in one or more series and sold to the public.

up to $300,000,000 of aggregate principal amount of taxable pollution control revenue bonds to be issued by IDA in one or more series and sold to the public.

up to $125,000,000 of preferred stock to be sold to the public. p. 10, Busch NU 5-B.

Each element of the financing is described in detail in Busch's original and supplemental testimony.

The Commission is requested to approve the issuance of common stock by PSNH at Step 1 to its current unsecured creditors and equity security holders and the issuance each quarter of common stock in payment of stock dividends on that stock. Ex. NU 5, at 26-30, Busch, Ex. NU 5-B at 13-14. At Step 2 of the PSNH Reorganization in order to consummate the merger and implement the Joint Plan, three additional common stock issues will be subject to the approval of the commission: the issuance of a new series of PSNH common stock to NU, the issuance by NAEC of all its common stock to NU, and the issuance by NAESC of its common stock to NU.

At step one, PSNH will also issue five million shares of cumulative preferred stock, $25.00 par value with cumulative cash dividends at a rate to be negotiated by NUSCO by the time of the sale.

The commission has also been requested to remove the prohibition in order no. 17,222 (DF 84-167), [69 NH PUC 522 (1984)] against PSNH declaring or paying dividends on its stock. Unless the prohibition is removed there can be no distribution of stock dividends on common stock to be issued to unsecured creditors and equity security holders and cash dividends on the preferred stock to be issued.

At step two, contingent unsecured notes with a principal amount of $205 million are proposed to be issued and distributed to PSNH's preferred and common stockholders. Busch Pre-Filed Direct Testimony, NU 5, p. 50. The contingencies relate to the issuance of an unrestricted full power operating license to Seabrook (which has now been issued), and various power ascension percentages of the Seabrook unit's rated power, ranging from 5% (for Series A) to 90% (for Series B), and releasing

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Seabrook to the New England Power Exchange for dispatch (which has now been accomplished). Series C terminates its contingency when the warranty run as defined in the Joint Plan has been completed.

13(43) Draft forms of indenture for three series of contingent notes, and for a consolidated series of contingent notes were supplied in Busch Exhibits 4 and 5, NU 5-A.

Contingent warrant certificates will be issued at Step 2 to purchase approximately 8,431,000 NU common shares. At Step 1, PSNH will issue to its former preferred and common shareholders contingent warrant certificates evidencing the right to receive NU warrants when Step 2 occurs, at which time the holders of these certificates will surrender them and receive the NU warrants in exchange. Busch NU 5-B. p. 16, See Busch Exhibit 6 for draft of agreement for certificates to be issued by PSNH, and Ex. 7 for the form of warrant agreement to be entered into by NU, at Step 2.

Costs of Financing

The estimated costs of financing debt, preferred, equity and contingent notes are summarized in Table III.

The initial embedded cost of debt (excluding contingent notes) is estimated at 10.25%, the initial embedded cost of debt (excluding contingent notes) plus the preferred stock is estimated at 10.43%; and the overall initial embedded cost of debt (including the contingent notes) plus the preferred stock is estimated at 11.12%. The projected financing costs are below the 11.5% overall embedded cost ceiling excluding contingent notes shown on Table I. The cost of financing rates in Table I, were raised by 100 basis points (except for the contingent notes) to allow flexibility in financing up to that amount. Busch, NU 5-B pp. 51-52.

On March 29, 1990 the commission staff was notified that Standard and Poor's had stated that it expects to assign initial ratings of BBB- to the first mortgage bonds, BB+ to the preferred stock and BB to the contingent notes. Those ratings are higher than was expected by company officials (Busch testimony p. 38, company responses to Q-Staff-158,159) at the time that they filed their testimony and may imply lower than expected financing costs.

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The Proposed Financing
Serves the Public Good

The New Hampshire Supreme Court defined the law governing the scope of the commission's responsibility when considering a utility's financing request in the following terms:

> "The scope of the commission's responsibility rests upon the mandate of RSA 369:1 and :4, which require the commission's approval for the issuance of a utility's securities and which condition the granting of that approval on a finding that the amount and

> objects of the proposed financing will be in the `public good,' *Id.*, as being `reasonable taking all interests into consideration,' *Grafton Etc. Co. v. State*, 77 N.H. 539, 542, PUR1915 C 1064, 94 A. 193, 195 (1915). Thus in *Appeal of Easton*, 125 N.H. 205, 480 A.2d 88, we followed long-standing law in holding that a financing in the public good must be one `reasonably to be permitted under all the circumstances of the case,' *Id.* at 212, 480 A.2d at 91 (quoting *Grafton, supra* at 540, 94 A. at 194). Accordingly, we emphasized that the express statutory concern for the public good comprises more than the terms and conditions of the financing itself, and we held that the commission was obligated to determine whether the object of the financing was reasonably required for use in discharging a utility company's obligation, which is to provide safe and reliable service, *Id*, at 211, 480 A.2d at 90. Moreover, we specifically decided that the commission was obliged to determine whether the company's plans to accomplish that object were economically justified when measured against any adequate alternatives; and whether the capitalization resulting from the utility company's plans would be supportable. *Id.* at 212-13, 480 A.2d at 91."

Appeal of Conservation Law Foundation of New England, Inc., 127 N.H. 606, 614, 507 A.2d 652 (1986).

We have examined the terms and conditions of the financing and find that the issuance of the securities required to finance the Joint Plan should be authorized as serving the public good. The Step 2 financings are essential to consummate the merger and implement the Joint Plan. Since the merger of PSNH and NU is an integral facet of the Reorganization Plan and serves the public good, it is important to authorize at this time the necessary stock issuances to effect the merger. These approvals are subject to disclosure of specific pricing terms for approval before issuance.

We have also determined that the object of the financing may be summarized as follows:

- to consummate the Compromise Joint Plan confirmed by the Bankruptcy Court,
- to terminate the bankruptcy proceeding,
- to enable the acquisition of PSNH by NU,
- to stabilize safe and reliable electric power service at reasonable rates over the seven years of the Rate Agreement, and
- to serve the economy of the State.

Thus, consistent with the N.H. Supreme Court's precept we have determined that the object of the financing was reasonably required for use in discharging NU's and Reorganized PSNH's obligation to provide safe and reliable service.

We have also determined that NU's plans to consummate the Joint Reorganization Plan confirmed by the Bankruptcy Court and implementation of the Joint Plan by the Rate Agreement between the State and NU are economically justified when measured against any "adequate alternatives." No adequate alternative to the NU financing plan and acquisition have been presented either to the Bankruptcy Court or this commission. Nevertheless, based on record evidence we have examined and evaluated the rate structure under traditional ratemaking for Stand-alone PSNH and under alternative rate plans *supra.* We have concluded that the rates produced by the Rate Plan represent a fair and equitable compromise within the ambit of results

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reasonably to be anticipated in a litigated rate case by Stand-alone PSNH. Our

evaluation of record evidence relating to the Rate Plan compels the conclusion that the Joint Reorganization Plan and Rate Agreement will serve the public good.

We now address the question of whether the capitalization resulting from NU's plans would be supportable. As demonstrated by our analysis of the rate support for the resulting capital structure of Reorganized PSNH, with and without Seabrook operating, Stand-alone PSNH with and without Seabrook operating, and NAEC with and without Seabrook operating, the resulting capitalization is supportable by reasonable rates.

Financial Viability

The capital structure resulting from implementation of the Reorganization Plan is supportable by reasonable rates.

The financial projections over the seven year fixed period support the conclusion that the Joint Plan may be financed and that projected revenues generated by reasonable rates will be adequate to support the capital structure and NU's and affiliate corporations' operations to provide safe, reliable and reasonably priced electric service.

The key assumptions underlying the financial projections contained in Busch original Attachment 2 and Busch Supplementary Exhibit 27 are as follows.

(1) New PSNH-Seabrook operates: NU's acquisition is consummated on July 1, 1990 and Seabrook attains commercial operation prior to July 1, 1990 (Busch original Att. 2, p.2).

(2) New PSNH-Seabrook Canceled: NU's acquisition is consummated on July 1, 1990 and Seabrook does not attain commercial operation and is ultimately canceled on December 31, 1991. (Busch original Att. 2, p.2)

(3) Stand Alone PSNH—Seabrook operates: Merger terminates in 1991 and Seabrook attains commercial operation prior to July 1, 1990.

(4) Stand Along PSNH—Seabrook canceled: Merger agreement terminates in 1991 and Seabrook does not attain commercial operation and is canceled on December 31, 1991.

(5) Upon termination of the merger by stand alone PSNH, NU is reimbursed for expenses estimated to be $12 million in 1991 and an additional $20 million of NU expenses will be capitalized by Stand Alone PSNH. In addition PSNH is obligated to pay the $25 million termination fee (Busch Att. 2, p. 2)

(6) In both of the New PSNH scenarios, the company will be capitalized at $1.596 Billion. (Busch original Attachment 2, p.3). The initial capital structure will consist of $1,151,000 of debt (72 percent of capital), $125 million of preferred equity (8 percent of capital) and $320 million of common equity (20 percent of capital) contributed by NU (Busch Att. 2, pp. 2, 8 for Seabrook Operates, p. 11 for Seabrook Cancelled)

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(7) In the New PSNH scenarios the capital structure of the New PSNH will improve to 48 percent long term debt by 1996 from 72 percent if Seabrook operates (Busch Att. 2, p. 3, 8) and to 50 percent long term debt by 1996 from 72% if Seabrook is canceled (Busch Att. 2, p. 11)

(8) North Atlantic will be capitalized with $140 million of equity contributed by NU, $355 million from a first mortgage bond on the Seabrook assets and $205 million of Seabrook contingent notes. (Busch Att. 2, p. 3). North Atlantic's capitalization will ultimately be 67% of long term debt and 33 percent common equity (Busch Att. 2, p. 3) in 1996 if Seabrook runs but begins with ratios of 21% common equity and 79% debt (Busch Att. 2, p. 28). If Seabrook is canceled the ratios for North Atlantic will not change over the period of the fixed rate plan. (Busch Att. 2, p. 28).

(9) Stand-alone PSNH is capitalized with $1.517 billion of debt, $125 million of preferred stock and $648 million of common equity. (Busch Att. 2, p. 4, 14, 17).

(10) If Seabrook operates the debt ratios will fall from 66% in 1990 to 50% in 1996 while the preferred ratio rises from 6% to 7% over the period. The common equity ratio

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rises from 28% to 43% (see table IV, Column D, Section 3) according to the original Stand Alone PSNH—Seabrook Operates scenario contained in Busch original Attachment 2, p. 8.

(11) If Seabrook is canceled, Stand Alone PSNH will initially have a debt ratio of 66% which falls to 48% over the course of the rate plan. The ratio of preferred equity to total capital rises from 6% to 7% and the proportion of common equity rises from 28% to 45%. (See table IV, Column E, Section 3)

(12) Peak load is expected to grow at a 2.3 percent annual rate over the course of the fixed rate period (Busch Att. 2, p. 6)

(13) Seabrook capacity factors are expected to range from 60% to 70% over the six year period according to the following schedule (Busch Att. 2, p. 6).

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Seabrook Capacity Factors

1990 60%
1991 63%
1992 67%
1993 67%
1994 67%
1995 67%
1996 70%

(14) Operation and maintenance expenses are expected to escalate at 5.3 percent compounded annually over the fixed rate period. (Busch Att. 2, p. 6)

Revised Assumptions

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(15) All assumptions previously outlined underlie the revised financial projections of the Stand Alone PSNH—Seabrook Operates scenario, shown in Busch Supplemental, Exhibit 27 and summarized in column F of Table IV. The difference between the original Stand Alone-Seabrook Operates case (table IV, Column D) and the revised projections (table IV, Column F) concern the financing mix and expected capital costs.

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Key measures of financial viability for the four scenarios listed above are portrayed in Table IV. Column F of Table IV represents a revised projection of the applicable financial statistics for Stand-alone PSNH Seabrook Operates and differs from the original scenario due to the revised mix of securities and market capital costs.

Financial Viability of New PSNH
and Stand-Alone PSNH

New PSNH—Seabrook Operates
(Table IV, Column B)

As shown in Section 1 in Table IV on a year by year basis the ROE net income average rises from .53 percent in 1990 to 21 percent in 1996. PSNH in this scenario begins to earn the industry average ROE in 1994. As a result of the rising ROE net income (average) the profitability of the company on a cumulative investment basis as measured by the ROE net income (cumulative NPV) rises throughout the fixed rate period. Although the 11.75 percent earned on equity on a cumulative NPV basis falls short of the current industry average, it can be concluded that an investor in PSNH common equity nearly achieves the current industry level of profitability over the fixed rate period.

The TIER coverage figures in Section 2, Column B of Table IV show that the company's ability to meet obligatory interest payments on long term debt begins the period at a level slightly less than the current average in the industry (1.98 vs. 2.47) but grows to nearly twice that of the industry (5.22 vs. 2.47) over the fixed rate period.

Section 3, Column B of Table IV shows that while the company begins the fixed rate period as a highly leveraged enterprise, with 72% debt, its cash flow should be sufficient to allow it to attain a debt level of 48% and capital structure consistent with the average company in the industry by 1996. (see the capital structure ratios for the industry average and those in column B of Table IV, section 3.) See New PSNH Analysis of Significant Financial Ratio Merger Case with 1% Higher Rates than Anticipated. Ex. 27 at p.6

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New PSNH—Seabrook Canceled
(Table IV, column C)

The cancellation of Seabrook requires replacement power costs and adversely affects the profitability of PSNH, particularly during the early years of the rate plan. The ROE net income (average) measure of profitability begins the period at 2.69 percent but quickly recovers so that by 1996, PSNH is earning 13.25 percent on common equity. Section 1, Column C Table IV. PSNH exceeds the industry average level of profitability in 1994.

The pattern of change in the ROE net income (cumulative NPV) also suggests that cancellation of Seabrook has adverse consequences during the early years of the plan. Over the course of the six year plan, however, the profitability of PSNH improves on a cumulative net present value basis from (2.69%) in the first year as indicated by the 13.25% ROE net income cumulative NPV achieved over the course of the plan.

The TIER coverage figure in Section 2 of Table IV, Column C suggests that the cancellation of Seabrook does not significantly affect the ability of PSNH to meet interest payments when due. Earnings coverage at 2.01 times long term interest in 1990 is at about the same level whether Seabrook operates or not. As the end of the rate plan approaches, however, the coverage ratio is seen to be measurably lower if Seabrook is canceled (4.5 if Seabrook is canceled vs. 5.22 if Seabrook operates). The end of period level of interest coverage is adequate in relation to the current industry average even if Seabrook is cancelled.

Section 3 of Table IV, column C shows that a capital structure very near that of the current industry average (L-T debt 50%, Pref. Equity 9%, Com. Equity 39.5%) is attained by PSNH in 1996 in the event that Seabrook is canceled.

Stand-Alone PSNH—Seabrook Operates
(the original and revised projections
for this scenario are shown in Table IV,
columns D and F respectively)

On a stand alone basis, the profitability of

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PSNH falls short of that attained in the previous two scenarios but should rise to the current industry average level by the end of the rate plan. According to the original projections (column D of Table IV) the return on equity begins at 1.88 percent and rises to 15.42 percent in 1996, the year in which the current industry average return on equity is achieved. On a cumulative investment basis, the profitability of the equity investment of the company rises only to 6.64% (earned return on equity) over the course of the seven year rate plan (Column D Section 1 of Table IV).

As shown in Section 2 of Table IV, the TIER measure of long term interest coverage begins at a level of 1.49 and rises to 3.76 by the end of 1996. Although low by industry standards during the early years of the plan, the coverage level should exceed the industry average TIER of 2.47 by 1996.

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The capital structure ratios shown in Section 3 of Table IV, column D indicate that although PSNH begins the period with much more financial leverage than current industry standards (66% debt vs. 47.6% debt) it nearly attains the current industry average degree of leverage by 1996 (50% L-T debt vs. 47.6% industry average).

The revised projections can be examined by reviewing column F of Table IV. Differences between the figures in column F and column D reflect the assumptions about capital costs and a different financing mix. The effect of those assumptions is to lower the profitability of PSNH in the early years of the plan. Profitability (ROE net income average) rises on an annual basis to reach the current industry average level in 1994 and exceeds 20% by 1996. On a cumulative net present value basis the equity investment in PSNH is more profitable than was the case under the original projections (10.09% vs. 6.64% ROE net income cumulative NPV).

Interest coverage levels under the revised projections of the Stand Alone PSNH—Seabrook Operates scenario are virtually identical to those under the original projections. The TIER under the revised projections begin the period 1.42, significantly less than the industry average of 2.47 but end the period higher at 3.76. Column F, Section 2, Table IV.

The capital structure under the revised projections begins the period with 72 percent of permanent capital supplied by long term debt, 8% by preferred equity and 20% from common equity. Column F, Section 3, Table IV. By the end of the period, PSNH remains relatively highly leveraged with a debt to total capital level of 53%, preferred equity 8%, common equity 40%, compared to an industry average of L-T debt 47.6%, preferred equity 8%, and common equity 39.5%.

Stand-Alone PSNH—Seabrook Canceled
(Table IV, column E)

The cancellation of Seabrook has an adverse impact on the profitability of PSNH, particularly during the early years of the rate plan. On an annual basis the return on equity, which begins the period at .97%, reaches 15.63% by the end of the fixed rate period. On a cumulative net present value basis the profitability of NU's equity investment in PSNH rises to only 6.10% by the end of the fixed rate period. The ROE net income (cumulative NPV) will continue to rise after the end of the fixed rate period even though its return on equity in 1996 of 15.63% will likely be reduced as conventional rate setting procedures are implemented.

The interest coverage ratio begins the fixed rate period at 1.58, significantly less than the current industry average of 2.47, but ends the period at significantly higher 4.33.

PSNH begins the fixed rate period under the Stand Alone-Seabrook Canceled scenario as a highly leveraged company with debt constituting 66% of permanent capital. By the end of the fixed rate period, however, the current industry average proportion of debt is reached.

Summary

In all scenarios both actual and cumulative returns on equity for PSNH begin at low levels and rise over the course of the plan to more acceptable levels. The cumulative ROE's rise to the 1989 industry average level in the 1994-1996 period depending on the particular

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scenario in question. The ROE level is less important during the early years of the rate plan and increases in importance during the later years as generally it measures the ability to attract capital. Since NU has already committed to a specified level of equity financing and no external equity will be raised during the course of the plan, the ROE is important only as PSNH re-emerges with traditional ratemaking at the end of the plan.

Of more importance than the ability to attract capital during the early years of the plan as measured by the earned ROE is the ability of the company to service its fixed income obligations held by outside creditors. That ability is measured by the coverage ratio. TIERs appear marginally adequate although not outstanding during the early years of the plan for all scenarios.

Given the commitment by NU to provide the initial capital, PSNH can evolve into a viable company on a par with the average electric utility. Specifically, PSNH under all of the scenarios has an interest coverage ratio that, although lower initially, rises above the current industry average during the course of the rate plan and substantially exceeds it by the end of the fixed rate plan.

Similarly, while PSNH emerges from bankruptcy under all of the scenarios as a highly leveraged company, by the end of the fixed rate period the company has regained an industry average capital structure. There is no assurance however that the industry average figures currently existing will remain unchanged over the seven year period.

Under the plan PSNH attains a financially attractive financial profile earlier in the merger scenarios than it does as a stand-alone utility whether Seabrook operates or not.

Company responses to several data requests propounded by staff and the Office of Consumer Advocate (OCA) suggest that the financial viability of PSNH either as a subsidiary of NU or as a stand-alone company is relatively sound under varying conditions whether or not Seabrook operates. For example, Q-OCA-014 response claims that the ROE floor would not be triggered by lower growth forecasts. Response to Q-OCA-015 claims that reductions in the Seabrook capacity factor would not affect the ROE. Response to Q-Staff-087 shows that the ROE floor would not trigger rate increases beyond the agreed upon 5.5% annually if PSNH just breaks even during the period 1990 through 1992.

Q-Staff-088 response shows the use of the "official" PSNH elasticities of demand rather than NU's elasticities of half that size would not trigger the ROE floor. Response to Q-Staff-154 shows that the effects of a recession similar to that experienced during 1980-82, does not result in reduced profitability that trigger the floor. The response to Q-Staff-155 indicates that capital cost rates would have to rise by about 500 basis points before the floor was triggered.

It is difficult to speculate on the implications of lower cumulative ROE's on the financial viability of PSNH. It can be inferred only that the financial ratios associated with the low level growth and with C&LM adversely affect the financial viability of PSNH and therefore the financial ratio used to measure it.

Financial Viability of North Atlantic Energy Corporation

The analyses presented *supra* address the financial viability of PSNH under the one step plan

(the new PSNH scenarios shown in columns B and C of table IV) and at step one of the two step plan (the stand alone PSNH scenarios shown in columns D, E and F of table IV). It remains to evaluate the financial viability of NAEC, since it emerges from step two of the two step plan as a New Hampshire utility.

Tables V and VI below characterize the financial viability of NAEC depending on whether Seabrook Operates (table V) or is canceled after the merger but before December 31, 1991 (table VI). Due to the unique character of NAEC as a single asset generation-only company with a purchase power agreement with PSNH, a different set of financial statistics are needed to adequately describe its operating and financial condition than was used in Table IV.

For the Seabrook Operates possibility regarding Seabrook, the capital structure, net income, returns on common equity and on assets and two cash flow ratios are presented for

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NAEC for each year during the 1990-96 period. The cash flow coverage ratio measures the ability of the company to pay its significant amount of debt interest from operating cash flow. Similarly the ratio of cash flow to construction measures the ability of NAEC to be self sustaining in terms of its ability to earn the cash needed to maintain the necessary asset base.

North Atlantic — Seabrook Operates

Upon completion of the merger and the sale of Seabrook to NAEC by PSNH, NAEC emerges with a capitalization of $712 million, 80 percent of which is comprised of debt. The debt level shown in column A consists of the Seabrook bond and the contingent note. At the end of the rate plan NAEC will have with a debt ratio of 67 percent.

NAEC should generate an increasing income stream which rises $9.5 million in 1990 to $30.7 million in 1996. Since the level of equity in NAEC rises at the same rate as its net income, the ratio of the two — return on common equity (column E) — remains relatively constant at a healthy 12.3-13.52% over the life of the rate plan. Return on assets (column F) however escalates from a low 1.35% in 1990 to over 4.0% during the late years of the rate plan. Although low by investment standards, the return on assets is less meaningful for NEAC than is the return on common equity and the cash flow coverage ratio since the former measures the profitability to NU of its equity investment in the generating company while the latter measures the safety of interest payments and principal repayments to outside creditors.

As shown in column G of Table V NAEC does not become financially self supporting until 1992 when its cash flow stream first attains the magnitude to support the interest on the company's fixed income obligations. By the end of the fixed rate period, NAEC is generating $1.49 of cash flow from operations per dollar of interest payments. As a result the company is viable.

The ratio of cash flow to construction (column H) rises from 1.97 in 1990 to 3.11 in 1996. This cash flow is sufficient to maintain the capital expenditures to ensure long term viability.

NU's latest financial forecast projects cash flow coverage to be substantially the same reflecting slight variations in financial costs. See Financial Assumptions, Supplemental Direct Testimony of Robert Busch, and p. 1 NU Ex. 27.

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In conclusion, NAEC as initially capitalized and under the assumptions defining the merger in step two of the two step plan of reorganization is financially viable.

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North Atlantic—Seabrook Canceled

NAEC is projected to be capitalized initially at $772 million (Table VI Column C), 80 percent of which is debt (Table VI Column A) and consists of the Seabrook bond and the contingent note. NAEC debt and equity ratios remain at 80 percent debt and 20 percent equity throughout the duration of the fixed rate plan.

The Seabrook power contract imposes an unconditional obligation on PSNH to purchase the full entitlement of its Seabrook power from NAEC whether or not Seabrook runs. In the event that Seabrook is canceled after the merger the return on equity stabilizes at 14.16 percent during the later years of the plan (Table VI, Column E). Total asset returns (Table VI, Column F) remain at the 2.80 percent level throughout the seven year rate plan. Cash flow for NAEC is sufficient to cover all costs of operation including interest on long term debt.

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[Graphic Not Displayed Here]

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Financial Evaluation
— John F. Curley

Mr. Curley presented comprehensive testimony evaluating significant financial ratios of the subsidiaries resulting from the merger in the Rate Plan where NU acquires PSNH and Seabrook operates by July 1, 1990 and North Atlantic acquires Seabrook.

First, Mr. Curley examined the dramatic and rapid improvement in common equity ratios as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

         New PSNHNorth Atlantic

12/31/91   22.5%   23.9%
12/31/92   26.1    27.2
12/31/93   28.4    28.5
12/31/94   31.7    29.8
12/31/95   35.6    32.4
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p.8, NU 6.

The Rate Agreement and the capacity commitments of NU are central to the improvement in New PSNH equity ratios, increasing to 36% by December 1995 representing financial stability

comparable to the current mean for low investment grade utilities.

NAEC's lower common equity ratio is acceptable because NAEC's credit is supported by the Seabrook power contract. NU 6 at 10.

Second, Mr. Curley examined interest coverage as an important financial ratio to evaluate the company's ability to support debt obligations of the capital structure of New PSNH and NAEC. His interest coverage analysis concentrated on cash flow, taking into consideration the large non-cash amortization of the acquisition premium in the Rate Agreement.

He defined cash flow coverage as the quotient of the pre-tax earnings plus interest and amortization of acquisition premium divided by total interest expenses resulting in the following coverage:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

		New PSNH	*North Atlantic**
Six months ended	12/31/90	2.0x	0.9x
Year ended	1991	2.2	0.9
Year ended	1992	2.6	1.0
Year ended	1993	3.0	1.1

*For NAEC, the numerator for the interest coverage calculations includes cash contributions from NU in consideration for NAEC's tax benefits.

Although NAEC's coverages are low relative to traditional coverages for electric utilities, investors would consider the attractiveness of the investment based on NAEC's contracts (e.g., Seabrook capacity, sharing) with new PSNH, the revenues from the Rate Agreement, the Management Services Agreement and operational support from NU. NU 6 at 12.

The third important ratio evaluated by Mr. Curley is cash flow from operations to total debt. The ratio measures the ability to reduce debt and improve long term capitalization. Following are New PSNH and NAEC's net cash flow to total debt ratios:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

		New PSNH	*NAEC*
Six months ended	12/31/90	1.4%	2.5%
Year ended	1991	14.3	5.8
Year ended	1992	18.5	8.8
Year ended	1993	18.5	5.0

Mr. Curley concluded that both New PSNH and NAEC are financially viable. We find that projected revenues under the Rate Plan are adequate to service the resulting capitalization of PSNH and NAEC and that these utilities will have the ability to attract capital on a timely and reasonable basis. See Curley, NU 6 at 14.

Mr. Curley also analyzed all required PSNH external financings, e.g., New PSNH's

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first mortgage bonds preferred stock, New PSNH's bank debt, and concluded that these financings are attainable at the projected cost reflected in the capitalization of the company.

NAEC's first mortgage bonds — a senior security of NAEC — are marketable in the high yield and bond market. These securities will be viewed as a single asset nuclear project financing secured by contracts backed by the Rate Agreement, which the N.H. Legislation has ratified, subject to this commission's implementation.

NU's financing, including the timing and interest and preferred stock dividend rates used in Mr. Busch's forecasts are reasonable. NU 6 at 19.

We conclude that post-merger New PSNH and NAEC will be financially viable utilities with the resources to meet financial requirements and attaining over the seven year period of the Rate Agreement financial stability to support the capital structure. We also conclude that the Rate Agreement is essential to secure acceptance of the planned financings in capital markets.

Financial Viability of
Stand-alone PSNH

The Rate Agreement, which provides a relatively predictable revenue and earnings stream, the contractual commitments for generating capacity for five years and NU's management resources provided under the Management Services Agreement, substantially contributes to the stability and viability of Stand-alone PSNH. Analysis of Stand-alone PSNH's equity ratio, interest coverage ratios and cash flow to debt ratio indicates that Stand-alone PSNH is at least marginally able to support its capitalization and will survive as a viable entity capable of meeting its financial commitments.

Stand-alone PSNH Capitalization
and Ratios

Initially, Stand-alone PSNH will have a common equity ratio of 28%. NU 6 at 20. Within 3 1/2 years, common equity is estimated to increase to the Low Investment Grade Utilities mean of 34% of capitalization and by December 1995 to 40%.

The projected interest coverage for Stand-alone PSNH is as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Six months ended	12/31/90	1.5x
Year ended	1991	1.7
Year ended	1992	1.9
Year ended	1993	2.2

This coverage takes into account the significant non-cash expense amortization of the acquisition premium prescribed by the rate agreement. NU 6 at 21.

Stand-alone PSNH with Seabrook canceled — as we have discussed *supra* — has an interest coverage ratio at the beginning of the fixed rate period at 1.50 times — (significantly less than the industry average at 2.47 times) although coverage improves to 4.33 times at the end of the period.

Based on Mr. Busch's financial projections in his pre-filed direct testimony, cash flow to debt ratios are adequate to meet financial commitments, as shown below:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Six months ended	12/31/90	1.1%
Year ended	1991	11.7
Year ended	1992	12.8
Year ended	1993	17.7

Financings for Stand-alone PSNH

Required financings for Stand-alone PSNH (Pre-merger) at the First Effective Dates to implement the Joint Plan should produce the following net proceeds:

$725 Million First Mortgage Bonds

$125 Million Preferred Stock

$487 Million Bank Debt

Stand-alone PSNH will require $165 million more bank debt than New PSNH (Post-merger). This additional debt burden is within the range anticipated to be provided by commercial banks. Stand-alone PSNH is not as strong financially or operationally as New

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PSNH, which would be owned and managed after the merger by the NU subsidiaries and affiliated companies. However, Stand-alone PSNH will be sufficiently viable to issue the required securities on a reasonable and timely basis.

G. THE COMMISSION IS NOT REQUIRED TO FIND A RANGE OF REASONABLE RATES

Since the commission has found that the rates over the fixed rate period are just and reasonable, it is not necessary to find a range of reasonably possible rates in a subsequent rate proceeding as required by the court in the finance proceeding to complete construction of Seabrook. See *Appeal of Conservation Law Foundation*, 127 N.H. 606 at 640-41, 507 A.2d 652. If "fixed" rates increase due to base rate exceptions, or FPPAC "flow through," we have found that the rates are just and reasonable over the seven year fixed rate period based on reasonable projections of operating revenues, expenses and investment base. The ROE collar assures the continued reasonableness of the Rate Agreement and resulting rates by limiting PSNH's allowed ROE to a predetermined high-low range during the seven year period.

H. CONTRACTS AMONG CURRENT AND FUTURE AFFILIATES

[22] The commission has reviewed the following contracts with NU affiliates in connection with the reorganization under the joint plan:

Service contracts between NUSCO and PSNH, NUSCO and NAEC, NUSCO and NAESC, the Management Services Agreement, the Seabrook Power Contract between PSNH and NAEC Capacity Transfer Agreements from CL&P to PSNH, and from PSNH to CL&P, and the Sharing Agreement between PSNH and the NU system.

The commission has the power to investigate contracts between affiliated public utilities, RSA 366:5. There are express requirements for filing such contracts by public utilities, RSA 366:3. Any contract with a term of one year for the purchase of generating or transmission capacity, or energy must be filed with the commission. Section 2(c) of the Rate Agreement requires commission approval of the Seabrook Power Contract.

NUSCO has requested that the commission investigate each of the affiliate contracts, make findings that the terms of each contract are reasonable and approve each contract based on our review of contract terms and record evidence. We find that each of the affiliate contracts is reasonable as outlined below.

NUSCO Service Contracts

As set forth in service contracts, NUSCO will provide centralized accounting, administrative, data processing, engineering, financing, legal, operational, and planning services to PSNH, NAEC and NAESC at NUSCO's cost for these services. To the extent these services are provided by NUSCO to NU operating subsidiaries, each company will pay its pro rata share of the cost of the services. Noyes Pre-filed Direct Testimony, Ex. NU 3 at 33-35. The service contracts and cost allocations of services are subject to the jurisdiction of the SEC under the Public Utility Holding Act. 15 U.S.C. §79N.

NUSCO is able to provide services due to economies of scale at less cost than similar services contracted to outside sources. The service contracts provide a contractual basis for attaining the fossil steam unit availability, energy expense, A & G and coal purchasing synergies outlined in Mr. Noyes Pre-filed Direct Testimony, Ex. NU 3 at 36-41 and Attachment 2. Performance by NUSCO of the service arrangement under the contracts is anticipated to result in economies, increased efficiencies and other benefits to the affiliates. We find the service contracts provide reasonable arrangements to assist PSNH, NAEC and NAESC in providing efficient utilization of combined resources.

Management Services Agreement

The Management Services Agreement has been approved by the Bankruptcy Court and FERC. On April 30, 1990, pursuant to Bankruptcy Court order, NUSCO began managing PSNH under the Management Services

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Agreement. The terms of the Agreement delegate responsibility to NUSCO for the management of PSNH's utility business and operations except for the management of Seabrook, which awaits approval by the NRC and the Seabrook Joint Owners. Exhibit B to Merger Agreement, Ex. NU 1-E p. A-81.

The Management Services Agreement, provides essential services to Stand-alone PSNH during the interim period in a two-step plan between the First Effective Date and the merger in step 2, the second effective date. If the Merger Agreement is terminated, NUSCO is obligated to provide management for an estimated six months if requested by Stand-alone PSNH's Board of Directors. To assure the performance by PSNH of its obligations to the joint owners of Seabrook and to effect operating efficiencies in Seabrook's operations, NUSCO will provide services for

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up to five years after confirmation of the Joint Plan, if the merger does not occur. Ellis, Pre-filed Direct Testimony, NU 2 at pp. 23-24. The Management Services Agreement is essential to the continued viability of Stand-alone PSNH as a stand-alone utility. We approve the Management Services Agreement as a reasonable and essential contract for the implementation of the Reorganization Plan.

Capacity Transfer Agreements and the Sharing Agreement

The Sharing Agreement and Capacity Transfer Agreements from CL&P to PSNH and from PSNH to CL&P to implement NU's undertaking to furnish system capacity to PSNH and to allocate savings resulting from the merger in the Sharing Agreement.

The method of effecting capacity transfers is outlined in Section 3 and 4 of the Rate Agreement. Ex. D Reorganization Plan pp. D-7-D-10, Ex. NU 1-E and was the subject of extensive testimony by Mr. Sabatino, Ex. NU 4, pp. 15-16 and 23-62. Capacity costs, transmission costs, and percentage of slice associated with the transfer of capacity from system companies to PSNH are detailed in Ex. F of the Rate Agreement. Ex. NU 1-E, pp. D-111-D-113. Savings from joint operation of the NU system and PSNH under the NEPOOL Agreement are divided equally between PSNH and the NU system. Section 4, Rate Agreement implemented by Section 7.3(C) of the Sharing Agreement.

The Sharing Agreement and Capacity Transfer Agreements are consistent with the Rate Agreement, establish a reasonable contractual basis for the joint planning and operation of the combined NU/PSNH System resulting in fair allocation of benefits and costs between PSNH and the NU System Companies.

I. REQUESTED STRUCTURAL CHANGES

[23] NU requests the following "structural approvals" under the Rate Agreement and the Joint Plan:

1. approval of the commencement of business by NAEC and the new NU subsidiary which will operate Seabrook referred to as "NUOP" or "NAESC," as public utilities in New Hampshire

2. approval of the transfer of PSNH's Seabrook interests (including land and fuel) to NAEC

3. approval of the merger of Northeast Utilities Acquisition Corporation ("NUAC") with and into PSNH. NUAC will not engage in any public utility business, and NU does not seek this commission's approval for its commencement of business pursuant to 374:22. NUAC will cease to exist when the merger between NU and PSNH takes effect.

4. approval of certain mortgages over present and future property of PSNH and NAEC.

NAEC and NAESC are essential parties to successful implementation of the Joint Plan. Ex. NU 5, Busch Pre-filed Direct Testimony at 95. NAEC has the sole purpose of replacing PSNH in its ownership share of Seabrook over rights and obligations defined under the Seabrook Power Contract discussed above and found to be in the public good. NAESC or NUOP will have the

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sole purpose of replacing New Hampshire Yankee in the management, operation and maintenance of Seabrook. NU management of Seabrook discussed above was of

paramount importance in achieving the projected rate levels. NU management of Seabrook will be conducted via NAESC and, accordingly, it will be in the public good to authorize NAESC to operate as a public utility. This authorization would be limited, as is currently NHY's authorization to operate as a public utility, to the management, operation and maintenance of the Seabrook project, and will not extend to its functioning as a franchised electric utility for the sale or distribution of electricity.

For similar reasons we approve the transfer of PSNH's Seabrook interest, including land and fuel, to NAEC, pursuant to RSA 374:30. The Joint Plan and the Rate Agreement cannot function without this transfer taking effect, thereby facilitating the financing of the reorganization, minimizing PSNH's capital costs and maximizing tax benefits. Tr. Apr. 11 at 62-63; Tr. Apr. 30 at 23-28. The rights and obligations of PSNH and NAEC will be defined primarily under the terms of the Seabrook Power Contract which we have found to be in the public good.

NU has also asked for approval of the merger of NUAC with and into PSNH. NUAC is the vehicle for effecting the merger between PSNH and NU and is therefore a vital part of the reorganization process. As we have discussed above, the merger between NU and PSNH is of paramount importance to attainment of the projected synergies and, ultimately, to containment of the rate increases to the 5.5% projection and important to assure that the public good will be served. For these reasons we find that the merger of NUAC with and into PSNH is in the public good and is hereby approved.

Finally, NU requests commission approval pursuant to RSA 369:2 for PSNH and NAEC to mortgage their present and future property to secure the bonds and notes referred to elsewhere in this report regarding the requested financing approvals. This mortgaging will allow PSNH and North Atlantic to effectuate the financings required by the Joint Plan. NU Trial Brief at 112; Ex. NU 5, Busch Pre-filed Direct Testimony at 102-103. The requested approval is a vital part of the proposed financings and is in the public good. Accordingly, we hereby grant the requested approval.

J. NU MANAGEMENT

[24] The acquisition of PSNH by a major New England electric utility is a pragmatic resolution of the unfortunate bankruptcy of PSNH. Northeast Utilities is the parent company of the NU System, which includes three electric operating subsidiaries, the Connecticut Light and Power Company, Western Massachusetts Electric Company and Holyoke Water Power Company. Support subsidiaries include Northeast Nuclear Energy Company (nuclear operations) and Northeast Utilities Service Company (system wide service). Northeast Utilities is one of the largest utilities in the U.S. and the largest in New England, with 8,300 employees serving 1.25 million customers in Connecticut and Western Massachusetts. Net utility plant is $5.3 billion. In 1989 electric generating capacity was 5,964 MW of which 3268 MW were from four nuclear plants, with the balance of capacity from fossil fuel plants (36%), hydro (3%) and cogeneration. (Northeast Utilities Annual Report 1989, Ex. NU 12, Disclosure Statement, Ex. NU 1-E at p. 77,

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Ellis, Ex. NU 2, pp. 2-3)

The commission considers the management of NU a substantially significant reason for finding that the acquisition of PSNH by NU under the applicable terms of the Joint Reorganization Plan and the Rate Agreement serves the public good. NU management has demonstrated its administrative competence in managing the NU system successfully, and in its particular expertise in managing nuclear power generation as a major part of its overall capacity. Mr. Fakonas emphasized NU's high level of performance in operating its nuclear plants. Good management will importantly contribute to the safe and efficient operation of Seabrook. NU's nuclear organization and technical capabilities was described in detail by Mr. Opeka. Mr. Noyes and Mr. Sabatino evaluated the ability of the company to attain operating efficiencies largely resulting from the merger. Mr. Ellis emphasized the importance of management strategy to develop a consensual reorganization ultimately resulting in NU's plan being adopted by the State, Bankruptcy

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Committees, and the Bankruptcy Court as the compromise plan that would best serve the public interest. Mr. Ellis further demonstrated management's utilization of its resources to maintain over the long term a reliable, reasonably priced, supply of electricity to serve ratepayers. Mr. Busch presented a detailed financial overview of the joint plan forecasts of financial conditions based on multiple reasonable assumptions and a realistic, creative financial plan to maintain just and reasonable rate levels. Mr. Busch demonstrated financial management competence to implement the financing and establish a workable corporate structure for effective administration of reorganized PSNH and North Atlantic. Mr. Curley testified that NU's management strength is recognized in financial markets and will enhance the prospect of successfully financing the $2.3 billion acquisition through NU's and PSNH's combined resources and external financing of debt, preferred stock and equity.

Through the difficult and complex negotiations in the bankruptcy proceeding, in effectively securing the approval of the New Hampshire Legislature in its enactment of RSA 362-C and in presenting comprehensive evidentiary support for the joint plan before this commission, NU has demonstrated a capability for strategic long term planning that provides assurance that its plan to acquire and manage PSNH is workable. NU has also demonstrated its capability of managing consistent with the standards and requirements of the state and federal regulatory process to provide electric service without the intervention of financial impairment of its operations.

We have adopted the Rate Agreement based on our analysis of its merits. We believe that NU's competent management will enable reorganized PSNH and NEAC to finance the plan, apply revenues from reasonable rates within the ambit of the Rate Agreement to support the resulting capitalization and assure post-merger that the public good will continue to be served consistent with a reliable electricity supply at a reasonable price to serve the New Hampshire economy and electricity customers.

K. CONCLUSION

[25] The implementation of the Rate Plan as set forth herein is consistent with the public good. Based on substantial evidence and analysis the commission has determined that the

reorganization proposal in the Joint Plan and the Rate Agreement will result in just and reasonable rates that equitably balance the interests of ratepayers and investors, will fairly resolve the PSNH bankruptcy and will establish a workable system for providing reliable electric service.

However, we recognize that a seven year forecast of rates is vulnerable to changes in economic trends, inflation and unforeseeable operation problems causing inexorable pressures on forecasted rates and various components of the Rate Plan. As a practical matter, the costs embodied in the rate paradigm may escalate beyond projections causing a greater than 5.5% annual compounded increase in rates over the seven year fixed term of the Agreement.

There are other variables and imponderables involved in predicting an uncertain future. If FERC does not approve a merger of NU and PSNH on a timely and acceptable basis to NU and PSNH, the State, the Equity and Creditor's Committees or the Bankruptcy Court, PSNH ratepayers are at risk by Stand-alone PSNH undertaking to provide electric service, albeit in accordance with the Rate Plan and this commission's continuing jurisdiction. As we have previously observed, there is also substantial risk that during the interim period (from the First Effective Date until FERC rules on the merger), the Reorganization and Rate Plan may not be consummated on terms consistent with the public good. Illustrative of the problem is that an estimated $500 million of synergies or efficiencies resulting from the merger would not transpire with a Stand-alone PSNH, costs of operating and financing will increase, and the 5.5% annual seven-year trajectory would be imperiled. If Seabrook does not operate as efficiently as anticipated, or operates at less than the assumed 60-70% capacity factors, or if fuel expenses are more volatile on the high side, costs flowing through FPPAC to the ratepayers will accelerate. If peak load demand does not approach 2.3%, pressures on base rates will increase. The commission will exercise constant regulatory oversight to assure, within the

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limits of feasibility, that NU's management will adhere to the rate path anticipated by the Rate Plan and the New Hampshire Legislature. RSA 362-C.

IV. REQUESTED FINDINGS

NU, the State and the Hydro Intervenors filed requests for findings, approvals and rulings of law. NU filed a response to Hydro Intervenors' Request for Findings of Fact and Rulings of Law on July 3, 1990. NU's requested findings and requested approvals, filed as Attachment 1 to their Trial Brief dated June 8, 1990, are:

A. NU'S REQUESTED FINDINGS OF FACT:

1. The implementation of the Rate Agreement is consistent with the public good. The Commission determines that the reorganization proposal contained in the Joint Plan will result in rates for electric service which reasonably balance the interests of consumers and investors, a prompt resolution to the PSNH bankruptcy and the establishment of a sound system for the furnishing of electric service. This ultimate finding is based on the totality of the substantial evidence presented on the record which supports the following specific findings:

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a. The rates anticipated under the Rate Agreement for the seven-year fixed rate period are affordable, reasonably balance the competing interests of consumers and investors so that investors will realize a reasonable return and ratepayers will not suffer an undue burden, and will permit PSNH to support its anticipated capitalization for such years.
b. The range of rates projected for the years following the seven-year fixed rate period are affordable, reasonably balance the competing interests of consumers and investors, and will permit PSNH to support its anticipated capitalization for such years.
c. The assumptions and projections upon which the Rate Agreement is based, including but not limited to the load forecast and NU's 20-year Load and Resource Plan, are reasonable. Moreover, the Commission finds that the 20-year Load and Resource Plan submitted by NUSCO provides adequate assurances that NU will have available sufficient supply-side options at reasonable cost to meet the energy needs of New Hampshire for 20 years. Based on this finding, the Commission approves the 20-year Load and Resource Plan in accordance with Section 3(d) of the Rate Agreement.
d. The establishment and amortization of the regulatory asset known as the "acquisition premium" are reasonable and facilitate the resolution of the PSNH bankruptcy by achieving a balance between PSNH investors' demands for prompt recovery of their investment and the ratepayers' interest in maintaining affordable rates.
e. The FPPAC, and the assumptions and projections upon which it is based, are reasonable, provide for a fair balancing of investor and ratepayer interests and facilitate the resolution of the PSNH bankruptcy.
f. The Seabrook Power Contract is reasonable, ensures a fair balance of investor and ratepayer interests in the event that Seabrook Unit I operates or is canceled, and results in reasonable charges to PSNH and to PSNH's ratepayers.
g. The ROE collar provisions are reasonable and provide protections against both ratepayer exploitation and confiscation of utility property.
h. The provisions of Section 5(a) of the Rate Agreement which permit modifications of base rates in certain circumstances are reasonable.
i. The provisions of Section 3 of the Rate Agreement which require NU system companies to provide capacity to PSNH are reasonable and ensure that PSNH will have sufficient electricity to meet anticipated ratepayer demands.
j. The issuance of the securities and other financings of PSNH and NAEC

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contemplated by the Joint Plan and the resulting capitalizations of these utilities are reasonable, permit the resolution of the PSNH bankruptcy, are supported by the rates provided for in the Rate Agreement and are in the public good.
k. The capital structure resulting from the issuance of the securities and other financings contemplated by the Joint Plan will not exceed the fair cost of the property reasonably requisite for present and future use to supply reliable electric service in the future to the New Hampshire ratepayers and its economy, plus the acquisition adjustment established by the Rate Agreement.
l. The capitalization ratios and capital structure resulting from the issuance of the securities and other financings contemplated by the Joint Plan are reasonable and are justified by the special circumstances of the case.

m. The provisions in Section 8 of the Rate Agreement relating to Seabrook decommissioning charges and the pass-through of such charges to customers are reasonable.

2. The acquisition of PSNH by NU will result in at least $300 million in capitalized synergies. Therefore, the Commission finds that upon consummation of the NU acquisition of PSNH, the Investment Adder, as that term is defined in the Rate Agreement, shall equal $300 million for the entire period that the ROE collar remains in effect and shall not be subject to further review or modification by the Commission. No party has presented evidence of the amount of capitalized synergies which would be realized by Stand-Alone PSNH in the event that the NU acquisition is not consummated. Therefore, the Commission finds that the value of such capitalized synergies shall equal $0, provided that the Commission may determine in a later proceeding brought by PSNH that synergies should be included in the Investment Adder for Stand-Alone PSNH.

3. The term "costs associated with conservation and load management programs" in section 5(a)(v)(D) of the Rate Agreement includes any and all direct program costs incurred by PSNH to implement conservation and load management programs in excess of those included in the current projections of the Rate Agreement. In addition, such term includes lost fixed cost recovery and incentives for C&LM to the extent determined by the Commission in this or any other proceeding.

4. The Joint Recommendations for Commission Order submitted to the Commission by NUSCO and the Office of the Attorney General are reasonable and consistent with the public good and are hereby adopted.

B. NU'S REQUESTED APPROVALS

NUSCO requests that the Commission issue the following approvals which are necessary to implement the provisions of the Rate Agreement in accordance with RSA 362-C:3:

1. The temporary 5.5 percent surcharge approved by the Commission in Order No. 19,655 in Docket No. DR 89-219, dated December 28, 1989, is just and reasonable and is hereby approved as a permanent rate of PSNH pursuant to Section 5(a)(i) of the Rate Agreement.

2. The six 5.5 percent rate increases to be effective pursuant to Section 5 of the Rate Agreement over the six-year period beginning on the later of the First Effective Date or January 1, 1991 are just and reasonable and are hereby approved. These rates shall become effective as permanent rates of PSNH as of the dates provided for in the Rate Agreement.

3. The Investment Adder of $300 million for PSNH upon acquisition by NU is reasonable and is hereby approved.

4. The commencement of business as a public utility by NAEC is for the public good and is hereby approved.

5. The commencement of business as a public utility by NAESC is for the public good and is hereby approved.

6. The acquisition of PSNH by NU in accordance with the Joint Plan is in the

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public good and is hereby approved. The Commission hereby finds in accordance with RSA 374:32 that the public good does not require that this transfer be authorized by a 2/3 vote of the stockholders of PSNH or NU.

7. The transfer by PSNH to NAEC of its ownership interest in the Seabrook plant, the land currently owned by PSNH surrounding the Seabrook site and Seabrook's nuclear fuel is for the public good and is hereby approved. The Commission hereby finds in accordance with RSA 374:32 that the public good does not require that this transfer be authorized by a 2/3 vote of the stockholders of PSNH or NAEC.

8. The Service Contract between NUSCO and PSNH in substantially the form submitted to the Commission under which NUSCO will provide management, financial, planning, accounting and other services at NUSCO's cost is reasonable and is hereby approved as in the public good.

9. The Service Contract between NUSCO and NAEC in substantially the form submitted to the Commission under which NUSCO will provide management, financial, planning, accounting and other services at NUSCO's cost is reasonable and is hereby approved as in the public good.

10. The Service Contract between NUSCO and NAESC in substantially the form submitted to the Commission under which NUSCO will provide management, financial, planning, accounting and other services at NUSCO's cost is reasonable and is hereby approved as in the public good.

11. The Seabrook Power Contract between PSNH and NAEC in substantially the form submitted to the Commission is reasonable and is hereby approved as in the public good.

12. The Capacity Transfer Agreements between PSNH and the NU system companies in substantially the form submitted to the Commission are reasonable and in the public interest and are hereby approved as in the public good.

13. The Sharing Agreement between PSNH and the NU system companies in substantially the form submitted to the Commission is reasonable and in the public interest and is hereby approved as in the public good.

14. The Management Services Agreement between PSNH and NUSCO which was filed with the Commission is reasonable and is hereby approved as in the public good.

15. With respect to the securities to be distributed to creditors and shareholders (the "Distribution Securities") at Step 1 of the Joint Plan and the proposed Step 1 financings (the "Financings"), the Commission finds as follows:

a. The issuance of common stock by PSNH at the effective date of the Joint Plan (the "Effective Date"), and from time to time thereafter in the form of stock dividends, in accordance with the terms of the Joint Plan and the proposed Amended Articles of Incorporation for PSNH submitted to the Commission, is consistent with the public good, and PSNH is authorized to issue said

shares of common stock, both at the Effective Date and from time to time thereafter, pursuant to the Joint Plan, in the respective amounts determined in accordance with the terms of the Joint Plan.
b. The issuance of contingent notes by PSNH at or after the Effective Date, in accordance with the terms of the Joint Plan and the proposed form of indenture (the "Contingent Note Indenture") is consistent with the public good, and PSNH is authorized to issue contingent notes having an aggregate principal amount of $205 million (or such lesser amount as shall be determined in accordance with the Joint Plan) pursuant to the Joint Plan in one, two or three series, bearing an interest rate set in accordance with the terms of the Joint Plan.
c. The issuance of contingent warrant certificates by PSNH at the Effective Date, in accordance with the terms of the Joint Plan and the form of contingent warrant agreement (the "Contingent Warrant Agreement"), is consistent with the public good, and PSNH is authorized to issue said

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certificates pursuant to the Joint Plan in the amounts determined in accordance with the Joint Plan.
d. The proposed Amended Articles of Incorporation of PSNH, in substantially the form approved by the Bankruptcy Court and filed with the Commission and the proposed Contingent Note Indenture and the Contingent Warrant Agreement, in each case in substantially the form submitted to the Commission, are consistent with the public good, and PSNH is authorized to effect the Amended Articles of Incorporation and to enter into the Contingent Note Indenture and the Contingent Warrant Agreement.
e. PSNH is authorized to issue the securities and incur the bank borrowings described in paragraphs 15(g) through 15(m) upon such terms as may be established by or on behalf of PSNH at the time of issuing such securities or effecting such borrowings, so long as the initial embedded cost to PSNH of such securities and borrowings, including issuance expenses, does not exceed 11.50 percent per annum.
f. The aggregate principal amount of first mortgage bonds and pollution control revenue bonds which may be issued pursuant to paragraphs 15(i) through 15(l) is limited to an aggregate principal amount of $825 million (plus such additional amounts of first mortgage bonds as may be required to provide security for the Letter of Credit and Reimbursement Agreement that may be issued in support of the taxable pollution control revenue bonds), to be allowed among such debt securities (up to the limits specified in such paragraphs) at the discretion of PSNH.
g. Subject to paragraph (e), the issuance and sale of 5,000,000 shares of a new series of PSNH preferred stock, $25 par value, (the "Series A Preferred Stock") by PSNH at the Effective Date, in accordance with the proposed Amended Articles of Incorporation and the testimony submitted to the Commission, is consistent with the public good, and PSNH is authorized to issue the Series A Preferred Stock to the public through one or more underwriters at par.
h. The proposed amendment of PSNH's General and Refunding Mortgage Indenture dated as of August 15, 1978 to Bank of New England, N.A. (formerly New England Merchants National Bank) as trustee, as heretofore supplemented and amended, substantially in accordance with the form of Tenth Supplemental Indenture and Schedule A thereto (the "Tenth Supplemental Indenture") submitted to the Commission is consistent with the public good, and PSNH is authorized to effect said amendment.

i. Subject to paragraphs (e) and (f), the issuance and sale of up to $400 million of first mortgage bonds by PSNH at the Effective Date, pursuant to the Tenth Supplemental Indenture and in accordance with the testimony submitted to the Commission, is consistent with the public good, and PSNH is authorized to issue and sell said first mortgage bonds at the principal amount to one or more underwriters.
j. Subject to paragraphs (e) and (f), the issuance of up to $120 million of tax exempt pollution control revenue bonds by the New Hampshire Industrial Development Authority (the "IDA") on behalf of PSNH at the Effective Date, the borrowing by PSNH of the proceeds of such issuance and the issuance by PSNH pursuant to the Tenth Supplemental Indenture of first mortgage bonds to a trustee for the benefit of the holders of such revenue bonds, in accordance with a Loan and Trust Agreement in substantially the form submitted to the Commission and the testimony submitted to the Commission, are consistent with the public good, and the issuance of such revenue bonds in one or more series, the execution of the Loan and Trust Agreement, the borrowing by PSNH of the proceeds therefrom, and the issuance by PSNH of first mortgage bonds as security therefor, are hereby authorized.
k. Subject to paragraphs (e) and (f), the issuance of up to $232.5 million of tax exempt pollution control refunding

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revenue bonds by the IDA on behalf of PSNH at the Effective Date, the borrowing by PSNH of the proceeds of such issuance and the issuance by PSNH pursuant to the Tenth Supplemental Indenture of first mortgage bonds to a trustee for the benefit of the holders of such revenue bonds, in accordance with a Loan and Trust Agreement in substantially the form submitted to the Commission and the testimony submitted to the Commission, are consistent with the public good, and the issuance of such revenue bonds in one or more series, the execution of the Loan and Trust Agreement, the borrowing by PSNH of the proceeds therefrom, and the issuance by PSNH of the first mortgage bonds as security therefor, are hereby authorized.
l. Subject to paragraphs (e) and (f), the issuance of up to $300 million of taxable pollution control revenue bonds by the IDA on behalf of PSNH at the Effective Date, the borrowing by PSNH of the proceeds of such issuance and the issuance by PSNH pursuant to the Tenth Supplemental Indenture of first mortgage bonds to a trustee for the benefit of the holders of such revenue bonds or to or for the benefit of the issuer of letters of credit supporting the bonds, in accordance with a Loan and Trust Agreement and a Letter of Credit and Reimbursement Agreement in substantially the respective forms thereof submitted to the Commission and the testimony submitted to the Commission, are consistent with the public good, and the issuance of such revenue bonds in one or more series, the execution of the Loan and Trust Agreements, the borrowing by PSNH of the proceeds therefrom, and the issuance by PSNH of first mortgage bonds, as security therefor and for PSNH's obligations to the letter of credit issuer, are hereby authorized.
m. Subject to paragraph (e), the borrowing by PSNH of up to $487 million from a group of banks under a term loan facility at the Effective Date, in accordance with a Term Loan Credit Agreement in substantially the form submitted to the Commission and the testimony submitted to the Commission, is consistent with the public good, and PSNH is authorized to effect such borrowings from such banks pursuant to such facility.

n. The borrowing of up to $200 million from time to time by PSNH from a group of banks under a revolving credit facility, in accordance with a Revolving Credit Agreement in substantially the form submitted to the Commission and the testimony submitted to the Commission, is in the public good, and PSNH is authorized to effect such borrowings from time to time from such banks pursuant to such facility.

16. While Commission approval of the specific proposed Step 2 financings (i.e., the issuance of common stock by PSNH, NAEC and NAESC to NU and the issuance of first mortgage bonds by NAEC) is not requested at this time, those proposed financings were considered by the Commission in this proceeding based upon the information available as to it at this time. Based upon that review, and in consideration of the Commission's right to approve the specific financings in the future as Step 2 becomes imminent, the Commission concludes that such financings, as components of the overall financing plan outlined in testimony before the Commission, are conceptually consistent with the public good and lend support to the Commission's finding as to the Rate Agreement under RSA 362-C:3.

17. PSNH shall use the proceeds of the security issuances and the bank borrowings approved in section 15 above to finance the cash requirements of the first step of the Plan.

18. With respect to the security to be provided by PSNH in connection with the security issuances and the bank borrowings approved in section 15 above, the Commission finds as follows:

a. The proposed amendment and restatement of PSNH's General and Refunding Mortgage Indenture to become

the first mortgage indenture of PSNH in accordance with the terms of the Plan and the Tenth Supplemental Indenture and the testimony provided to the Commission, and the continued mortgage by PSNH thereunder of substantially all of its present and future property, tangible and intangible, including franchises, but excluding its interest in Seabrook, to secure the payment of the first mortgage bonds to be issued thereunder is consistent with the public good and is hereby approved.

b. The proposed second mortgage to be granted by PSNH of substantially all of its present and future New Hampshire property, tangible and intangible, including franchises, subject to the first mortgage indenture referred to in paragraph (a) above, to secure payment of the Term Loan Credit Agreement and Revolving Credit Agreement referred to in paragraphs 15(m) and 15(n), in accordance with a second mortgage in substantially the form submitted to the Commission and in accordance with the testimony provided to the Commission, is consistent with the public good and is hereby approved.

c. The proposed first mortgage to be granted by PSNH of certain present and future property, both tangible and intangible, and including franchises, relating to the Seabrook nuclear power plant, to secure payment of the Term Loan Agreement and Revolving Credit Facility referred to above, in accordance with a Seabrook mortgage in substantially the form submitted to the Commission and the testimony submitted to the Commission, is consistent with the public good

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and is hereby approved.

19. In the Commission's Seventh Supplemental Order No. 17,222 in Docket No. DF 84-167 (69 N.H. PUC 522 [1984]), the Commission ordered that PSNH "is prohibited from declaring or paying preferred and common stock dividends unless such a declaration or payment is specifically authorized by further order of this Commission." The Commission finds that this prohibition is no longer necessary or appropriate and is hereby rescinded and shall be of no further force or effect.

NU's requested findings and approvals are consistent with the foregoing report and analysis and are approved.

C. STATE'S REQUESTED FINDINGS

The requested findings of the State of New Hampshire for Order Approving the Rate Agreement, filed on June 18, 1990, and listed above on pages 28-31 are likewise consistent with the foregoing report and analysis and are hereby approved with two exceptions. The State's third requested finding of fact which reads as follows:

The Annotated Rate Agreement submitted by the State is unchallenged as an accurate summary of the meaning to be ascribed to the Rate Agreement. The Annotated Rate Agreement and the accompanying glossary are adopted as the authoritative reference guide to the Rate Agreement. (AG-2: Kessler Pre-filed Testimony, Vol. II.)

Although the annotations in Ex. AG-2 appear to be consistent with this report and order and was not challenged by any party, we cannot ascribe the same weight to the annotations as we do to the explicit wording of the Agreement itself. Otherwise, the requested findings of the State are approved.

Second, as noted above, the State's request for a Supplemental Finding of Fact will be addressed at the time NU files its detailed accounting of book value and the Acquisition Premium at the First Effective Date.

D. HYDRO INTERVENORS' REQUESTED FINDINGS

The Request for Findings of Fact and Request for Rulings of Law filed by the Hydro Intervenors on June 8, 1990, are granted in part and denied in part. The Hydro Intervenors' requests for findings of fact along with respective

commission analysis and rulings are as follows:

1. In effect, implementation of the Rate Agreement will result in recovery of $1.5 billion or slightly more than 50%, of PSNH's Seabrook investment of approximately $2.9 billion.

NU objected to this request. We grant the request only insofar as the record indicates that, from an investor standpoint, the Rate Agreement, when considered as a whole, reflects in effect recovery of $1.5 billion, or the equivalent of slightly more than 50%, of PSNH's Seabrook investment. Tr. May 14 at 72. Dollars are fungible and the source of the funds does not so much

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matter to the investors as the bottom line return on their investment. However, the request is denied in that the value assigned to Seabrook under the Rate Agreement is $700 million, not $1.5 billion. As indicated by NU in its objection, treatment of the Acquisition Premium as part of the recovery of PSNH's Seabrook investment is not supported by the record, is inconsistent with the intent of the parties and would jeopardize the 5.5% rate projections in the Agreement.

Tr. May 24 at 72-73, Tr. April 7 at 177, Tr. April 18 at 94-95, Tr. April 20 at 101, 106-109.

2. The $700 million value assigned to Seabrook under the Rate Agreement is a negotiated value which has no rational basis other than being a value to accomplish all the things NU wanted to accomplish in the Rate Agreement.

The fact that the $700 million value for Seabrook was negotiated does not mean that there was no rational basis for it. There was testimony that the $700 million amount approximates Seabrook's market value and that said value could be used for ratemaking purposes in a Seabrook rate case. Ex. Staff-1, Pre-filed Direct Testimony of James T. Rodier at 7 and 10. Tr. April 18, at 223-24. Also, as NU asserted in its objection to this requested finding, the record citations by the Hydro Intervenors in support of its request demonstrate and the $700 million value assigned to Seabrook reflects an attempt by the parties to maintain a 5.5% rate path and zero level FPPAC charges. Accordingly, this request is denied.

3. NU does not assign the acquisition premium either to the Seabrook assets or to the non-Seabrook assets.

This request was not challenged. It appears to be consistent with the record and with the foregoing report and analysis and is therefore granted.

4. The $800 million "acquisition premium" is not related to, and not justified by, the "synergies" that NU claims will result from the acquisition of PSNH.

No party objected to this request. It is true that the Acquisition Premium was not calculated based on the aggregate savings attributable to synergies. To this extent, the requested finding is granted. However, the savings attributable to the synergies are of paramount importance to whether projected 5.5% annual rate increases will support the $2.3 billion dollar capitalized value of the company, including the Acquisition Premium. Accordingly, this requested finding is denied to the extent that it is inconsistent with this analysis and the foregoing report.

5. The $800 million "acquisition premium" cannot be characterized as an acquisition adjustment in the traditional utility ratemaking sense of a premium paid for assets above their depreciated original cost.

To the extent that the record indicates that the "acquisition premium" was calculated solely as the difference between the $2.3 billion value required to resolve the bankruptcy and the sum of the Seabrook and non-Seabrook values, it was not derived in the traditional utility ratemaking sense of the premium paid for assets above their depreciated original cost. However, the commission agrees with NU's assertion that the Acquisition Premium would also be justified if it were calculated in its traditional ratemaking sense. Accordingly, this request is denied. NU

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Trial Brief at 27-29.

6. The treatment of $800 million of the $2.3 billion purchase price as an acquisition premium or acquisition adjustment is not justified on the record under traditional accounting principles.

NU objects to this request. The commission agrees with NU that the request is not supported by the record. It was Staff Witness Sullivan's opinion that the accounting treatment of the acquisition premium in the Rate Agreement is consistent with Generally Accepted Accounting Principles. The Acquisition Premium is a regulatory asset created by the Rate Agreement. Authorization of the Acquisition Premium creates substantial cash flow limiting the need for external financing and contributes to lower financing costs and lower rates. Tr. Apr. 19 at 33-36. The accounting treatment of the Acquisition Premium rationally serves the balanced interest of ratepayers and investors in an effective rate plan. Accordingly, this requested finding is denied.

7. Regardless of what it is called, where it is placed as an asset, or how quickly it is amortized, the $800 million "acquisition premium" represents additional Seabrook costs (beyond the $700 million assigned value of Seabrook) recovered under the Rate Agreement.

This request is denied for, *inter alia,* the reasons cited *supra* in response to Hydro intervenors' first and second requests for findings of fact. NU's objection to this request is granted.

The Hydro intervenors made three requests for rulings of law:

1. The Commission is required to employ some rational method and to identify fully and accurately its method for determining reasonable rates, including its calculation of rate base and rate of return.

2. The statutory basis for calculation of rate base is "the cost of the property of the utility used and useful in the public service less accrued depreciation." RSA 378:27, 28; *Appeal of Public Service Co.,* 130 N.H. 748, 751, 96 PUR4th 536, 547 A.2d 269 (1988).

3. The special statute enacted by the legislature that governs this case, RSA Ch. 362-C, does not supercede traditional ratemaking principles under New Hampshire Law.

a. Statutes *in pari materia* are to be construed together. *State Employees' Association v. Public Employee Labor Relations Board,* 118 N.H. 885, 890 (1978).

b. In the absence of clear evidence to the contrary, a new statute will not be deemed to effect a repeal by implication of an existing statute. *Arnold v. City of Manchester,* 119 N.H. 859, 863 (1979).

There were no objections filed to Request No. 1 and NU objected to Request Nos. 2 and 3. Request No. 1 is granted. The commission is obligated to and has demonstrated a rational basis for its decisions in this proceeding and for its findings that rates are just and reasonable.

Request No. 2 is denied in that it does not go far enough in finding the statutory basis for the calculation of rate base. RSA 362-C:3 provides, in pertinent part, that the commission, if it first determines that implementation of the rate agreement will be consistent with the public good, shall, "*not withstanding any other provision of law,* establish and place into effect the level of rates, fares, or charges... in accordance with... the agreement... ." (emphasis added.) This

provision, among other things, would allow CWIP to be reflected in the rates under the plan notwithstanding the so-called anti-CWIP statute, RSA 378:30-a.

The third requested ruling of law is granted in part and denied in part. As discussed above regarding the Hydro intervenors' request for ruling of law, RSA 362-C:3 (and RSA 362-C:4 regarding temporary rates) provided that, to the extent the commission finds the Rate Agreement to be consistent with the public good, that it shall implement the Agreement "notwithstanding any other provision of law." To the extent that the commission can authorize said implementation of the Rate Agreement consistent with traditional ratemaking principles under New Hampshire law, this requested finding is

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granted. This was made clear in all of the scoping orders to date in this proceeding. To the extent that implementation of the Rate Agreement is not possible under traditional ratemaking principles under New Hampshire law, as may be the case in the application of RSA 378:30-a, the requested finding is denied.

Our order will issue accordingly.

ORDER

Based on the foregoing Report, which is made a part hereof, it is hereby

ORDERED, that NUSCO's requests for findings of facts, dated June 8, 1990, are consistent with the commission analysis in the foregoing report, are consistent with the public good, and are hereby granted; and

FURTHER ORDERED, that the requested approvals filed by NUSCO on June 8, 1990, are consistent with the commission analysis in the foregoing report, are consistent with the public good, and are hereby granted; and

FURTHER ORDERED, that, as set forth in the foregoing report, our approval of the Twenty Year Load and Resource Plan filed by NU pursuant to Section 3(d) of the agreement does not relieve NU from its obligation to implement least cost planning as specified by the commission, or limit, in any way, the right of the commission to set just and reasonable rates; and

FURTHER ORDERED, that NU/PSNH shall comply with all existing and any future least cost integrated planning or any other resource planning requirements of the commission; and

FURTHER ORDERED, that the requested findings of the State of New Hampshire for an Order Approving the Rate Agreement, filed on June 18, 1990, are consistent with the commission analysis in the foregoing report and are hereby approved with the exception of (1) the state's third requested finding of fact which asked the commission to accept the Annotated Rate Agreement and the accompanying glossary as the "authoritative reference guide to the rate agreement," which is denied insofar as the commission cannot ascribe the same weight to the annotations as is ascribed to the explicit wording of the agreement itself; and (2) the state's supplementary request for a finding of fact regarding NU's fees, expenses and obligations incurred prior to the first effective date which will be determined when NU files its detailed accounting of net book value and the acquisition premium; and

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FURTHER ORDERED, that the Hydro Intervenors' requests for findings of facts are denied, for reasons set forth in the foregoing report and analysis, with the following three exceptions:

1. The Hydro Intervenors' Third Request for Finding of Fact that "NU does not assign the acquisition premium either to the Seabrook assets or to the non-Seabrook assets," is consistent with the record and with the foregoing report and analysis and is granted.

2. The Hydro Intervenors' First Request for Finding[1(44)] is granted insofar as the record indicates that, from an investor's standpoint, the Rate Agreement, when considered as a whole, reflects in effect recovery $1.5 billion or the equivalent of slightly more than fifty percent of PSNH's Seabrook investment. The request is denied in that the value assigned to Seabrook under the Rate Agreement is $700 million, not $1.5 billion. Treatment of the Acquisition Premium as part of the recovery of PSNH's Seabrook investment is not supported by the record, is inconsistent with the intent of the parties and would jeopardize the 5.5 percent rate projections set forth in the Rate Agreement.

3. Hydro Intervenors' Fourth Request for Findings of Fact, that the "$800 million `acquisition premium' is not related to and not justified by the `synergies' that NU claims will result from the acquisition of PSNH," is granted in that the acquisition premium was not calculated based on the aggregate savings attributable to synergies. This requested finding is denied insofar as it is inconsistent with the foregoing report and our finding that the savings attributable to the synergies are of paramount importance to the ability of the projected 5.5 percent annual rate increases to support $2.3 billion dollar

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cumulative value of PSNH; and

FURTHER ORDERED, that the Hydro Intervenors' First Request for a Ruling of Law[2(45)] is granted for reasons cited in the foregoing report; and

FURTHER ORDERED, that the Hydro Intervenors' Second Request for a Ruling of Law

[3(46)] is denied for the reasons set forth in the foregoing report; and

FURTHER ORDERED, that the Hydro Intervenors' Third Requested Ruling of Law provides that the special statute enacted by the Legislature that governs this case, RSA Ch. 362-C, does not supercede traditional rate-making principles under New Hampshire law, is granted in part and denied in part. It is granted to the extent that the commission can authorize said implementation of the Rate Agreement consistent with traditional rate-making principles under New Hampshire law. It is denied to the extent that implementation of the Rate Agreement is not possible under traditional rate-making principles under New Hampshire law, as may be the case in the application of the so-called anti-CWIP statute, RSA 378:30-a; and

FURTHER ORDERED, that pursuant to RSA 362-C:3, the commission hereby finds that the implementation of the agreement would be consistent with the public good and the levels of rates, fares or charges and the fuel and purchased power adjustment clause shall be placed into effect as appropriate in accordance with, and during the time period set forth in, the agreement;

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and

FURTHER ORDERED, that the commission findings above, granting various requested findings of fact and approvals by the parties, were made in the context of the commission analysis and interpretation set forth in the foregoing report and are not necessarily consistent with the position of the party making the request; and

FURTHER ORDERED, that PSNH consult with the commission staff and propose a schedule for a rate design proceeding by January 1, 1991, in accordance with the foregoing report, and

FURTHER ORDERED, that PSNH shall file a detailed accounting of the reorganization, including severance payments to employees and senior management. Such accounting shall provide a calculation of the net book value, as described in Exhibit A to the Third Amended Joint Plan of Reorganization, Ex. NU 1E at A-37 and A-38, and the acquisition premium of the new company at the First Effective Date, including an account of severance payments to employees and senior management and an accounting of all fees, expenses and obligations incurred by NU in the resolution of the PSNH bankruptcy and proposed acquisition and the dates incurred and paid; and

FURTHER ORDERED, that upon consummation of the merger, PSNH will consult with the commission staff regarding the monthly and periodic reports that will be required for ongoing commission review of fuel and purchased power costs, rates of return earned and the return on equity collar calculations.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1990.

APPENDIX A

Joint Recommendation for Commission Order

NOW COMES Northeast Utilities Service Company ("NUSCO") and the Office of the Attorney General (referred to herein collectively as the "Undersigned Parties") and state as follows:

A. Introduction

The Undersigned Parties have reached certain agreements with respect to the proper intent and interpretation of the Rate Agreement. Such agreements do not result in amendments to the Rate Agreement. The Undersigned Parties recommend that said agreements, set forth below, be adopted by the New Hampshire Public Utilities Commission ("Commission") as conditions to or findings in a commission order approving the Rate Agreement in the above-captioned docket.

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B. Stipulations

1. In the event that NUSCO acquires PSNH, and for so long as payments made by PSNH under the Unit Contract ("Seabrook Power Contract") to North Atlantic Energy Corporation are

recovered from ratepayers through an adjustment clause in a manner substantially identical to the recovery of such payments allowed under the Fuel and Purchased Power Adjustment Clause ("FPPAC") (and except for the $700 million cost established for Seabrook as of the effective date of PSNH's reorganization and the additional costs, if any, relating to Seabrook, up to $200 million incurred prior to December 31, 1992 in placing Seabrook in commercial operation, as to which costs this waiver provision shall not apply) the recovery through retail rates of any and all such payments made by PSNH under the Seabrook Power Contract will continue to be subject to prudence review by the NHPUC. For such period of continued FPPAC existence or similar treatment of PSNH's Seabrook Power Contract payments, PSNH and NAEC severally and jointly waive or will waive any provision of law that would preclude NHPUC prudency review of the recovery through retail rates of such Seabrook Power Contract payments by PSNH. Between the First Effective Date and ten years following the First Effective Date, a prudent expense shall, for the purpose of this provision, mean an expense that a reasonable utility management would have made, in good faith, under the same circumstances, and at the time the expense was actually incurred or at the time the utility became committed to incur the expense. Such definition shall apply after ten years following the First Effective Date for so long as the waiver described in this paragraph continues in effect, or until NUSCO and the Commission adopt a different definition by mutual agreement.

2. NUSCO shall provide a legal opinion (to be furnished not later than the filing of its brief) that the no-setoff language of the Seabrook Power Contract would not foreclose any cause of action that PSNH otherwise would have against NAEC.

3. Interest shall accrue and be applied to the average of the beginning monthly balance and ending monthly balance of any over-recovery or under-recovery of FPPAC costs at an interest rate equal to the average prime rate, as reported in the Wall Street Journal, for that month. Commencing in 1991, the amount of any FPPAC credit or charge shall be subject to interim changes during the six-month FPPAC period at times and upon events substantially similar to the times and events applicable to interim changes under ECRM.

4. The FPPAC should be interpreted in accordance with the intent of the parties negotiating the Rate Agreement so that the term "actual prudent energy and purchased power costs" as used in the first paragraph of Exhibit C to the Rate Agreement (Exhibit NU-1E, page D-91) would be deemed not to include: (i) the cost of any purchase of capacity, including capacity exchanges, made in order to replace that portion of any PSNH capacity sold that causes PSNH to be unable to meet its allocated capability responsibility; or (ii) the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date.

5. A drafting error in the formula for "PA" appearing on page D-104 of Exhibit NU-1E is hereby acknowledged and the formula should read as follows:

[Equation below may extend beyond size of screen or contain distortions.]
gfont 1 delim @@
gsize 8

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[Equation below may extend beyond size of screen or contain distortions.]
~~~~~~~~~~~~~PA~=~{(FPPACa~-~FPPACp)~×~SAa} over
{SAf}

6. (i). To the extent that Section 5(v)(A) of the Rate Agreement, Exhibit NU-1E, page D-13, allows recovery for the cost of compliance with environmental orders, regulations, and laws, said Section 5(v)(A) should be interpreted to apply only to such costs incurred in connection with PSNH's non-production facilities. All such costs incurred by PSNH for production facilities shall be recovered through FPPAC, pursuant to the definition of the term "EA" on pages D-91 and 92 of Exhibit NU-1E.

(ii). With respect to the concern of the NHPUC Staff that PSNH should implement least-cost measures without a NHPUC mandate, the parties acknowledge that the intent of the Rate Agreement is that *neither* PSNH *nor* ratepayers should assume risks or costs (beyond

the requirements of Section 5(v) of the Rate Agreement) from any determination made by PSNH as to whether or not to pursue such measures. Toward that end, and consistent with the parties' desire not to exceed the projected rate path, the parties agree to cooperate in achieving their mutual goal by recommending, as needed, innovative mechanisms to permit rate stability and implementation of least-cost measures without adversely affecting the financial assumptions upon which the Undersigned Parties relied in agreeing to the 5.5 percent rate path. Such innovative mechanisms could include retention by PSNH of any fuel expense savings until the capital costs incurred by PSNH for such measure are repaid, if such savings result from any least-cost measure that (a) does not meet the criteria of Section 5(V) of the Rate Agreement, and (b) is not included in base rates assumptions.

7. (i) If the Commission orders PSNH to implement any conservation and load management ("C&LM") programs in excess of the base level included in the current projections for the Rate Agreement, PSNH shall be entitled to recover fully the sum of any and all incremental direct program costs (including but not limited to equipment and installation costs, administration and planning costs, load research costs and monitoring and evaluation costs). In addition, PSNH shall be entitled to recover fully all other costs (including lost fixed costs) and incentives related to C&LM programs only as may be permitted either in this or any other Commission proceeding.

(ii) For the purposes of this paragraph 7, the base level for C&LM programs included in the current base rate projections for the Rate Agreement means programs approved by the Commission totaling approximately $1.167 million in annual 1989 costs to PSNH; provided that Rate WI and other interruptible program costs shall be recovered as Purchased Capacity Expense under FPPAC.

(iii) All incremental C&LM costs which PSNH is entitled to recover pursuant to this paragraph shall be recovered under Paragraph 5(v)D of the Rate Agreement, and any incremental

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level of C&LM expenditures allowed by the Commission to be recovered under Paragraph 5(v)(D) in one year shall be increased by 5.5% annually for the remainder of the fixed rate period. The intent of the preceding sentence is that compounding of the 5.5% increases in allowed C&LM costs will be matched by corresponding increases in C&LM expenditures and will not be retained by PSNH as income.

(iv) The NHPUC Staff shall use its best efforts to facilitate the issuance of a report and order of the Commission in Docket DR 89-187 on or before the issuance of a report and order this docket.

8. PSNH shall file semi-annual reports indicating actions taken to achieve the cost savings represented by NUSCO as part of the benefits of NU's acquisition of PSNH.

9. Within 30 days of the First Effective Date, NUSCO and PSNH will consult with the Chief Engineer of the NHPUC, or a designee, as to the development of performance measures and statistics for tracking distribution system reliability and customer outages.

10. Section 3(d) of the Rate Agreement (Exhibit NU-1E, page D-10) should be interpreted consistent with the intent of the parties negotiating the Rate Agreement that the 20-year load and resource plan filed by NUSCO provides adequate assurances that NUSCO will have available sufficient supply side options at reasonable cost to meet the energy needs of New Hampshire for 20 years. Further, the Commission's acceptance of the 20-year load and resource plan shall not relieve NUSCO from its obligation to implement least cost planning as specified by the Commission or limit, in any way, the right of the Commission to set just and reasonable rates.

C. PROCEDURAL UNDERSTANDINGS

The Undersigned Parties jointly recommend that the Commission adopt the recommendations set forth in Paragraphs 1 through 10, above, as conditions to, or findings in, any order of the Commission approving the Rate Agreement as being consistent with the public good. Finally, the Undersigned Parties jointly recommend that no additional substantive conditions be imposed by the Commission that

conflict with express language in the Rate Agreement or that alter allocations of risk or revenue expectations under that agreement.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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SECOND JOINT RECOMMENDATION TO THE COMMISSION

The State of New Hampshire, by and through its attorneys ("State"), and Northeast Utilities Service Company ("NUSCO") have reached agreement regarding the appropriate calculation of the Fuel and Purchased Power Adjustment Clause ("FPPAC") in view of the revisions in the data underlying base assumptions attributable to Seabrook. In summary, the State and NUSCO agree that a change should be made to the "BA" component of FPPAC. Such a change would use the savings experienced in future years to offset the near-term impact on rates of an increase in base assumptions. With this change, the State and NUSCO believe the integrity of the rate path established by the Rate Agreement[1(47)] will be preserved.

Introduction

As part of rebuttal testimony, NUSCO provided revised projections for Seabrook Operating and Maintenance ("Seabrook O&M") and nuclear fuel for the fixed rate period of the Rate Agreement which is the subject of this docket. NUSCO's revisions would increase the projected cost of Seabrook O&M and decrease the cost of nuclear fuel.

The State had NUSCO's nuclear fuel projections reviewed by a nuclear fuel expert employed by Ernst & Young. This review included a comparison of NUSCO's original and the revised

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projections. Also, the review examined the assumptions and principals employed by NUSCO to compute the lower projected fuel cost including the assumptions relative to AFUDC.

Based on the information provided by NUSCO, the State finds the revised projections for nuclear fuel to be reasonable.

The State did not independently analyze the revised projected Seabrook O&M expenses. However, the State agrees that the annual Seabrook O&M expenses will be greater than the original projection of NUSCO ($95 million), but less than the amount projected by the present operators of Seabrook ($154 million). Based on the record developed in this docket, the State believes it is reasonable to use NUSCO's revised projection of the annual Seabrook O&M expenses ($113 million) in the calculation of the "BA" component of FPPAC.

Recommendations

The State and NUSCO recommend that the commission incorporate the following adjustments.

1. The base assumption for the Seabrook O&M expense should be increased to $113 million for 1991 and escalated at 5.5% per year thereafter. The Seabrook O&M expense for 1991 includes an estimated severance expense item of $5.1 million.

2. The base assumption for nuclear fuel expense should be reduced to reflect the revised projections, discussed at the hearing, to the extent necessary to offset the increases to the

Seabrook O&M expense described in Paragraph 1 on a net present value basis.

3. The base assumption for the capacity factor for Seabrook, and all other base assumptions, should remain unchanged.

4. Fuel and purchased power BA as set forth in Exhibit C, Schedule 1 to the rate plan should be adjusted as set forth in Attachment 1 to this joint recommendation to reflect Paragraphs 1 and 2, above.

5. The adjusted BA will result in annual rate increases in each year of the rate plan of no more than 5.5% if the assumptions relied on are achieved.

6. These adjustments will result in an anticipated cumulative net present value of earnings approximately equal to the cumulative net present value of earnings available to PSNH over the entire seven year period as originally negotiated by NUSCO and the State.

7. This agreement creates additional protection against FPPAC related rate increases. At the new reference assumptions for Seabrook O&M and nuclear fuel expenses, there would be a net cumulative present value benefit to ratepayers of approximately $7 million over the fixed rate period.

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Conclusion

The State and NUSCO believe that this refinement of the FPPAC calculation is in the public good because it maintains the integrity of the rate path created by the Rate Agreement. In addition, these parties believe that the adoption of these recommendations will reduce the risk to ratepayers that rates will increase during the fixed rate period. For these reasons, the State and NUSCO respectfully request that the Commission adopt these recommendations.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

ATTACHMENT 1
(EXHIBIT C—SCHEDULE 1—REVISED)

ANNUAL BASE RATE LEVEL
OF THE FUEL CHARGE ("BA")
IN THE FUEL AND PURCHASED POWER
ADJUSTMENT CLAUSE ("FPPAC")

Fuel and Purchased Power

"BA"

Year	Seabrook Pre-Commercial Operation (¢/kwh)	Seabrook Post-Commercial Operation (¢/kwh)
1990	3.291	3.447
1991	3.154	3.520
1992	3.263	3.760
1993	3.457	4.096
1994	3.609	4.351
1995	3.985	4.823
1996	4.213	5.054

Note: This base rate level of fuel and purchased power assumes an initial capital structure and cost to NEWCO as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	StructureCost
Debt	80% 11.5 and 15.0%
Equity	20% 13.75%

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At the Second Effective Date the base rate level fuel charges will be updated using the actual NEWCO capital structure and cost and to reflect the results of any renegotiation with the New Hampshire Electric Cooperative, Inc. It is intended that such updates will have no impact on total rates if the reference assumptions, as updated, are achieved.

FOOTNOTES

Report

[1]"Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the State of New Hampshire, acting on behalf of the State of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities. RSA 362-C:2 II.

[2]In its report and order 19,775 issued March 13, 1990, the Commission audited the Nuclear Decommissioning Finance Committee's (NDFC) Decommissioning Fund as the basis for the Nuclear Decommissioning Charge to be assessed against the applicable utilities. If the N.H. Supreme Court's decision, currently pending, requires revision of the Nuclear Decommissioning Charge, the Commission's order in Docket No. DR-90-019 will be appropriately modified and a final order relating to the Decommissioning Charge will be issued.

[3]Ex. NU-23, Joint Recommendation for Commission order between the State of New Hampshire and NU filed June 22, 1990 at 1-2. Said Joint Recommendation and its companion "Second Joint Recommendation to the Commission" (filed by the State and NU with the original Joint Recommendation) and the Staff response and concurrence thereto dated June 27, 1990, are attached to this report as Appendix A.

[4]The commission is constrained by RSA 362-C:8 which provides: Notwithstanding any law or rule to the contrary, during the fixed rate term of the approved agreement or plan the

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commission shall not cause the allocation of base rate revenue responsibility among residential, commercial, industrial and municipal customers in effect on September 15, 1989, for the electric customers, serviced by Public Service Company of New Hampshire or its successor, to change without legislative approval of the commission's finding that such revenue responsibility allocation is unjust or unreasonable.

[5]Connecticut Light and Power, an NU subsidiary, owns approximately 4% of the Seabrook Nuclear Power Plant, with the balance of the ownership distributed among 10 other joint owners.

[6]The unit contract between PSNH and NAEC is in the record as part of Exhibit NU 1-E beginning at page D-29. The Schedule I, cost-of-service and termination costs, commences in the same exhibit at page D-62. Between the first effective date and consummation of the merger, PSNH can recover under the plan from its ratepayers the same amounts that PSNH would have had to pay to NAEC if the Seabrook Power Contract were in place. This was presented by NU as being an essential part of the financing arrangements. Ex. NU 1-E, at 24.

[7]Paragraph 7 of the Rate Agreement, Ex. NU 1-E at D-16 and D-17 provides that FPPAC shall expire at the end of 10 years, and, at the end of such 10 year period, the "cost of... purchased power shall be recovered in the manner established by the NHPUC."

[8]Ex. C to the Rate Agreement, Exh. NU 1-E at D-98 and D-99. Prudence is not defined elsewhere in the Agreement and the commission is not bound to apply this definition except as it pertains to costs incurred under the Seabrook Power Contract.

[9]NU, in its trial brief at page 49, indicated, regarding a staff request that PSNH waive any claim of preemption that it may have concerning review of replacement power expenses attributable to Seabrook outages that are determined to be imprudent, that this "question was specifically addressed during negotiations with the State of New Hampshire and deliberately excluded from the waiver provisions of the FPPAC. Tr. May 23 at 72. In a recent filing with the commission, NUSCO discussed existing case law on this complex and unsettled question, and reserved the right, if the issue ever arises, to argue for an interpretation of law that would preclude disallowance of replacement power costs.... However, no provision in the Seabrook Power Contract or the Rate Agreement, including the FPPAC, diminishes in any way the commission's existing powers with respect to such costs — whatever authority the commission would have absent these agreements, it will continue to have." NU went on to ask that the commission not "rewrite the Rate Agreement to resolve a contentious legal issue that may never arise in fact." *Id.* In determining now that the commission has the authority under the Seabrook Power Contract to disallow costs resulting from Seabrook outages that were caused by imprudent acts, we are not rewriting the Agreement but interpreting how it may be implemented in the public good in subsequent rate proceedings.

[10]Another alternative shield for ratepayers, would be for the commission, in subsequent proceedings, to consider, when appropriate, removing from rates a portion of the up to $900 million initial investment in Seabrook, (considered prudent under the Agreement) under the used and useful principle

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(pursuant to *inter alia,* RSA 378:27, 28) in the event that imprudence at Seabrook should render Seabrook unusable and useless for an extended period of time.

[11]Ex. B to the Rate Agreement, NU 1-E at D-86. The Investment Adder for PSNH is calculated under the formula set out in schedule 1 to Exhibit B found at page D-90 of Ex. NU 1-E.

[12]Second Joint Recommendation of the Parties at 2. NU's projected Seabrook budget was increased from $95 million to $113 million to accommodate various differences between Seabrook and Millstone 3, including emergency planning costs, environmental monitoring costs, and costs of radiological monitoring, nuclear licensing, training and nuclear records. NU Trial Brief at 57-58.

[13]The Joint Plan defines warranty run as follows: "Warranty Run" means a period of 100 continuous hours during which the Seabrook Unit No. 1 nuclear steam supply system and turbine successfully operate, in accordance with the warranty provisions of the respective contracts under which the nuclear steam supply system and the turbine were constructed, at least at the capability rating determined for the Unit by the New England Power Pool for the first year of operation. NU 1-E at A-9.

Order

[1]The Hydro Intervenors' First Request for Finding was: "in effect, implementation of the Rate Agreement will result in recovery of $1.5,billion, or slightly more than fifty percent, of PSNH's Seabrook investment of approximately $2.9 billion.

[2]The Hydro Intervenors' First Request for a Ruling of Law is that the "commission is required to employ some rational method and to identify fully and accurately its method for determining reasonable rates, including its calculation of rate base and rate of return.

[3]The Hydro Intervenors' Second Request for a Ruling of Law is: "... the statutory basis for calculation of rate base is `the cost of the property of the utility used and useful so in the public service less accrued depreciation.' RSA 378:27, 28; *Appeal of Public Service Company,* 130 N.H. 748, 751, 96 PUR4th 536, 547 A.2d 269 (1988)."

Joint Recommendation

[1]The Rate Agreement was signed by NU and the State on November 22, 1989 and is the subject of this docket. Hereinafter, the Agreement, including exhibits and schedules, will be referred to as "the Rate Agreement."

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NH.PUC*07/20/90*[51048]*75 NH PUC 488*New Hampshire Electric Cooperative, Inc.

[Go to End of 51048]

75 NH PUC 488

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 19,891

New Hampshire Public Utilities Commission

July 20, 1990

ORDER granting a motion for an extension of time to file data requests in a proceeding to review an electric rate plan for resolving the financial crisis of an electric cooperative.

PROCEDURE, § 39 — Time limitations — Data requests — Extension — Grounds for granting.

[N.H.] The commission granted a motion for an extension of time to file data requests in a proceeding to review an electric rate plan for resolving the financial crisis of an electric cooperative; all parties concurred with the motion and the commission found that the extension would not impair the conduct of the proceeding.

By the COMMISSION:

ORDER

The Staff of the Public Utilities Commission having filed on July 10, 1990, a motion for extension of time for submittal of data requests in this proceeding; and

WHEREAS, pursuant to Order of Notice dated May 8, 1990, the commission, *inter alia*, established July 9, 1990 as the time for "[l]ast data request to NHEC"; and

WHEREAS, on July 6, 1990, the State of New Hampshire, by and through the Office of Attorney General ("State"), requested that "consideration of the NHEC rate plan be suspended until July 23, 1990 at which time the State will submit an alternative rate plan for NHEC"; and

Page 488

WHEREAS, at a public commission meeting held on July 9, the commission denied without prejudice the request of the state to suspend consideration of the NHEC rate plan and agreed that the State may file an alternative rate plan by the State by July 23, 1990 "after which the commission will entertain whatever procedural requests go along with said filing" (Minutes — Commission Meeting at 2); and

WHEREAS, on July 12, NHEC filed an objection to staff's motion for extension of time for submittal of data requests and also requested the commission to "[d]eclare that the so-called alternative rate plan by the State is unauthorized by RSA 362-C:7 ..." (Objection at 6); and

WHEREAS, in its motion staff asserts that although it intends to propound some data requests on NHEC's proposed rate plan on July 9 or soon thereafter, staff requires a period of three weeks after the filing of the State's alternative rate plan on July 23 to prepare and propound additional data requests on that plan and NHEC's plan; and

WHEREAS, in any event, staff needs substantial additional time for discovery on NHEC's

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proposed rate plan and related plans to resolve its financial crisis; and

WHEREAS, the parties to this proceeding have been consulted with respect to this motion for extension of time until August 13 and, except for NHEC, have authorized staff to represent to the commission their concurrence with staff's motion; and

WHEREAS, the commission does not believe that the requested extension of time will require adjustment to the procedural schedule or will unduly impair the conduct of this proceeding given its highly fluid nature at present; it is

ORDERED, that staff's motion for extension until August 13, 1990 to file data requests is hereby granted.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1990.

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NH.PUC*07/20/90*[51049]*75 NH PUC 489*New England Telephone Company

[Go to End of 51049]

75 NH PUC 489

Re New England Telephone Company

DE 89-117
Order No. 19,893

New Hampshire Public Utilities Commission

July 20, 1990

ORDER approving revised tariff pages for NOVA Centrex and Intellipath Digital Centrex Services offered by a telephone local exchange carrier.

RATES, § 566 — Centrex service — Tariff revision — Correction of service conversion charge — Telephone LEC.

[N.H.] The commission approved revised tariff pages for NOVA Centrex and Intellipath Digital Centrex Services offered by a telephone local exchange carrier (LEC) ; the revised tariff pages corrected an erroneous service and equipment charge for conversion of any existing Centrex system to Intellipath Digital Centrex Service.

By the COMMISSION:

ORDER

WHEREAS, on June 26, 1989 New England Telephone Company (the Company) filed a petition seeking changes in its NOVA Centrex and Intellipath Digital Centrex Services in order

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to make them more competitive with key and private branch exchange offerings; and

WHEREAS, the proposed services were submitted for effect on July 26, 1989, and

WHEREAS, the filing was suspended by NHPUC Order No. 19,494, dated July 24, 1989; and

WHEREAS, following a thorough investigation by the commission staff, the Company

filed a substitute proposed tariff page to correct an erroneous service and equipment charge for conversion of any existing Centrex system to Intellipath Digital Centrex Service; and

WHEREAS, the rates and charges contained in this petition, mirror in large part those approved by the New Hampshire Public Utilities Commission in prior order no. 18,753 (72 NH PUC 293), dated July 10, 1987; and

WHEREAS, the augmentation of the Incremental Cost Study, filed by the Company in DR 89-010 will permit a more detailed analysis on the incremental costs of all Centrex Services; and

WHEREAS, the proposed tariff pages appear to be just and reasonable and consistent with the public good; it is hereby

ORDERED, that the proposed tariff NHPUC No 75, telephone pages:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Supplement No. 31 — Title Page
                  — Original pages 1 and 2
Part A, Section 7 — Fourth Revision of page 23
                  — Third Revision of page 25
                  — Ninth Revision of page 29
                  — Original Pages 29.1 and 29.2
                  — Third Revision of page 38
Part C, Section 6 — Second Revision of pages 1-3
                  — Original page 3.1
                  — Second Revision of pages 6-8
                  — Third Revision of page 11.1
                     and 11.2
                  — Second Revision of pages 12
                     (substituted 6/11/90), 15, 18
```

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1990.

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NH.PUC*07/30/90*[51050]*75 NH PUC 490*U.S. Sprint Communications Company of New Hampshire Inc.

[Go to End of 51050]

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DE 90-087
Order No. 19,895

New Hampshire Public Utilities Commission

July 30, 1990

ORDER revising the tariffs of a telephone public utility to reflect a changes in its corporate names.

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1. CORPORATIONS, § 1 — Corporate name change — Telephone public utility.

[N.H.] The tariffs of a telephone public utility were revised to reflect a change in the name of U.S. Sprint Communications Company Limited Partnership to Sprint Communications Company. p. 490.

2. CORPORATIONS, § 1 — Corporate name change — Telephone public utility.

[N.H.] The tariffs of a telephone public utility were revised to reflect a change in the name of U.S. Sprint Communications Company to Sprint Communications Company of New Hampshire Inc. p. 490.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, on May 23, 1990, U.S. Sprint Communications Company of New Hampshire filed a petition seeking to revise its NHPUC tariff No. 1 effective June 25, 1990; and

WHEREAS, the revisions were filed in order to reflect U.S. Sprint Communications Company Limited Partnership and U.S. Sprint Communications Company name change to

Sprint Communications Company and Sprint Communications Company of New Hampshire Inc. respectively; and

WHEREAS, by Order No. 19,851 (75 NH PUC 314) dated June 7, 1990, the New Hampshire Public Utilities Commission approved the name change; and

WHEREAS, on June 22, 1990 U.S. Sprint of New Hampshire filed the following NHPUC Tariff No. 1 pages:

2nd Revised Title Page
2nd Revised Page 1

seeking to delete language stating that U.S. Sprint Communications Company Limited Partnership wished to change its name, due to a company initiated delay in the name change; it is hereby

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ORDERED, that U.S. Sprint's New Hampshire

PUC Tariff No. 1 Pages:

2nd Revised Title Page
2nd Revised Page 1

be and hereby are approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1990.

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NH.PUC*07/30/90*[51051]*75 NH PUC 491*Cold Spring Resort/White Mountain Country Club

[Go to End of 51051]

75 NH PUC 491

Re Cold Spring Resort/White Mountain Country Club

DE 90-113
Order No. 19,896

New Hampshire Public Utilities Commission

July 30, 1990

ORDER *NISI* exempting a water system from regulation as a public utility.

---

1. PUBLIC UTILITIES, § 121 — Water — Service to less than ten customers — Exemption from regulation.

[N.H.] State statute RSA 362:4 provides that if a water system supplies less than 10 customers, the commission may exempt such water system from any and all provisions of public utility statutes. p. 491.

2. PUBLIC UTILITIES, § 121 — Water — Service to less than 10 customers — Exemption from regulation.

[N.H.] A water system that provided service to less than 10 customers was granted an exemption from regulation as a public utility; however, the operator of the system was directed to inform the commission if and when the system expands to provide service to 10 or more customers. p. 491.

By the COMMISSION:

ORDER

On July 6, 1990, the commission received a petition from Cold Spring Resort/White

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Mountain Country Club seeking exemption from the provisions of RSA 362:4 for service provided to 5 customers in the Town of Ashland, N.H.; and

[1, 2] WHEREAS, RSA 362:4 provides, *inter alia*, that if a water system shall supply a less number of consumers than ten, the commission may exempt such water system from any and all provisions of public utility statutes; and

WHEREAS, after investigation and consideration, this commission is satisfied that the granting of the exemption here sought will be for the public good; and

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard on this petition; it is hereby

ORDERED, *NISI* that exemption from public utility statues be, and hereby is, granted to Cold Spring Resort/White Mountain Country Club for water service provided to Cold Springs Resort in Ashland, N.H.; and it is

FURTHER ORDERED, that all persons

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interested in responding to this petition must submit their comments or a written request for a hearing, to the commission no later than twenty days from the required publication date of this order; and it is

FURTHER ORDERED, that Cold Springs Resort/White Mountain Country Club effect public notice by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the state in which operations are conducted, such publication to be no later than August 10, 1990, and documented by an affidavit to be filed with this office on or before August 30, 1990. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each, by first class U.S. mail, postage prepaid and postmarked on or before August 10, 1990; and it is

FURTHER ORDERED, that Cold Spring Resort/White Mountain Country Club and/or Community Services Corporation, prior to its transfer of ownership to the consumers of the water system, shall notify this commission if and when it expands the water system to service ten or more customers; and it is

FURTHER ORDERED, that Cold Spring Resort shall maintain adequate records to fulfill the accounting obligations of a public utility until transfer to the homeowners association is accomplished. By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1990.

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NH.PUC*07/31/90*[51052]*75 NH PUC 492*Valleyfield/Northland Water System

[Go to End of 51052]

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Re Valleyfield/Northland Water System

DE 90-086
Order No. 19,897

New Hampshire Public Utilities Commission

July 31, 1990

ORDER exempting a water system from regulation as a public utility.

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1. PUBLIC UTILITIES, § 121 — Water — Service to less than ten customers — Exemption from regulation.

[N.H.] State statute RSA 362:4 provides that if a water system supplies less than 10 customers, the commission may exempt such water system from any and all provisions of public utility statutes. p. 492.

2. PUBLIC UTILITIES, § 121 — Water — Service to less than 10 customers — Exemption from regulation.

[N.H.] A water system that provided service to less than 10 customers was granted an exemption from regulation as a public utility; however, the operator of the system was directed to maintain adequate records to fulfill the accounting obligations of a public utility and to inform the commission if and when the system expands to provide service to 10 or more customers. p. 492.

By the COMMISSION:

ORDER

On May 14, 1990, the commission received a petition from Valleyfield/Northland Water System seeking exemption from the provisions of RSA 362:4 for service provided to 3 customers in the Town of Plaistow, N.H.; and

[1, 2] WHEREAS, RSA 362:4 provides, *inter alia*, that if a water system shall supply fewer than ten consumers, the commission may exempt such water system from any and all provisions of public utility statutes; and

WHEREAS, after investigation and consideration, this commission is satisfied that the granting of the exemption here sought will be for the public good; and

WHEREAS, the public should be offered an opportunity to file comments and/or request an opportunity to be heard on this petition; it is hereby

ORDERED, *NISI* that exemption from

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public utility statutes be, and hereby is, granted to Valleyfield/Northland Water System for

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water service provided to Valleyfield apartments, Northland Mall, and Northland Condominium Association; and it is

FURTHER ORDERED, that all persons interested in responding to this petition must submit their comments, or a written request for a hearing, to the commission no later than twenty days from the required publication date of this order; and it is

FURTHER ORDERED, that Valleyfield/Northland Water System effect public notice by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the state in which operations are conducted, such publication to be no later than August 13, 1990 and documented by an affidavit to be filed with this office on or before September 4, 1990. In addition, individual notice shall be given to all known current and prospective customers by serving a copy of this order to each, by first class U.S. mail, postage prepaid and postmarked on or before August 13, 1990; and it is

FURTHER ORDERED, that Valleyfield/Northland shall notify this commission if and when it expands the water system to service ten or more customers; and it is

FURTHER ORDERED, that Valleyfield/Northland shall maintain adequate records to fulfill the accounting obligations of a public utility.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1990.

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NH.PUC*07/31/90*[51053]*75 NH PUC 493*Plymouth Village Water & Sewer District

[Go to End of 51053]

75 NH PUC 493

Re Plymouth Village Water & Sewer District

DE 89-166
Order No. 19,898

New Hampshire Public Utilities Commission

July 31, 1990

ORDER granting a license to construct a sewer main across state-owned railroad property.

CERTIFICATES, § 125 — Sewer — Main construction — License to cross state-owned property.

[N.H.] The commission granted a petition for a license to construct, use, repair and reconstruct a sewer main across state-owned railroad property where the construction was necessary to meet the reasonable requirements of the petitioner without substantially affecting public rights in the property and the only private property owner affected had granted the petitioner an easement for the sewer main.

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By the COMMISSION:

ORDER

WHEREAS, on September 15, 1989, the Plymouth Village Water & Sewer District filed a petition with this commission seeking authorization under RSA 371:17 to construct, use, repair and reconstruct a 12” sewer main across state-owned railroad property in the Town of Plymouth; and

WHEREAS, On December 19, 1989 the commission closed this docket at the petitioner's request until such time as questions concerning an easement could be resolved; and

WHEREAS, on July 2, 1990 a petition was filed with this commission re-opening the docket; and

WHEREAS, said sewer main crossing is part of a project involving construction of approximately 400 feet of 12-inch sewer main on Highland St. between Main St. and said railroad property, said project being designed to relieve capacity problems in the existing mains; and

WHEREAS, the sewer main will be 12-inch PVC except where it passes beneath the railroad tracks, where it will be 12-inch ductile iron inside a 24-inch steel sleeve, all as shown on a plan, profile and details submitted with the petition; and

WHEREAS, the above crossing is at approximate valuation station 2702 + 50, map V21/88 of the Concord-to-Lincoln Railroad; and

WHEREAS, the commission finds the above construction is necessary to meet the reasonable requirements of the petitioner without substantially affecting the public rights in said state property; and

WHEREAS, the only private property owner affected by this petition granted to the petitioner on June 15, 1990 a 20-foot construction and 10-foot permanent easement for said sewer; and

WHEREAS, the Bureau of Railroads (DOT) is in agreement with this petition; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than August 28, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Plymouth region, such publication to be no later than August 13, 1990 and to be documented by affidavit filed with this office on or before 1990; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:22, the petitioner serve a copy of this Order of Notice by first-class mail to the clerk of the Town of Plymouth postmarked no later

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than August 13, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is, granted, pursuant to RSA 371:17 *et seq.* to the Plymouth Village Water and Sewer District, 13 South Main St., Plymouth, New Hampshire 03264 for the construction, use, repair and reconstruction of the aforementioned sewer main across public railroad property in Plymouth, New Hampshire identified at approximate Valuation Station 2702 + 50, Map V21/88; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), Water Supply and Pollution Control Division (DES) and others as mandated by the Town of Plymouth; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1990.

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NH.PUC*07/31/90*[51054]*75 NH PUC 494*Nuclear Decommissioning Charge

[Go to End of 51054]

75 NH PUC 494

Re Nuclear Decommissioning Charge

Parties: Public Service Company of New Hampshire; New Hampshire Electric Cooperative, Inc.; Northeast Utilities Service Company; and New Hampshire Yankee Division of Public Service Company of New Hampshire

DR 90-019
Order No. 19,899

New Hampshire Public Utilities Commission

July 31, 1990

ORDER adopting joint recommendations of the parties with respect to the nuclear decommissioning charge applicable to the Seabrook nuclear electric generating station.

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1. NUCLEAR PLANT DECOMMISSIONING, § 26 — Financing — Funded methods — Nuclear Decommissioning Finance Committee — Seabrook nuclear electric generating station.

[N.H.] State Statute RSA 162-F:15 provides for the establishment of a Nuclear Decommissioning Finance Committee (NDFC) for nuclear electric generating facilities; pursuant

to said statute, the NDFC committee established a nuclear decommissioning financing fund and set the level of payments to be deposited into the fund by the joint owners of Seabrook Unit 1. p. 496.

2. NUCLEAR PLANT DECOMMISSIONING, § 7 — Ratemaking — Nuclear decommissioning charge — Seabrook nuclear electric generating station.

[N.H.] Pending the outcome of an appeal pending before the state supreme court regarding the reasonableness of a decision by the Nuclear Decommissioning Finance Committee (NDFC) to establish the nuclear decommissioning fund for the Seabrook nuclear electric generating station, the commission adopted the amount of the nuclear decommissioning fund as the basis for the nuclear decommissioning charge to be assessed against the joint owners of Seabrook; should the supreme court require revision to the amount of decommissioning, the commission order would be modified. p. 498.

3. NUCLEAR PLANT DECOMMISSIONING, § 7 — Ratemaking — Nuclear decommissioning charge — Seabrook nuclear electric generating station.

[N.H.] The commission adopted the joint recommendations of the parties with respect to the nuclear decommissioning charge applicable to the Seabrook nuclear electric generating station; adoption of the recommendations resolves the following issues: (1) the timing of commencement of contributions to the nuclear decommissioning fund and the reflection of such contributions on utility customer bills; (2) the basis and method for reflecting contributions to the fund in customer bills; (3) the segregation of contributions to the fund from payments made in escrow, pursuant to temporary rate orders; (4) the recovery of decommissioning fund contributions from wholesale customers; (5) the format of tariff revisions; and (6) contributions by other utilities holding ownership shares in Seabrook station. p. 498.

APPEARANCES: Eve H. Oyer, Esquire on behalf of Northeast Utilities; Michael W. Holmes, Esquire on behalf of the Office of the Consumer Advocate; Martin L. Gross, Esquire and Gerald M. Eaton, Esquire on behalf of Public Service of New Hampshire; Stephen E. Merrill, Esquire on behalf of New Hampshire Electric Cooperative, Inc. and James T. Rodier, Esquire on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

I. *Procedural Background*

This proceeding was commissioned by Order of Notice dated February 8, 1990, which, *inter alia*, ordered PSNH and NHEC to file a revised supplemental tariff, supporting documentation and appropriate pleadings related to implementation of a nuclear decommissioning charge no later than February 15, 1990. The Order of Notice stated that "it appears that Unit 1 of Seabrook Station may receive operating authority from the Nuclear Regulatory Commission in the coming weeks ... . " and scheduled a hearing for March 5, 1990.

On February 14, 1990, PSNH filed a motion for enlargement of time until February 23, 1990, for the filing of responsive material. PSNH's motion was granted by the commission through order No. 19,719 (75 NH PUC 111) (February 15, 1990).

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At a prehearing conference held on March 5, 1990 the parties identified a number of issues. In its subsequent report addressing the issues raised in the prehearing conference held on March 5, the commission set forth additional issues. Report and Order No. 19,755 (75 NH

PUC 171) (March 13, 1990) ("Report").

In its Report, the commission also approved the procedural schedule recommended by the parties which, *inter alia*, scheduled a hearing on the merits for March 26, 1990.

At the hearing on March 26, 1990, the parties submitted to the commission a document entitled "Joint Recommendations of the Parties for Resolution of All Pending Issues" (Exh. PSNH-2)

II. *Interventions*

The mandatory parties to these proceedings include PSNH, NHEC and the commission staff. The Office of the Consumer Advocate is participating as an intervenor of right. The only motion to intervene pursuant to RSA 541-A:17 was filed on behalf of Northeast Utilities Service Company (NUSCO) on February 28, 1990. NUSCO is under consideration by the commission in docket DR 89-244 to acquire PSNH in order to resolve the ongoing PSNH bankruptcy reorganization proceedings. Furthermore, NUSCO is currently negotiating with NHEC regarding possible purchase of certain NHEC rights to Seabrook Unit 1 power (the "sell back"). For these reasons, and because there were no objections filed to NUSCO's motion to intervene, NUSCO was granted full party intervention in these proceedings. Report at 3.

At the prehearing conference on March 5th, it became apparent that participation by New Hampshire Yankee (NHY), as agent of the Joint Owners in the decommissioning process[1(48)] , should also be a party to these proceedings to ensure the development of a complete record and to ensure that the aggregate nuclear decommissioning charge to be paid by the joint owners will be appropriately assessed to the individual owners. Accordingly, New Hampshire Yankee was ordered to participate as a full party for the duration of these proceedings. Id.

III. *Late-Filed Exhibits*

On July 17, 1990, PSNH filed a Motion for Late-Filed Exhibits and moved to mark the following documents as late-filed exhibits:

Exhibit PSNH-6: a six page document including copies of correspondence sent on July 3, 1990 under cover letter from Mr. Leon A. Maglathlin, President and CEO of PSNH, addressed to Wynn E. Arnold, Executive Director of the Commission,

Exhibit PSNH-7: a seven page document containing the responses to three requests made of PSNH at the hearing and filed under cover letter dated April 17, 1990 from Gerald M. Eaton, and

Exhibit NHY-2: a five page document entitled "Supplemental Direct Testimony of H.T. Tracy, Jr." filed under cover letter dated April 3, 1990 from Attorney Edward A. Haffer.

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IV. *Applicable Law*

[1] RSA 162-F:15, I provides for the establishment of a nuclear decommissioning finance committee (NDFC) for a nuclear electric generating facility such as Seabrook Unit 1. Pursuant to RSA 162-F:15 *et seq.*, said nuclear decommissioning financing committee established a nuclear decommissioning financing fund (Fund) and the level of payments to be deposited into the Fund by the joint owners of Seabrook Unit 1 in Docket DF 87-01, Report and 17th Supplemental Order (June 2, 1989), in pertinent part as follows:

> 1. "A nuclear decommissioning financing fund is established for Seabrook Station Unit 1 in the amount of $242,429,000 in 1987, with this amount to be increased each year after 1987 by a 4% annual inflation factor until the plant begins commercial operation, and
>
> 2. That the Joint Owners of Seabrook Station Unit 1, when required by law, are required to make monthly payments into the fund with schedules as set forth in the order".

17th Supplemental Order at 1 and 2.

The actual collection of money from the joint owners of Seabrook Unit 1 and payment to the nuclear decommissioning financing fund shall, pursuant to RSA 162-F:19, II, "commence in the billing month which reflects the first full

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month of service from the facility".

This collection of money for payment to the fund by PSNH and NHEC cannot be effected without appropriate tariff revisions approved by the commission pursuant to RSA 378:3 which provides:

> Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after thirty days' notice to the commission and such notice to the public as the commission shall direct.

The commission is required, pursuant to RSA 162-F:19, III, to:

> ... permit the utility to charge its customers on a per kilowatt hour basis the amount it pays directly into the fund created under this section. The charge, as determined by the public utilities commission, shall be designated a nuclear decommissioning charge and shall be separately stated on the customer's billing statement.

The NDFC, in the aforementioned 17th Supplemental Order in DF 87-1, found, at page 20 of the report accompanying the order, that the Master Trust Agreement proposed by New Hampshire Yankee in DF 87-1 provides a proper and reasonable method for funding decommissioning The commission will be guided by the procedures set forth in said master trust agreement in determining the disposition of the decommissioning charge assessed in this case. The NDFC specifically cited the following provisions of the master trust agreement, at pages 20-22 of the above cited 17th Supplemental Order, as being particularly pertinent:

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1. Participating in this Master Trust Agreement would be the joint owners of Seabrook Station, through New Hampshire Yankee, the State Treasurer, and a trustee.

2. This Committee would establish the aggregate monthly payments to be made to the trust.

3. The State Treasurer would determine each joint owner's monthly contributions based on the payment schedule established by this Committee.

4. Monthly, the joint owners would make payments to the trust in the amount determined by the State Treasurer.

5. Except for periodic withdrawals to cover expenses, the trustee would hold all the monies until they are withdrawn to cover decommissioning expenses.

6. The State Treasurer would, under RSA 162-F:20, be responsible for administering the fund.

7. The trust would provide each joint owner with the ability to fund either through a so-called qualified trust (Trust A) or a so-called non-qualified trust (Trust B).

8. A qualified trust is subject to tax at the *trust* level, whereas a non-qualified trust is subject to tax at the *owner* level, that is as if the trust income were earned by the owner itself. The benefit to a taxable owner in contributing to a qualified trust would be an immediate tax deduction. In contrast, a tax-exempt owner would have no need or use for a tax deduction, and thus would derive no benefit from contributing to a qualified trust. If a tax-exempt owner were to use a qualified trust, the income from that trust would be taxed at the *trust* level, meaning income taxation except for interest on tax-exempt obligations. A tax-exempt owner could thus be expected to prefer a non-qualified trust, since the income from that trust would be treated for tax purposes at the *owner* level, meaning a tax exemption.

The NFDC found that:

Insofar as terms of the Master Trust Agreement are concerned, whether money should go into a qualified trust (Trust A) or a non-qualified trust (Trust B) is not an issue for this Committee, but rather one for the ratemaking authorities, each joint owner, and the Internal Revenue Service. The Committee finds and approves that the Master Trust Agreement and the funding schedule proposed by New Hampshire Yankee permit the

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joint owners to avail themselves of certain tax advantages, and that they provide for funding over a sufficient term of years that ratemaking bodies will consider reasonable.

Report accompanying 15th Supplemental Order, NDFC. Docket DF 87-1 (January 6, 1989) at 22.

The Master Trust Agreement was executed by the respective bank trustees, the State Treasurer of New Hampshire, and New Hampshire Yankee on October 11, 1988. Subsequent to the issuance of the 17th Supplemental Order, the Master Trust Agreement was approved as to

form, substance and execution by the Assistant Attorney General Larry M. Smukler on July 10, 1989.

[2] The NDFC's Report and 17th Supplemental Order was appealed to the New Hampshire Supreme Court by the Campaign for Ratepayers Rights (CRR), a party to Docket DF 87-1. The issue before the Supreme Court is whether the NDFC's decision to establish the nuclear decommissioning fund was reasonable. Pending appeal, we have decided to adopt the amount of NDFC's nuclear decommissioning fund as the basis for the nuclear decommissioning charge to be assessed against applicable utilities. In the event that the supreme court's decision should require revision of the amount of nuclear decommissioning, our order will be appropriately modified. See Report at 7.

In view of the foregoing discussion, the commission will determine the amount of the nuclear decommissioning charge and resolve certain issues related to the method for payment of the funds through the trustee under the Master Trust Agreement.

V. *Joint Recommendations of the Parties for Resolution of All Pending Issues*

[3] As noted earlier, at the hearing on the merits on March 26, 1990, the parties presented to the commission a document entitled "Joint Recommendation of the Parties for Resolution of All Pending Issues" (Exh. PSNH-2) which are attached hereto (Attachment A) and are incorporated herein by reference.

The Joint Recommendations are intended to address and resolve the following issues identified by the parties and the commission:

1. Timing of commencement of contributions to nuclear decommissioning fund and reflection of such contributions in customer bills

2. Basis and method for reflecting contributions to the Fund in customer bills

3. Segregation of contributions to the Fund from payments made in escrow, pursuant to temporary rate orders

4. Recovery of Decommissioning Fund contributions from wholesale customers

5. Format of tariff revisions

6. Contributions by other utilities holding ownership shares in Seabrook Station

VI. *Commission Analysis*

We will now examine and evaluate each of the joint recommendations contained in Exh. PSNH-2 and make appropriate findings.

Recommendation No. 1

Timing of commencement of contributions to Nuclear Decommissioning Fund and reflection of such contributions in customer bills.

(a) In accordance with the requirements of RSA 162-F:19,II, contributions to the Fund and reflection thereof in customer bills shall start in the same month.

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(b) As referred to in RSA 162-F:19,II, the "first full month of service from the facility" shall be deemed to be the first full calendar month in which Seabrook Station is counted by the New England Power Pool for capacity credit.

(c) As referred to in RSA 162-F:19, the "billing month" which reflects the first full month of service from Seabrook Station, shall be deemed to be the first calendar month immediately following the first full month of service.

(d) Accordingly, contributions to the Fund and reflection thereof in customer bills shall commence in the first calendar month

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immediately following the first full calendar month in which Seabrook Station is counted for NEPOOL capacity credit.

(e) Agreement in this case on the interpretation of the language in RSA 162-F:19 for purposes of the Decommissioning Fund is not to be considered precedent for other purposes.

With regard to subsection (b) above, after review and evaluation of PSNH late-filed Exhibit 6 (appended hereto as Attachment B), we find that the "first full calendar month in which Seabrook Station is counted by the New England Power Pool for capacity credit"[2(49)] is the month of July, 1990. Accordingly, July, 1990, is also the "first full month of service from the facility".[3(50)]

With regard to subsection (c), we find that August, 1990 is "the first calendar month immediately following the first full month of service". Accordingly, the "billing month" which reflects the first following of service from Seabrook Station is August, 1990.

Consequently, pursuant to subsections (a) and (d), we find that contributions to the fund shall commence in August, 1990 and the nuclear decommissioning charge shall be implemented effective with all bills rendered on or after August 1, 1990.

Recommendation No. 2

Basis and method for reflecting contributions to the Fund in customer bills.

Contributions to the Fund allocable to retail sales shall be reflected in retail customer bills on the basis of kilowatt hours of sales billed in the period. Each customer's approximate portion of such contribution, based on the customer's kwh usage, shall be shown as a memorandum or message on the customer's bill.

Upon review and evaluation of the revised calculation of the NDC nuclear decommissioning charge submitted on July 17, 1990, (Attachment C hereto) we find that PSNH's proposed method for calculating its nuclear decommissioning charge is accurate and appropriate. We note that the nuclear decommissioning charge proposed to be implemented by PSNH effective August 1, 1990 is $0.00023 per kwh.

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Upon review of the PSNH's proposed bill message submitted on July 18, 1990, (Attachment D hereto) we find said message to be appropriate and reasonable.

Recommendation No. 3

Segregation of contributions to the Fund from payments made in escrow pursuant to temporary rate orders.

The portion of monthly revenues required to be transferred to the Escrow Agent pursuant to paragraph 1(b) of the Escrow Arrangements approved by the Commission in Report and Order No. 19,655 in Docket DR 89-219 and Report and Order No. 19,656 in Docket DR 89-245 shall be determined net of the retail portion of the contribution to the Decommissioning Fund for the current month. This will require a minor modification to the second sentence of paragraph 1(b) of the Escrow Arrangements, so that the sentence shall read as follows (new matter in italics):

"As soon thereafter as possible, but in any event within twenty days after the last day of each such month, [PSNH] [Coop] shall transfer cash moneys equivalent to revenues subject to refund determined in accordance with this paragraph to the Escrow Agent identified in paragraph 2, provided that the portion allocable to retail sales of any payment due or made during the month of transfer to the Nuclear Decommissioning Fund in accordance with Public Utilities Commission Order shall be subtracted from the amount transferred to the Escrow Agent."

The parties shall submit appropriate motions in Dockets DR 89-219 and DR 82-245 for modification of the Escrow Arrangements accordingly.

On July 19, 1990, PSNH submitted a Motion to Amend Escrow Payments in Docket

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No. DR 89-219 (Temporary Rate Proceeding). We have approved PSNH's motion by order in that proceeding (Order No. 19,894).

Recommendation No. 4

Recovery of Decommissioning Fund contributions from Wholesale customers.

PSNH shall undertake to recover from its wholesale customers the portion of its contributions allocable to sales for resale, through an appropriate proceeding before the Federal Energy Regulatory Commission. The parties express no opinion as to whether NHEC will or will not be a "wholesale customer" when Seabrook Station is placed in service. At present, NHEC is a wholesale customer and so PSNH's calculation of the portion of Decommissioning Fund contributions allocable to retail sales will reflect that status. In the event, there is a subsequent change in NHEC's status, reallocation of PSNH's Decommissioning Fund contributions between retail sales and sales for resale will become necessary. The parties agree that in such event, reconciliation of such

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reallocation will be undertaken.

On July 12, 1990, a letter was submitted to the commission by NHEC (Attachment E hereto) by which NHEC informed the commission, *inter alia*, of the following:

> At this time, it is the New Hampshire Electric Cooperative's intention to collect our portion of Decommissioning Charge through our Sellback Contractual Arrangement with PSNH and not through monthly customer bills. This charge will be reflected specifically on our monthly invoices rendered to PSNH commencing for the month ending July 31, 1990.

Based upon our review of NHEC's stated intention to sell back Seabrook to PSNH, we find that it is not necessary or appropriate for NHEC to bill its retail customers for the amount paid into the Fund under RSA 162-F:19. NHEC will be reimbursed by PSNH under the "sellback" contractual arrangement for the amounts it pays into the Fund.

Recommendation No. 5

Format of tariff revisions

> Tariff revisions necessary to reflect the foregoing need not be extensive. Such revisions will describe the memorandum item and the amount of the kwh charge to be reflected in customer bills. Tariff supplements previously submitted will be revised to reflect that in the event the temporary rate surcharges authorized in Docket DR 89-219 and Docket DR 89-245 are required to be refunded, the refund amount shall not include the retail portion of amounts paid to the Nuclear Decommissioning Fund.

Upon review of the illustrative tariff pages submitted by PSNH on July 18, 1990, (Attachment F hereto) we find that PSNH's proposed tariff provisions are just, reasonable and adequate.

Recommendation No. 6

Contributions by other utilities holding ownership shares in Seabrook Station.

> On information available to the parties, it appears that all utilities with ownership shares in Seabrook Station are prepared to contribute to the Decommissioning Fund on a timely basis.

Upon review of late-filed Exh. NHY-2, (Attachment G hereto) and a letter to the commission dated June 27, 1990, from Attorney Haffer (Attachment H hereto) Counsel to NHY, we believe that substantial evidence exists to find that all of the joint owners are prepared to commence contribution to the Fund in August, 1990.

Recommendation No. 7

Other

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In addition to the foregoing, the parties agree that PSNH and NHEC will submit to the Commission their respective designations of Nuclear Decommissioning Fund "Trust A" or "Trust B" as the recipient of their contributions, and will submit requests for appropriate findings by the Commission, necessary to avail themselves of certain tax advantages for incorporation in the Commission's Report and Order.

Exh. PSNH-3 (Attachment I hereto) indicates that "PSNH initially designates Trust A (Qualified) as recipient of its contributions to the Fund". NHEC's letter to the commission on July 12, 1990, (Attachment E) indicates the NHEC has designated Trust B.

Exh. NHEC-2 (Attachment J) and Exh. PSNH-4 (Attachment K) contain NHEC's and PSNH's Requests for Special Findings for Income Tax Purposes.

Upon review, we find that PSNH's and NHEC's request for special findings for income tax purposes are just and reasonable.

VII. *Conclusion*

Based upon our review of the Joint Recommendations and the evidence in these proceedings, and the attachments to this report, we find that the Joint Recommendations are just and reasonable and should be approved.

Our order will issue accordingly.

ORDER

Based on the foregoing Report, which is made a part hereof; it is hereby

ORDERED, that the Joint Recommendations are approved in the context of the findings contained in the foregoing Report; and it is

FURTHER ORDERED, that PSNH's Motion for Late Filed Exhibits is granted; and it is

FURTHER ORDERED, that PSNH is authorized to implement its proposed nuclear decommissioning charge of $0.00023/kwh effective with all bills rendered on and after August 1, 1990, until further ordered by the commission; and it is

FURTHER ORDERED, that NHEC's and PSNH's Requests for Special Findings for Income Tax Purposes are granted.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1990.

ATTACHMENT A

Nuclear Decommissioning Charge

JOINT RECOMMENDATIONS OF THE
PARTIES FOR RESOLUTION OF
ALL PENDING ISSUES

The parties hereby recommend that the Commission adopt and incorporate in its Order determining these proceedings the following resolution of issues previously identified by the

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parties and noted by the Commission at page 8 of the Report accompanying Order No. 19,755 (75 NH PUC 171):

1. *Timing of commencement of contributions to Nuclear Decommissioning Fund and reflection of such contributions in customer bills.*

(a) In accordance with the requirements of RSA 162-F:19,II, contributions to the Fund and reflection thereof in customer bills shall start in the same month.

(b) As referred to in RSA 162 F:19.II, the "first full month of service from the facility" shall be deemed to be the first full calendar month in which Seabrook Station is counted by the New England Power Pool for capacity credit.

(c) As referred to in RSA 162-F:19, the "billing month" which reflects the first full month of service from Seabrook Station, shall be deemed to be the first calendar month immediately following the first full month of service.

(d) Accordingly, contributions to the Fund and reflection thereof in customer bills shall commence in the first calendar month immediately following the first full calendar month in which Seabrook Station is counted for NEPOOL capacity credit.

(e) Agreement in this case on the interpretation of the language in RSA 162-F:19 for

purposes of the Decommissioning Fund is not to be considered precedent for other purposes.

2. *Basis and method for reflecting contributions to the Fund in customer bills*. Contributions to the Fund allocable to retail sales shall be reflected in retail customer bills on the basis of kilowatt hours of sales billed in the period. Each customer's approximate portion of such contribution, based on the customer's kwh usage, shall be shown as a memorandum or message on the customer's bill.

3. *Segregation of contributions to the Fund from payments made in escrow pursuant to temporary rate orders*. The portion of monthly revenues required to be transferred to the Escrow Agent pursuant to paragraph 1(b) of the Escrow Arrangements approved by the Commission in Report and Order No. 19,655 (74 NH PUC 493) in Docket DR 89-219 and Report and Order No. 19,656 (74 NH PUC 521) in Docket DR 89-245 shall be determined net of the retail portion of the contribution to the Decommissioning Fund for the current month. This will require a minor modification to the second sentence of paragraph 1(b) of the Escrow Arrangements, so that the sentence shall read as follows (new matter in italics):

> "As soon thereafter as possible, but in any event within twenty days after the last day of each such month, [PSNH] [Coop] shall transfer cash moneys equivalent to revenues subject to refund determined in accordance with this paragraph to the Escrow Agent identified in paragraph 2, provided that the portion allocable to retail sales of any payment due or made during the month of transfer to the Nuclear Decommissioning Fund in accordance with Public Utilities Commission Order shall be subtracted from the amount transferred to the Escrow Agent."

The parties shall submit appropriate motions in Dockets DR 89-219 and DR 82-245 for

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modification of the Escrow Arrangements accordingly.

4. *Recovery of Decommissioning Fund contributions from wholesale customers*. PSNH shall undertake to recover from its wholesale customers the portion of its contributions allocable to sales for resale, through an appropriate proceeding before the Federal Energy Regulatory Commission. The parties express no opinion as to whether NHEC will or will not be a "wholesale customer" when Seabrook Station is placed in service. At present, NHEC is a wholesale customer and so PSNH's calculation of the portion of Decommissioning Fund contributions allocable to retail sales will reflect that status. In the event there is a subsequent change in NHEC's status, reallocation of PSNH's Decommissioning Fund contributions between retail sales and sales for resale will become necessary. The parties agree that in such event, reconciliation of such reallocation will be undertaken.

5. *Format of tariff revisions*. Tariff revisions necessary to reflect the foregoing need not be extensive. Such revisions will describe the memorandum item and the amount of the kWH charge to be reflected in customer bills. Tariff supplements previously submitted will be revised to reflect that in the event the temporary rate surcharges authorized in Docket DR 89-219 and Docket DR 89-245 are required to be refunded, the refund amount shall not include the retail portion of amounts paid to the Nuclear Decommissioning Fund.

6. *Contributions by other utilities holding ownership shares in Seabrook Station*. On information available to the parties, it appears that all utilities with ownership shares in Seabrook Station are prepared to contribute to the Decommissioning Fund on a timely basis.

In addition to the foregoing, the parties agree that PSNH and NHEC will submit to the Commission their respective designations of Nuclear Decommissioning Fund "Trust A" or "Trust B" as the recipient of their contributions, and will submit requests for appropriate findings by the Commission, necessary to avail themselves of certain tax advantages, for incorporation in the Commission's Report and Order.

Such requests for findings will be submitted by the close of business March 22, 1990.

WHEREFORE, the parties urge that the

Commission adopt the foregoing recommendations in the determination of this proceeding.

Staff of the New Hampshire
Public Utilities Commission
by: Staff Attorney

Public Service Company of New
Hampshire
by: Its Attorney

New Hampshire Electric
Cooperative, Inc.
by: Its Attorney

Office of Consumer Advocate

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by: Consumer Advocate

Northeast Utilities Service Co.
by: Its Attorney

New Hampshire Yankee Division
by: Its Attorney

March 26, 1990

ATTACHMENT B
July 3, 1990

Mr. Wynn Arnold
NHPUC
8 Old Suncook Road
Building 1
Concord, NH 03301-5185

Dear Wynn:

It has been brought to my attention that there is some misunderstanding relative to the PSNH "commercial service" date for Seabrook. PSNH declared Seabrook in commercial service effective 00:01 a.m. on Saturday, June 30, 1990, coincident with the unit being released to NEPEX for dispatch.

The attached correspondence was exchanged in the decision making process and should provide the necessary background information. If I can be of further assistance in helping you understand this process, please feel free to contact me at area code (603) 669-4000 Extension 2259.

Sincerely,
Leon E. Maglathlin, Jr.
President & CEO

LEM:acm

cc: J. T. Rodier
E. H. Oyer, Esq.
J. R. DeMella

Subject: SEABROOK STATION RELEASE FOR DISPATCH

Date June 29, 1990

From: T. C. Feigenbaum

To: E. G. Legacy|11.5P'Reference

Following a review of the current status of Seabrook Station and the results of the test program to date, we have determined that there are no known impediments from either equipment operation or licensing conditions to prevent the unit from operating as a reliable source of generation at its current power level and from ultimately achieving full power operation. The only major piece of equipment which will not have been operated prior to

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achieving 100% power will be the Moisture Separator Reheater.

Eased upon this assessment, we are able to release the unit for dispatch at a level of 709.6 MWE. Please instruct your Control Center staff to make the required notification to NEPEX to have Seabrook released for dispatch at the stated level *effective at 0001 on June 30, 1990*.

By copy of this memo, I am forwarding the required Seabrook generation data for preparation of the NEPEX forms to the System Operations Manager at the Control Center.

T. C. Feigenbaum
Senior Vice President &
Chief Operating Officer

TCF:bes

cc: J. A. S. Breton

TO: T. C. Feigenbaum — NH Yankee
FROM: F. D. McCormack
SUBJECT: Seabrook Capability

Page 503

Effective 0001 hours on June 30, 1990, the Seabrook capability for NEPOOL purposes is:

Maximum Claimed Capability|10P'709.60 MW
Reserve Claimed Capability|10P'709.60 MW
Normal Claimed Capability|10P'709.60 MW

At 0001, 06/30/90, Seabrook will be operational for NEPOOL dispatch.

SEABROOK:dpr

cc: Earl Legacy — PSNH
Ross McEacharn — NEPEX
NEPOOL Operations Committee

June 29 1990
EO-90-G-093

TO: L.E. Maglathlin, Jr.

FROM: J.F. Opeka
Ext. 5323

SUBJECT: *DECLARATION OF SEABROOK's COMMERCIAL OPERATION FOR PSNH*

I have reviewed the attached document entitled "Millstone 3 — Availability for Commercial Service" that was distributed with E. J. Ferland's June 10, 1985 memorandum entitled "Methodology for Determining Millstone 3's In-service Date" and determined the appropriate

adaptations necessary to apply those procedures to Seabrook, taking into account NUSCO's role in rendering management services to PSNH under the Management Service Agreement.

In keeping with the above, I am pleased to provide you with the following assurances:

1. I have received the attached written confirmation from E. Brown, Chief Executive Officer of New Hampshire Yankee (NHY), in NHY's current role as Managing Agent of Seabrook, that NEPEX has released Seabrook for dispatch, at approximately the 65% power level, effective June 30, 1990.

2. E. Mroczka, Senior Vice President of Nuclear Engineering & Operations (NE&O) for NUSCO, has received verbal assurance from E. Brown, during a conference call on June 27, 1990, that NHY is aware of no material deficiencies, license restrictions, or other conditions that will prevent Seabrook from operating safely and reliably, at high power levels, as of June 27, 1990, and at sustained 100% power within a reasonable time thereafter.

3. E. Mroczka also received verbal assurance from E. Brown, during the same conference call, that transmission capacity is in place to carry Seabrook's output at its 100% power level.

4. I have received personal assurance from E. Mroczka, who in turn has consulted with and received advice from T. Dente of NE&O, in concurrence with item 2 above, in NUSCO's role under the Management Services Agreement for providing management services to PSNH.

5. On the basis of the foregoing and other such information as I have considered before reaching the conclusions described in this memorandum, I am well satisfied that Seabrook is ready for safe, reliable, and sustained operations as evidenced by its performance through the pre-operational testing and start-up program to date.

Thus, I recommend that you declare Seabrook in commercial service for PSNH's share of ownership, effective June 30, 1990.

JFO:df

cc: E. J. Mroczka
W. D. Romberg
C. F. Sears
R. P. Werner
J. R. DeMella
J. B. Keane

June 29 1990

Mr. Joseph P. Tyrrell
Chairman
241 Bristol Road
Wellesley Hills, MA 02181

Dear Joe:

I am pleased to inform you that I have made the determination to declare Seabrook in commercial service effective 00:01 a.m. on Saturday, June 30, 1990 for PSNH's share of ownership. Specifically, I have determined that Seabrook's performance during its power

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ascension testing has demonstrated that the unit is capable of producing a substantial percentage of its designed generating capability on a reliable basis for a sustained period.

Before making my determination, I received a recommendation from J. Opeka, NUSCO's Executive Vice President — Engineering and Operations, to declare Seabrook's commercial operation, in NUSCO's role of rendering management services under the Management Services Agreement. Furthermore, I received confirmation from E. Brown, Chief Executive Officer of New Hampshire Yankee (NHY), in NHY's current role as Managing Agent of Seabrook, that NHY has released Seabrook to NEPEX for dispatch effective 00:01 a.m. June 30, 1990.

Based on the foregoing, I am satisfied that this determination is sound.

Sincerely,

Leon E. Maglathlin, Jr.
President & CEO

cc: J. F. Opeka
E. G. Legacy
B. V. Wiggett

[Graphic Not Displayed Here]

[Graphic Not Displayed Here]

ATTACHMENT D
July 18, 1990

Wynn E. Arnold, Esquire
Executive Director and Secretary
New Hampshire Public Utilities Commission
Eight Old Suncook Road, Building One
Concord, New Hampshire 03301-5185

Re: Nuclear Decommissioning Charge — Docket No. DR 90-019 Message Printed on Customers' Bills.

Dear Secretary Arnold:

Public Service Company of New Hampshire (PSNH) is prepared to implement the Nuclear Decommissioning Charge pursuant to the Commission's order and state law. The charge must be separately stated on customers' bills pursuant to RSA 162-F:19, III. The revenues associated with Public Service Company's contribution to the Decommissioning Financing Fund (Fund) are included in the 5.5% temporary rate surcharge; therefore, no rate increase for PSNH is necessary at this time.

The rate that will be printed on the bill is actually an estimate. Although based upon fixed payments to the Fund, it is also based upon a forecast of annual energy sales. See Exhibit PSNH 1, Long Attachment 3. Actual consumption will determine what each customer actually paid toward PSNH's fixed contributions to the Fund. Because the revenues are already being collected in the revenue path contemplated in the Rate Agreement, there is no need for a true up or reconciliation.

Even though the parties to this proceeding understand that the rate is estimated, PSNH believes it serves no useful purpose to print the word "estimated" on the bill. The customer will be able to verify the computation of the payment using the kilowatt-hour and rate information supplied on the bill. We believe customers will not understand why the payment is an estimated amount and not the actual amount printed on the bill.

The text of the message PSNH will use on its bills is the following which we believe provides the information required:

> "The above amounts include a nuclear decommissioning charge of $ *[insert dollar amount]* based on a rate of 0.023/kwh multiplied by *[insert kwh from bills]* KWHS"

Thank you for your attention to this matter. If there are any questions please feel free to contact me.

Very truly yours,

Gerald M. Eaton
Senior Counsel

cc: Eve H. Oyer, Esquire
Martin L. Gross, Esquire
Stephen P. Merrill, Esquire
Michael W. Holmes, Esquire
Edward A. Haffer, Esquire
Mrs. Mary Metcalf
Mr. Timothy J. Fontaine

ATTACHMENT E
July 12, 1990

Mr. James Rodier
State of New Hampshire
Public Utilities Commission
8 Old Suncook Road, Bldg. 1
Concord, NH 03301

Dear Jim:

At this time it is the New Hampshire Electric Cooperative's intention to collect our portion of Decommissioning Charge through our Sellback Contractual Arrangement with PSNH and not through monthly customer bills. This charge will be reflected specifically on our monthly invoices rendered to PSNH commencing for the month ending July 31, 1990.

Also, please find the "Revised" Fund Designation Report dated July 10, 1990. Please contact

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us immediately if you need additional information or clarification on this matter.

Very truly yours,

N.H. ELECTRIC COOPERATIVE, INC.
Fred C. Anderson
Director of Finance & Administration

FCA:sc Encl.

EXHIBIT C (REVISED)

SEABROOK NUCLEAR DECOMMISSIONING
FINANCING FUND JOINT ORDER FUNDING
CONTRIBUTION ELECTION
PARTICIPANT: New Hampshire Electric Cooperative, Inc.

MONTHLY CONTRIBUTION: (To Be Provided)

It is requested that New Hampshire Yankee, as Managing Agent, will instruct the Trustee of the Seabrook Nuclear Decommissioning financing Fund to make the following allocations of our monthly funding contributions made during the initial twelve month funding period.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

QUALIFIED TRUST A		*NON QUALIFIED TRUST B*	
FUND #1	FUND #2	FUND #3	FUND #4
— %	100%	— %	— %

Company Officer: Name and Title
Fred C. Anderson, Director of Finance & Administration

Signature
Date July 10, 1990

Please complete and return this form no later than July 6, 1990 to:

Irving E. Canner
Controller
New Hampshire Yankee
P.O. Box 300
Seabrook, NH 03874

ATTACHMENT F
DRAFT 7/12/90

NHPUC NO. 31 ELECTRICITY
PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE

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Superseding

Page 508

[Graphic(s) below may extend beyond size of screen or contain distortions.]

TABLE OF CONTENTS

Issued _____

Issued by: W. T. Frain, Jr.

Title: Vice President

Effective: August 1, 1990

Issued in compliance with NHPUC Order No. ____ dated ____, 1990 in Docket No. DR 90-019.

DRAFT 7/12/90

NHPUC NO. 31 — ELECTRICITY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

10th Revised Page 14
Superseding 9th Revised Page 14
Terms and Conditions

In accordance with the Stipulated Recommendations of the Parties approved by the Commission in Order No. 19,655 (74 NH PUC 493) in Docket No. DR 89-219 and Order No. 19,659 (74 NH PUC 556) in Docket No. DR 89-212, the previously approved ECRM component of 3.664 cents per kilowatt-hour remained in effect as a temporary ECRM component for the

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period January 1, 1990 through June 30, 1990.

The Commission, in Order No. 19,868 (75 NH PUC 343) dated July 2, 1990 in Docket No. DR 90-059, ordered that the currently-effective ECRM component of 3.664 cents per kilowatt-hour remain in effect for the period July 1, 1990 until the First Effective Date occurs pursuant to Commission order in Docket No. DR 89-244.

Page 509

16. RATE REVISIONS TO APPROPRIATELY REFLECT THE FRANCHISE TAX ON GROSS RECEIPTS

a. *Method of Adjusting Retail Rates*.

Pursuant to the imposition of a new franchise tax on the gross receipts of electric utilities, the rates to be in effect under this Tariff shall include an allowance for the franchise tax. This allowance shall consist of two separate parts: first, for the portion of gross receipts which relates to non-energy costs; and second, for the portion of gross receipts which relates to energy costs. The amount of the first part shall be established during the course of the normal rate level setting process of the Commission. An amount for the second part shall be included in rates in accordance with the provisions of this section.

Energy costs are included within the basic energy (kilowatt-hour) charges of this Tariff in accordance with Commission Order No. 15,486 dated February 10, 1982. Under the procedures established by that Order, rate levels are normally adjusted every six months after hearings, to reflect a newly-determined Energy Cost Recovery Mechanism (ECRM) component for the prospective six-month period. In order that rate levels appropriately reflect the amount of franchise tax on gross receipts that relates to the energy component of costs, the Company will adjust, at the time the Commission directs a change to the ECRM component, the basic energy charges of its rates to include an amount equal to the allowed ECRM component multiplied by the franchise tax rate factor of 1.010101.

b. *Method of Adjusting Rates for Secondary Sales*.

In order that rates charged for secondary sales appropriately reflect the franchise tax on gross receipts, any secondary sales made by the Company subject to the provisions of the Terms and Conditions of this Tariff and subject to the franchise tax shall be made at the rates set forth in the sales agreements except that those rates shall be multiplied by the franchise tax rate factor of 1.010101.

Issued: _____

Issued by: W. T. Frain, Jr.

Title: Vice President

Effective: August 1, 1990

Issued in compliance with NHPUC Order No.__ dated __, 1990 in Docket No. DR 90-019.

DRAFT 7/12/90

NHPUC NO. 31 — ELECTRICITY

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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2nd Revised Page 15
Superseding 1st Revised Page 15
Terms and Conditions

17. CHARGES FOR TEMPORARY SERVICES

The Company shall have the right to charge the customer for the total cost incurred in constructing and removing temporary services at locations under construction where the temporary service will not be converted to a permanent service under a residential service rate or General Service Rate G. Such costs shall include the costs of labor, overheads and all materials except for the costs of transformers and meters. The Company shall not charge for the construction and removal of such temporary service whenever the temporary service is to be replaced at approximately the same location with a permanent service under a residential service rate or General Service Rate G when construction is completed, provided that the permanent service is run from the same pole and utilizes the same material which was utilized for the temporary service.

18. NUCLEAR DECOMMISSIONING CHARGE

The Temporary 5.5 Percent Surcharge set forth in Supplement No. 7 to this Tariff as applied to bills rendered on and after August 1, 1990 is deemed to include the retail portion of

contributions to the Nuclear Decommissioning Financing Fund required to be made by the Company pursuant to the Seventeenth Supplemental Order of the Nuclear Decommissioning Finance Committee dated June 2, 1989.

Expressed in terms of cents per kilowatt-hour the estimated amount of nuclear decommissioning cost included in customers' bills as of August 1, 1990 is 0.023 cents per kilowatt-hour. This amount, times the kilowatt-hour use of the customer during the monthly billing period, shall be the estimated Nuclear Decommissioning Charge associated with the customer's bill and will appear in a message printed on each bill.

The estimated cents per kilowatt-hour amount of nuclear decommissioning cost included in customers' bills has been determined on the basis of estimated kilowatt-hour sales and estimated nuclear decommissioning payments. This estimated cents per kilowatt-hour amount will be revised periodically to reflect the several annual nuclear decommissioning contributions set forth in the Seventeenth Supplemental Order or significant changes to estimated kilowatt-hour sales. Furthermore, estimated amounts will be reconciled to actual amounts to the extent necessary to compute repayments, if any, of the Temporary 5.5 Percent Surcharge set forth in Supplement No. 7 to this Tariff.

Issued: _____

Issued by: W. T. Frain, Jr.

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Title: Vice President

Effective: August 1, 1990

Issued in compliance with NHPUC Order No. __ dated __, 1990 in Docket No. DR 90-019.

DRAFT 7/12/90

NHPUC NO. 31 — ELECTRICITY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

1st Revised Page 1
Superseding Original Page 1
Temporary Surcharge

TEMPORARY 5.5 PERCENT SURCHARGE
EFFECTIVE JANUARY 1, 1990,
SUBJECT TO REPAYMENT

Effective with all monthly bills rendered based on two successive meter readings, the latter of which is taken on or after January 1, 1990, and with all monthly bills to municipalities for Outdoor Lighting Service under Rates ML and ML-HPS for the calendar months of January, 1990 and later, each bill rendered shall be equal to the sum of the bill amount as computed under the applicable rate of this Tariff NHPUC No. 31, plus 5.5 percent of said amount exclusive of any service charges, returned check charges, late payment charges, line extension surcharges, charges for temporary services or apparatus rentals. This temporary surcharge will not be applied to the credit amounts paid to customers under the provisions of Winter Interruptible Service and Use of Customer Standby Generation Rate WI.

The additional amounts collected pursuant to this temporary surcharge provision less any amounts contributed by the Company to the New Hampshire Nuclear Decommissioning Fund in accordance with RSA 162-F:19 and order of the New Hampshire Public Utilities Commission and attributed to customers, shall be subject to possible repayment. Amounts billed under this temporary surcharge provision shall be deposited and retained in an escrow account in accordance with the provisions of NHPUC Order No. 19,655 dated December 28, 1989, and Order No. __ dated __, 1990 in Docket No. DR 89-219, provided that the portion allocable to retail sales of any payments due or made to the Nuclear Decommissioning Fund during the period that this surcharge is in effect in accordance with New Hampshire Public Utilities Commission Order shall be subtracted from the amount transferred to the escrow account.

The temporary surcharge rate of 5.5 percent is designed to operate in conjunction with the level of tariff rates in effect on September 15, 1989 including an energy Cost Recovery

Mechanism (ECRM) Component of 3.664 cents per kilowatt-hour, and to continue to operate in conjunction with such level of tariff rates regardless of any changes in ECRM or any similar rate component.

Issued: _____

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Issued by: W. T. Frain, Jr.

Title: Vice President

Effective: August 1, 1990

Issued in compliance with NHPUC Order No. 19,655 dated December 28, 1989 and order No. __ dated __, in Docket No. DR 89-219.

ATTACHMENT G
April 3, 1990

Mr. Wynn E. Arnold
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301-5185

Re: DR 90-019

Dear Mr. Arnold;

Enclosed are the original and 9 copies of the "Supplemental Direct Testimony of H.T. Tracy, Jr. on Behalf of New Hampshire Yankee."

Sincerely,
Edward A. Haffer

Enclosure

cc: Eve H. Oyer, Esq.
Michael W. Holmes, Esq.
Gerald M. Eaton, Esq.
Stephen E. Merrill, Esq.
James T. Rodier, Esq.

SUPPLEMENTAL DIRECT TESTIMONY
OF H.T. TRACY, JR. ON BEHALF OF
NEW HAMPSHIRE YANKEE

Q. Please summarize how money will move from the Joint Owners to the nuclear decommissioning financing fund?

A. Consistent with Section 13A.2 of the Joint Ownership Agreement (attached to my previously filed testimony), each month New Hampshire Yankee will direct each Joint Owner to transfer the appropriate amount for the fund to the Trustee, First NH Investment Services Corp. The money will initially be placed in a demand deposit account for the benefit of participants of the Seabrook nuclear power plant decommissioning fund. The money will then be moved from that account to the appropriate trust account of each Joint Owner.

Q. After the money is received by the Trustee will it be secure?

A. Yes. As soon as the money is placed in the appropriate trust account, it will be secure regardless of the Trustee's own financial circumstances. For the momentary period that the

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money is in the demand deposit account, it will also be secure. As shown on the attached pages 1 and 50-51 of the Master Trust Agreement, Merchants National Bank of Manchester (now First NH Bank, N.A., the sole stockholder of the Trustee) and First NH Banks, Inc. (the sole stockholder of First NH Bank, N.A.) have both guaranteeed the Trustee's performance of its duties.

Q. Does this conclude your supplemental testimony?

A. Yes.

10/18/88

SEABROOK NUCLEAR DECOMMISSIONING
FINANCING FUND MASTER TRUST
AGREEMENT

This MASTER TRUST AGREEMENT, dated as of Oct. 11, 1988, is made between NEW HAMPSHIRE YANKEE DIVISION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE (together with its duly appointed replacements, hereinafter called the "Managing Agent"), as agent, First NH Investment Services Corp., a New Hampshire corporation (together with its successor or successors, hereinafter called the "trustee"), and the TREASURER OF

Page 512

THE STATE OF NEW HAMPSHIRE (together with her duly elected successors, hereinafter called the "State Treasurer"), and solely in their capacity as guarantors as hereinafter set forth, Merchants National Bank of Manchester, the sole stockholder of First NH Investment Services Corp., and First N.H. Banks, Inc., the sole stockholder of Merchants National Bank of Manchester. This Master Trust Agreement and all obligations of the parties hereunder shall become effective on the date of execution or the date of approval by the Governor and Council of the State of New Hampshire, whichever is later.

WHEREAS, the Managing Agent is acting as agent for the "Seabrook Participants", as defined in Section 1.01 and listed in Exhibit A, who are the joint owners and licensees of the Unit, as defined in Section 1.01;

WHEREAS, rules and regulations of the United States Nuclear Regulatory Commission (hereinafter referred to, respective authorized officers as of the date first above written.

New Hampshire Yankee Division
of Public Service Company
of New Hampshire, as agent

By _____
Its Vice President

First NH Investment Services Corp.
By _____
Its President
Georgie A. Thomas
Treasurer, State of New Hampshire

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As the direct and indirect sole stock holders of First HN Investment Services Corp. ("Investment Services"), Merchants National Bank of Manchester and First NH Banks, Inc. jointly and severally guarantee that Investment Services shall perform its duties as Trustee under this Master Trust Agreement. This guarantee shall run to New Hampshire Yankee Division of Public Service Company of New Hampshire, as agent for the Seabrook Participants, and to the Treasurer of the State of New Hampshire.

Merchants National Bank of
Manchester
By _____
Its President

First NH Banks, Inc. By _____
Its Chairman and Chief Executive Officer

Approved as to form, substance and execution:

Assistant Attorney General,
State of New Hampshire
7/10/89 Date

ATTACHMENT H
June 27, 1990

VIA FAX

James T. Rodier, Staff Attorney
Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301-5185

RE: DR 90-019

Dear Jim:

This confirms our phone conversation of this date. I said that it is now virtually certain that June 30 will be the starting date for Seabrook Station to be counted by the New England Power Pool for capacity credit. I understand from you that as of now the draft dated March 20, 1990 of the "Joint Recommendations of the Parties for Resolution of All Pending Issues" has not yet been approved by the Commission. However, I understand also that all parties remain in agreement on the appropriateness of the Commission's approving ¶ 1 of those Joint Recommendations.

I further understand that, assuming a June 30 starting date, the "first full month of service from the facility" shall be deemed to be July; that the "billing month" which reflects that first full month of service shall be deemed to be August; and that the first contribution to the Fund shall be in August.

If my stated understanding is wrong in any way, please let me know.

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Sincerely,
Edward A. Haffer

EAH:dl

cc: Eve Oyer, Esquire/via Fax
Gerald Eaton, Esquire/via Fax

ATTACHMENT I

Wynn E. Arnold, Esquire
Executive Director and Secretary
New Hampshire Public Utilities Commission
Eight Old Suncook Road
Concord, New Hampshire 03301-5185

Re: Nuclear Decommissioning Charge
Docket No. DR 90-019

Dear Secretary Arnold:

Pursuant to the Joint Recommendations of the Parties, Public Service Company of New Hampshire and the New Hampshire Electric Cooperative were to designate which trust would be the recipient of its contributions to the Nuclear Decommissioning Financing Fund. Until further notice, Public Service Company of New Hampshire initially designates Trust A (Qualified) as the recipient of its contributions to the Nuclear Decommissioning Financing Fund as described in Exhibit D to the Master Trust Agreement dated October 11, 1988.

Very truly yours,
Gerald H. Eaton
Senior Counsel

cc: All Parties

ATTACHMENT J

New Hampshire Electric Cooperative, Inc.'s Request for Special Findings for Income Tax Purposes

New Hampshire Electric Cooperative. Inc. (NHEC) request that the New Hampshire Public Utilities Commission (the Commission) make the following Special Findings based upon the record in this proceeding as well as the record of the Nuclear Decommissioning Finance Committee (NDFC) in Docket No. DF 87-1 and the findings of NDFC set forth in its Report and Seventeenth Supplemental Order in that docket dated June 2, 1989 (NDFC Report). The purpose for requesting these Special Findings is the desire of NHEC to request a ruling from the Internal Revenue Service which would allow a deduction to income equal to the contributions made to the Nuclear Decommissioning Finance Fund (the Fund) should the Cooperative ever lose its tax exemption. In order to grant a request for a ruling, the Internal Revenue Service requires the appropriate regulatory authority approving a decommissioning charge to make specific findings

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similar to the following:

1. *Period of years over which decommissioning costs will be included in NHEC's cost of service and the amount of decommissioning costs that are included in the NHEC's cost of service for each taxable year.*

NDFC found that the reasonable anticipated energy-producing life of Seabrook Unit I will be 40 years. *NDFC REPORT*, at 16. Based upon the issuance of a 40 year operating license, NDFC adopted a funding schedule of forty years. New Hampshire statutes require the Commission to permit the utility to collect from customers a charge for decommissioning costs paid into the Fund. NH RSA 162-F:19, III. As a reasonable period of years over which NHEC will include decommissioning costs in its cost of service, the Commission adopts the 40 year funding schedule as accepted by the NDFC for collecting the decommissioning costs of Seabrook Unit I. *NDFC Report*, at 14-16.

NHEC's ownership share of the Seabrook Unit I is 2.17391%. NDFC found that the monthly contribution of all non-taxable Joint Owners would be 14.35761%. *NDFC Report*, at Exh. 1-C. The Commission finds that this schedule of expected monthly contributions is a reasonable estimation of the amount of decommissioning costs that will be included in

NHEC's cost of service in each taxable year.

2. *The proposed method of decommissioning.*

NDFC found that the method of prompt removal/dismantling, called DECON, was the preferred method for decommissioning. *NDFC Report*, at 12-14. 47-58. The Commission adopts this finding as reasonable for the purpose of this proceeding.

3. *The estimated year in which substantial decommissioning costs will first be incurred.*

The Nuclear Regulatory Commission has granted a full operating license in 1990. The useful energy producing life was found by NDFC to be forty years. *NDFC Report*, at 16. Accordingly, the Commission finds that the year 2030 is reasonable as an estimated year in which substantial decommissioning costs will first be incurred by NHEC.

4. *The estimated year in which decommissioning will be substantially completed.*

The DECON method was proposed by NDFC by New Hampshire Yankee Witness Thomas S. LaGuardia and supported by Allan J. Schultz, Witness for the Public. *NDFC Report*, 47, 49. Mr. LaGuardia's study submitted to NDFC estimated a 72 month period for the completion of the DECON method of decommissioning. "Decommissioning Study for the Seabrook Station — Unit I", at 41, 81 (February 1987). NDFC found that DECON was the preferred method for decommissioning. Accordingly, the Commission determines that, if the decommissioning process can begin in the year 2030, the dismantling period estimated for the DECON method indicates that decommissioning would be substantially completed on or before the year 2036.

5. *The total estimated cost of decommissioning Seabrook and NHEC's share of the cost expressed in current dollars.*

NDFC's Seventeenth Supplemental Order established the Fund in an amount of $242,429,000

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in 1987 dollars. This amount was increased at NDFC's found rate of inflation of 4% to a sum of $272,699,430 expressed in current (1990) dollars. NHEC's 2.17391% share of this amount is $5,928,240. For the purposes of this proceeding, the Commission adopts as reasonable these estimates of the total costs of decommissioning and NHEC's share thereof, expressed in current dollars.

6. *The total estimated cost of decommissioning Seabrook and NHEC's share of that cost expressed in future dollars.*

The total estimated cost of decommission- ing expressed in future dollars (2030) is $1,309,235,596 assuming a target cost of $272,669,430 in 1990 dollars. The original target cost found by NDFC of $242,429,000 was increased by the found inflation factor of 4% annually to create a new target cost to begin the funding, and the schedule of contributions was revised accordingly. NHEC's 2.17391% share of this cost is $28,461,604. The assumptions underlying these estimates are those adopted by NDFC at page 27 to 28 of the NDFC Report. The Commission adopts as reasonable these estimates of the total costs of decommissioning and NHEC's share thereof, expressed in future dollars.

7. *The amount of decommissioning costs that are expected to be incurred in each year of the decommissioning and NHEC's share of such costs.*

In testimony to NDFC, witness LaGuardia broke down his estimated schedule and costs for the 72 month period for prompt removal/dismantling as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Period Length (mos.)	Period Cost($)	Percent of Total Cost
Period 1: Preparations	12	22,342,000	9.2%
Period 2: Decom. Activities	36	168,168,000	69.4%
Period 3: Structure Demolition	24	51,918,000	21.4%

LaGuardia, Thomas S., "Decommissioning Study", *supra*, at 41. (Percentage of total cost data extrapolated from total cost data.)

NDFC adopted Witness LaGuardia's recommendations. *NDFC Report*, at 12-13. Assuming that expenditures for each period will be spread equally across each year of the respective periods, the Commission adopts the following schedule of total costs and NHEC's share thereof (2.17391%) as reasonable estimates of the expected decommissioning expenditures.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Year	Total Costs	NHEC's Share
2030	$ 120,449,675	$2,618,468
2031	$ 302,869,834	$ 6,584,118
2032	$ 302,869,834	$ 6,584,118
2033	$ 302,869,834	$ 6,584,118
2034	$ 140,088,209	$ 3,045,392
2035	$ 140,088,209	$ 3,045,392

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Total $1,309,235,596$28,461,604
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8. *The methodology for converting current dollars to future dollars.*

The methodology for converting the estimated cost of decommissioning in current dollars to the estimated cost of decommissioning in future dollars is:

$$[\$272,699,430(1.04)^{40}]$$

Assuming the 4% inflation factor found by NDFC (*NDFC Report*, at 11) and the 40 year expected energy-producing life during which contributions would be made and invested (*NDFC Report*, at 16, 27), the Commission adopts this formula for converting current dollars of estimated decommissioning expenses into future dollars.

9. *The after-tax (i.e. federal, state and local taxes) rate of return to be earned by the fund.*

The moneys in the Fund are not subject to state and local taxes. NH RSA 162-F:19, I. The earnings of the Fund are not expected to be subject to federal income taxation. Pursuant to the Master Trust Agreement, as adopted by NDFC (*NDFC Report*, at 20-26, the Joint Owners who are subject to federal income tax shall contribute to a qualified trust that will hold only investments whose earnings are not subject to federal income tax. The Joint Owners not subject to federal income tax shall contribute to a non-qualified trust that will hold investments that may or may not be subject to federal income taxation.

The Commission finds it reasonable to expect that the rate of return after taxes shall be equal to the rate of return before taxes as found by NDFC (*NDFC Report*, at 27) of 7.0% for the non-qualified trust and 6.0% for the qualified trust. The return for the total Decommissioning Fund is expected to be 6.1435761% compounded annually. *NDFC Report*, Exh. 1-C.

10. *The period over which Seabrook will be included in the NHEC's rate base for ratemaking purposes*.

The Commission finds that it is reasonable to assume that NHEC's investment will be included in utility rate base for ratemaking purposes for the expected energy-producing life of the facility, found by NDFC to be 40 years. *NDFC Report*, 16.

11. *The frequency of contributions to the Fund*.

Once the fund is started, each Joint Owner,

Page 516

including NHEC, will contribute monthly to the Fund. *NDFC Report*, Exh. 1.

NHEC has reviewed these Requests for Special findings with the Commission Staff and the parties, incorporating their comments and suggestions. NHEC does not believe there are any objections or disagreements with these Requests.

WHEREFORE NHEC urges that these Requests for Special Findings be granted and incorporated in the Commission's final order in this proceeding, and that the Commission order such further relief as may be just and equitable.

Respectfully submitted,

New Hampshire Electric Cooperative, Inc.

3/23/90 Date

By: Timothy Fontaine
Accounting Supervisor
New Hampshire Electric Cooperative, Inc.
RFD 4, Box 2100
Plymouth, NH 03264
(603) 536-1800

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Request for Special Findings for Income Tax Purposes have been sent this day by fax to Attorneys Knickerbocker, Oyer, Holmes, Haffer, Judd, and Merrill.

3/23/90 Date
Timothy Fontaine

ATTACHMENT K

Public Service Company of New Hampshire's Request for Special Findings for Income Tax Purposes

Public Service Company of New Hampshire (PSNH or the Company) requests that the New Hampshire Public Utilities Commission (the Commission) make the following Special Findings based upon the record in this proceeding as well as the record of the Nuclear Decommissioning Finance Committee (NDFC) in Docket No. DF 87-1 and the findings of NDFC set forth in its Report and Seventeenth Supplemental Order in that docket dated June 2, 1989 (NDFC Report). The purpose for requesting these Special Findings is the desire of PSNH to request a ruling from the Internal Revenue Service which would allow a deduction from taxable income equal to the contributions made to the Nuclear Decommissioning Financing Fund (the Fund). In order to grant a request for a ruling, the Internal Revenue Service requires the appropriate regulatory authority approving a decommissioning charge to make specific findings similar to the following:

1. *Period of years over which decommissioning costs will be included in PSNH's cost of service and the amount of decommissioning costs that are included in the PSNH's cost of service for each taxable year*.

NDFC found that the reasonable anticipated energy-producing life of Seabrook Unit I will be 40 years. *NDFC Report*, at 16. Based upon the issuance of a 40 year operating license, NDFC adopted a funding schedule of forty years. New Hampshire statutes require the Commission to permit the utility to collect from customers a charge for decommissioning costs paid into the Fund. NH RSA 162-F:19, III. The Commission adopts the 40 year funding schedule as accepted by the NDFC for collecting the decommissioning costs of Seabrook Unit I as a reasonable period of years over which PSNH will include decommissioning costs in its cost of service. *NDFC*

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Report, at 14-16.

PSNH's ownership share of the Seabrook Unit I is 35.56942%. NDFC found that the monthly contribution of all taxable Joint Owners would be 85.64239%. *NDFC Report*, at Exh. 1-C. PSNH has provided a list of its expected monthly contributions to the Fund from 1990 until 2030 based upon the NDFC Report. DR 90-019, Exh. __, Attachment Long-2). The Commission finds that this schedule of expected monthly contributions is a reasonable estimation of the amount of decommissioning costs that will be included in PSNH's

Page 517

cost of service in each taxable year.

2. *The proposed method of decommissioning*.

NDFC found that the method of prompt removal/dismantling, called DECON, was the preferred method for decommissioning. *NDFC Report*, at 12-14, 47-58. The Commission adopts this finding as reasonable for the purposes of this proceeding.

3. *The estimated year in which substantial decommissioning costs will first be incurred*.

The Nuclear Regulatory Commission has granted a full operating license in 1990. The expected energy-producing life was found by NDFC to be forty years. *NDFC Report*, at 16. Accordingly, the Commission finds that the year 2030 is reasonable as an estimated year in which substantial decommissioning costs will first be incurred by PSNH.

4. *The estimated year in which decommissioning will be substantially completed*.

The DECON method was proposed to NDFC by New Hampshire Yankee Witness Thomas S. LaGuardia and supported by Allan J. Schultz, Witness for the Public. *NDFC Report*, 47, 49. Mr. LaGuardia's study, submitted to NDFC, estimated a 72 month period for the completion of the DECON method of decommissioning. "Decommissioning Study for the Seabrook Station — Unit I", at 41, 81 (February 1987). NDFC found that DECON was the preferred method for decommissioning. Accordingly, the Commission determines that, if the decommissioning process can begin in the year 2030, the dismantling period estimated for the DECON method indicates that decommissioning would will be substantially completed in or before the year 2036.

5. *The total estimated cost of decommissioning Seabrook and PSNH's share of that cost expressed in current dollars*.

NDFC's Seventeenth Supplemental Order established the Fund in an amount of $242,429,000 in 1987 dollars. This amount was increased at NDFC's found rate of inflation of 4% to a sum of $ 272,699,430 expressed in current (1990) dollars. PSNH's 35.56942% share of this amount is $96,997,606. For the purposes of this proceeding, the Commission adopts as reasonable these estimates of the total costs of decommissioning and PSNH's share thereof, expressed in current dollars.

6. *The total estimated cost of decommissioning Seabrook and PSNH's share of that cost expressed in future dollars*.

The total estimated cost of decommissioning expressed in future dollars (2030) is $1,309,235,596 assuming a target costs of $272,669,430 in 1990 dollars. The original target cost

found by NDFC of $242,429,000 was increased by the found inflation factor of 4% annually to create a new target cost to begin the funding, and the schedule of contributions was revised accordingly. PSNH's 35.56942% share of this cost is $465,687,509. The assumptions underlying these estimates are those adopted by NDFC at page 27 to 28 of the NDFC Report. The Commission adopts as reasonable these estimates of the total costs of decommissioning and PSNH's share thereof, expressed in future dollars.

7. *The amount of decommissioning costs that are expected to be incurred in each year of the decommissioning and PSNH's share of such costs.*

In testimony to NDFC, Witness LaGuardia broke down his estimated schedule and costs for the 72 month period for prompt removal/dismantling as follows:

Page 518

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Period Length (mos.)	Period Cost ($)	Percent of Total Cost
Period 1: Preparations	12	22,342,000	9.2%
Period 2: Decom. Activities	36	168,168,000	69.4%
Period 3: Structure Demolition	24	51,918,000	21.4%

LaGuardia, Thomas S., "Decommissioning Study", *supra*, at 41. (Percentage of total cost data extrapolated from total cost data.)

NDFC adopted Witness LaGuardia's recommendations. *NDFC Report*, at 12-13. Assuming that expenditures for each period will be spread equally across each year of the respective periods, the Commission adopts the following schedule of total costs and PSNH's share thereof (35.56942%) as reasonable estimates of the expected decommissioning expenditures.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Year	Total Costs	PSNH's Share
2030	$ 120,449,675	$ 42,843,251
2031	$ 302,869,834	$ 107,729,044
2032	$ 302,869,834	$ 107,729,044
2033	$ 302,869,834	$ 107,729,044
2034	$ 140,088,209	$ 49,828,564
2035	$ 140,088,209	$ 49,828,564
Total	$ 1,309,235,596	$ 465,687,509

8. *The methodology for converting current dollars to future dollars.*

The methodology for converting the estimated cost of decommissioning in current dollars to the estimated cost of decommissioning in future dollars is :

$$[\$272,699,430(1.04)^{40}]$$

Assuming the 4% inflation factor found by NDFC (*NDFC Report*, at 11) and the 40 year expected energy-producing life during which contributions would be made and invested (*NDFC Report*, at 16, 27), the Commission adopts this formula for converting current dollars of

estimated decommissioning expenses into future dollars.

9. *The after-tax (i.e. federal, state and local taxes) rate of return to be earned by the fund.*

The moneys in the Fund are not subject to state and local taxes. NH RSA 162-F:19,I. The earnings of the Fund are not expected to be subject to federal income taxation. Pursuant to the Master Trust Agreement, as adopted by NDFC (*NDFC Report*, at 20-26), the Joint Owners who are subject to federal income tax shall contribute to a qualified trust that will hold only investments whose earnings are not subject to federal income tax. The Joint Owners not subject to federal income tax shall contribute to a non-qualified trust that will hold investments that may or may not be subject to federal income taxation. Accordingly, the Commission finds it reasonable to expect that the rate of return after taxes shall be equal to the rate of return before taxes as found by NDFC (*NDFC Report*, at 27) of 7.0% for the non-qualified trust and 6.0% for the qualified trust. The return for the Total Decommissioning Fund is expected to be 6.1435761% compounded annually. *NDFC Report*, Exh. 1-C.

10. *The period over which Seabrook will be included in the PSNH's rate base for ratemaking purposes*.

The Commission finds that it is reasonable to assume that PSNH's investment will be included in utility rate base for ratemaking purposes for the expected energy-producing life of the facility, found by NDFC to be 40 years. *NDFC Report*, 16.

11. *The frequency of contributions to the Fund*.

Once the fund is started, each joint owner,

including PSNH, will contribute monthly to the Fund. *NDFC Report*, Exh. 1.

PSNH supplied a copy of these Requests by delivery to the Commission and to all parties by mail on March 22, 1990 pursuant to the Joint Recommendations of the Parties. PSNH does not believe there are any objections or disagreements with these Requests.

WHEREFORE PSNH urges that these Requests for Special Findings be granted and incorporated in the Commission's final order in this proceeding, and that the Commission order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of
New Hampshire

Date March 26, 1990

By: Martin L. Gross
Sulloway, Hollis and Soden
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302

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(603) 224-2341

Date March 26, 1990

By: Gerald I. Eaton
Senior Counsel

Public Service Company of
New Hampshire
P.O. Box 330
Manchester, New Hampshire 03105-0330
(603) 669-4000 ext. 2961

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Request for Special Findings for Income Tax Purposes have been sent this day by First Class, U.S. Mail, postage prepaid, or hand delivered to Attorneys Knickerbocker, Oyer, Holmes, Haffer, Judd, and Merrill.

Date March 26, 19901.5P'Gerald H. Eaton

July 26, 1990

RE: 90-019, Nuclear Decommissioning Charge

To The Parties:

The commission has marked the enclosed material from the commission files as Exhibit Staff — 1 in the above referenced proceeding.

Sincerely,
Wynn E. Arnold
Executive Director & Secretary

WEA/jps
Enclosures

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Re: DR 90-019 Nuclear Decommissioning Charge
Staff Exhibit 1

Attachment A Ex. PSNH-2		Joint Recommendations of the parties for resolution of all pending issues.
Attachment B	6 page document	July 3, 1990 letter and attachments to Wynn Arnold from Leon Maglathlin, Jr.,
Attachment C	2 page document	Calculation of the Nuclear Decommissioning Charge for the effective period

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		beginning August 1, 1990.
Attachment D	2 page letter	July 18, 1990 letter to Wynn Arnold from Gerald Eaton
Attachment E	2 page letter	July 12, 1990 letter to James Anderson with attachments.
Attachment F	4 page document	Revised tariff pages of PSNH.
Attachment G	5 page letter & document	Ex. NHY 2 April 3, 1990 letter to Wynn Arnold from Edward Haffer and supplemental direct testimony of H. T. Tracy, Jr.
Attachment H	1 page letter	June 27, 1990 letter to James Rodier from Edward Haffer
Attachment I	1 page letter	Letter dated March 26, 1990 to Wynn Arnold from Gerald Eaton (PSNH 3)
Attachment J	9 page document	New Hampshire Electric Cooperative, Inc.'s request for special findings for income tax purposes (NHEC 2)
Attachment K	9 page document	Public Service Company of New Hampshire's request for special findings for income tax purposes (PSNH 4)

TRANSMITTAL COVER

From: New England Governors' Conference, Inc.

Date: 7/30/90

To: Commissioner Smukler, Ellsworth, Bisson,
Janet Besser
Dept: NH PUC
From: Steve Leahy
Subject: revised agenda for Thursday

Power Planning Committee

If possible, please give me a call by Wednesday noon to confirm your attendance. Thanks

NEW ENGLAND GOVERNORS'
CONFERENCE, INC.
POWER PLANNING COMMITTEE

Boston Park Plaza Hotel
Berkeley/Clarendon Room

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64 Arlington Street
Boston, Massachusetts
617/426-2000

Thursday, August 2, 1990

REVISED AGENDA

[Graphic(s) below may extend beyond size of screen or contain distortions.]

10:30 a.m. Introduction of agenda
— *Peter Boucher & Brad Chase, Connecticut*
10:35 a.m. NEPOOL generating capability update
— *Gerald Browne, NEPOOL*
10:50 a.m. Update on recent FERC decision regarding Iroquois project
— *Fred Lowther, Counsel, Iroquois Gas, and Michael Lucy, President, Northeast Gas Markets*
11:30 a.m. Presentation on proposed U.S. Department of Energy conservation initiatives
— *Hugh Saussy, Director, Boston Support Office U.S. Department of Energy, Boston, MA*
12:00 p.m. Remarks on U.S. Department of Energy's clean coal initiatives
— *Jack Siegel, Deputy Assistant Secretary for Coal Technology, U.S. Department of energy, Washington, D.C.*
12:30 p.m. Lunch
1:00 p.m. Updates on Committee activities:
A.) Report from 7/19/90 meeting of policy subcommittee on resource strategy
— *Janet Besser, New Hampshire*
B.) Meeting with Western Canadian gas producers
— *Peter Boucher, Connecticut*
C.) Technical Task Force work
— *Janet Besser, New Hampshire*
D.) Proposed 8/9/90 meeting on Clean Air Act
— *Jim Malachowski, Rhode Island*
E.) Transmission issues
— *Sue Tiemey, Massachusetts*
1.30 p.m. Open discussion concerning the Committee's focus and workplan in coming months
— *Peter Boucher, Connecticut*
1:45 p.m. Other Business
2:00 p.m. Next Meeting

FOOTNOTES

[1]See attachment 4 to the nuclear decommissioning financing committee's 15th supplemental order, master trust agreement at 1 where NHY is designated "Managing Agent" for the Seabrook participants".

[2]*See* Exh. PSNH-6 at 4

[3]This finding should not be construed as a precedent or otherwise prejudicing in any way any commission ruling or finding under RSA 378:30-a.

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75 NH PUC 523

Re Atlantic Connections, Ltd.

DE 90-042
Order No. 19,900

New Hampshire Public Utilities Commission

July 31, 1990

ORDER clarifying a prior order that granted a motion for a protective order and required compliance with certain requests for production of documents.

---

1. PROCEDURE, § 16 — Discovery and inspection — Confidential treatment — Protective order.

[N.H.] In response to a request by telephone company that was the subject of an investigatory proceeding for assurances that it would be given notice and and opportunity to be heard should any party seek to challenge the confidentiality of protected information, the commission clarified a prior order that granted a motion for a protective order to state that any request for disclosure of materials subject to confidential treatment must be followed by a properly noticed hearing on the issue prior to any commission order granting or denying such request. p. 523.

2. PROCEDURE, § 16 — Production of evidence — Relevance — Protected materials.

[N.H.] On rehearing of a prior order requiring a telephone company that was the subject of an investigatory proceeding to comply with certain requests for production of documents, the commission clarified the extent to which responses to data requests would be granted protected status and affirmed its findings as to the relevance of certain data requests. p. 523.

By the COMMISSION:

REPORT

I. *Position of Atlantic Connections, Ltd.*

On July 12, 1990, Atlantic Connections, Ltd. (Atlantic) filed a Motion to Clarify and for Hearing of order no. 19,870 (75 NH PUC 354). Instead the commission will treat said motion as a motion for rehearing pursuant to RSA 541:3.

Said motion requested assurance from the PUC that Atlantic will be afforded proper notice

and an opportunity to be heard should any party seek to challenge the confidentiality of any protected information. Atlantic next objected to the commission's order in regard to staff data request 24 based upon relevance and concern for its customers. Atlantic requested a hearing on this matter. Atlantic next requested a protective order for information supplied in response to data request no. 26.

II. *Commission Analysis*

[1, 2] In regard to Atlantic's request for assurances that it be given notice and an opportunity to be heard should any parties seek to challenge the confidentiality of the protected information, it was the commission's intent in report and order no. 19,870 that said procedures would be followed. To the extent that our intent was unclear, the motion to simplify is granted.

The commission as previously stated, finds the information requested in data request no. 24 relevant, and in regard to Atlantic's concern for its customers relative to protection from intrusive calls from the staff of the commission, the commission finds this concern baseless and does not consider the potential for calls from the staff to be intrusive or harassing in any way. No hearing will be granted on this matter as Atlantic has not indicated that any evidence is necessary on this issue nor has the company indicated it would supplement the request.

Finally in regard to data request 26, a protective order for all information obtained in viewing the company's files is granted subject to the same conditions contained in order no. 19,870, as clarified in this order.

Page 523

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that any request for disclosure of materials subject to confidential treatment in this case shall be followed by a properly noticed hearing on the issue prior to any commission order granting or denying such request; and it is

FURTHER ORDERED, that the information requested in staff data request no. 24 is relevant and subject to discovery and no hearing shall be granted in this matter; and it is

FURTHER ORDERED, that all information obtained pursuant to data request no. 26 shall be subject to the commission's order no. 19,870 on confidentiality as, clarified herein.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1990.

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NH.PUC*08/01/90*[51056]*75 NH PUC 524*Bethlehem Hydroelectric Company, Inc.

[Go to End of 51056]

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Re Bethlehem Hydroelectric Company, Inc.

DR 86-136
Order No. 19,902

New Hampshire Public Utilities Commission

August 1, 1990

ORDER rescinding a thirty-year, long-term rate order for a hydroelectric small power production project.

COGENERATION, § 24 — Long-term rate order — Rescission — Hydroelectric small power production project.

[N.H.] The commission rescinded a 30-year, long-term rate order for a hydroelectric small power production project where the project developer had informed commission staff that it was abandoning the project.

By the COMMISSION:

ORDER

WHEREAS, on May 1, 1986 Bethlehem Hydroelectric Co., Inc. (Bethlehem) was granted a long term rate pursuant to order no. 17,104 (69 NH PUC 352, 61 PUR4th 132) in Docket DE 83-062, order no. 17,838 (70 NH PUC 753, 69 PUR4th 365) in Docket DR 85-215 and order no. 18,235 (71 NH PUC 264) in Docket DR 86-136; and

WHEREAS, on September 28, 1989 the commission ordered that Bethlehem's request for an extension of its long term rate be heard on October 25, 1989 and subsequently postponed until December 4, 1989; and

WHEREAS, Bethlehem's developer communicated to staff via telephone prior to the date of the hearing that he was abandoning the project; and

WHEREAS, staff requested the developer send a letter to the commission confirming that fact but staff has not yet received that correspondence; it is hereby

ORDERED, *NISI*, that the 30 year long term rate granted in order no. 18,235 be rescinded; and it is

FURTHER ORDERED, that this order *NISI* will be effective 30 days from the date of this order unless the commission provides otherwise in a Supplemental Order issued prior thereto.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1990.

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NH.PUC*08/01/90*[51057]*75 NH PUC 525*Public Service Company of New Hampshire

[Go to End of 51057]

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75 NH PUC 525

Re Public Service Company of New Hampshire

DR 89-219
Order No. 19,903

New Hampshire Public Utilities Commission

August 1, 1990

ORDER altering the terms of a temporary electric rate surcharge order to allow the utility to subtract its nuclear decommissioning fund contributions from surcharge revenues prior to the deposit of surcharge revenues into the escrow account established by the surcharge order.

---

1. NUCLEAR PLANT DECOMMISSIONING, § 7 — Ratemaking — Nuclear decommission fund — Utility contributions.

[N.H.] An electric utility was authorized to deduct an amount equal to its monthly contribution to the Seabrook nuclear decommissioning finance fund from the revenues derived from a temporary rate surcharge established by prior order; the commission altered the terms of the electric rate surcharge order to allow the utility to subtract its nuclear decommissioning fund contributions from surcharge revenues prior to the deposit of surcharge revenues into an escrow account established by the surcharge order. p. 525.

2. RATES, § 630 — Temporary rate surcharge — Nuclear decommissioning fund contributions — Escrowed revenues — Electric utility.

[N.H.] The commission altered the terms of a temporary electric rate surcharge order to allow the utility to subtract its nuclear decommissioning fund contributions from surcharge revenues prior to the deposit of surcharge revenues into an escrow account established by the surcharge order. p. 525.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, on July 19, 1990, Public Service Company of New Hampshire (PSNH) submitted a motion to alter the payments made to the Escrow Fund as established in this proceeding; and

WHEREAS, the purpose of the amendment is to permit PSHN to deduct an amount equal to its monthly contribution to the Nuclear Decommissioning Financing Fund (Fund) from the revenues derived from the temporary surcharge, RSA 162-F:14 *et seq.*; and

WHEREAS, consistent with this request, PSNH is also requesting an amendment to the

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"Recommendations of Parties for Escrow of PSNH Temporary Rates", (Recommendations) Exhibit No. 4, Paragraph 1.b. to add the following italicized:

> b. At the end of each month, commencing in January, 1990, and prior to closing the books for that month, PSNH shall determine the portion of that month's revenues that was derived from the temporary rate surcharge and transfer such amount from revenues (on the income statement). As soon thereafter as possible, but in any event within 20 days after the last day of each such month, PSNH shall transfer cash monies equivalent to revenues subject to refund determined in accordance with this subparagraph to the Escrow Agent identified in paragraph 2, *provided that the portion allocable to retail sales of any payment due or made during the month of transfer to the Nuclear Decommissioning Fund in accordance with Public Utilities Commission Order shall be subtracted from the amount transferred to the Escrow Agent*.

WHEREAS, on June 30, 1990, the Joint Owners of Seabrook Station voted to allow Unit I to be dispatched by the New England Power Pool; and

WHEREAS, RSA 162-F:19, II provides that "the collection of money and payment to the [Nuclear Decommissioning Fund] shall commence in the billing month which reflects

the first full month of service from the facility;" and

WHEREAS, the parties in Docket No. DR 90-019 have filed Joint Recommendations that urge the commission to accept July 19, 1990 as the first full month of service of Seabrook Station Unit I and August 19, 1990 if the first billing month for the charge to be reflected in customers' bills and whence PSNH will be obligated to make its contributions to the Fund; and

WHEREAS, the Joint Recommendations have been approved by the commission through Report and Order No. 19,899 (75 NH PUC 494) (July 31, 1990); and

WHEREAS, the purpose of this motion is to entitle PSNH to deduct from revenues derived from the temporary surcharge an amount equal to its contribution to the Nuclear Decommissioning financing funds before such revenues are deposited with the Escrow Agent in August 1990, and thereafter; and

WHEREAS, PSNH has received consent to this motion from the commission staff, Northeast Utilities Service Company, the Office of the Attorney General and the Office of Consumer Advocate, all of whom were signatories to the letter filed December 21, 1989, which transmitted the parties' recommendations for Escrow for PSNH temporary rates in this proceeding; it is hereby

ORDERED, that commencing in August 1990, and thereafter, PSNH is entitled to deduct for revenues derived from the temporary surcharge an amount equal to its contribution to the Nuclear Decommissioning Financing Fund before such revenues are deposited with the Escrow Agent; and

FURTHER ORDERED, that the Recommendations of the Parties for Escrow of PSNH Temporary Rates (Exhibit 4) be amended to include the language specified in the body of this

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order.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1990.

==========

NH.PUC*08/02/90*[51058]*75 NH PUC 526*Robert A. Demers dba Echo Lake Woods Water System Woodland Grove Water System Rolling Ridge Water System

[Go to End of 51058]

75 NH PUC 526

Re Robert A. Demers dba Echo Lake Woods Water System Woodland Grove Water System Rolling Ridge Water System

DR 90-124
Order No. 19,904

New Hampshire Public Utilities Commission

August 2, 1990

ORDER modifying a water rate settlement to correct an error in the formula used to calculate the rates for two water systems and accepting rate tariffs reflecting the correction.

RATES, § 595 — Water rate settlement — Correction of computational error — Tariff revisions.

[N.H.] The commission modified a water rate settlement to correct an error in the formula used to calculate the rates for two water systems; revised rate tariffs reflecting the correction were approved.

By the COMMISSION:

ORDER

In Order No. 19,520 (74 NH PUC 291), Docket DE 89-002, issued September 1, 1989, the Commission accepted a stipulation between Robert A. Demers, d/b/a Echo Lake Woods Water System, Woodland Grove Water System and Rolling Ridge Water System (the Company) and the Staff of the Commission.

WHEREAS, the Stipulation had an error in one of the formulas used in the calculations in two of the Company's water systems; and

WHEREAS, the Stipulation concerning Rolling Ridge Water System shows a Rate Base of $17,590 and a Revenue Requirement of $8,123 which should be corrected to a Rate

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Base of $20,040 and a Revenue Requirement of $8,389; and

WHEREAS, the corrections to Rolling Ridge Water System would increase the annual rate from $270.76 ($135.38 semi-annual billing) to $279.63 ($139.82 semi-annual billing); and

WHEREAS, the Stipulation of the Parties concerning Echo Lake Woods Water System shows a Rate Base of $12,594 and a Revenue Requirement of $7,374 which should be corrected to a Rate Base of $16,607 and a Revenue Requirement of $7,811; and

WHEREAS, the corrections to Echo Lake Woods Water System would increase the annual rate from $189.08 ($94.54 semi-annual billing) to $200.29 ($100.05 semi-annual billing); and

WHEREAS, no errors were found in the Woodland Grove Water System; it is

ORDERED, NISI, that Order No. 19,520, Docket DE 89-002 be adjusted to show the above listed corrections for the two effected water systems, to wit, Rolling Ridge Water Sys- tem and Echo Lake Woods Water System; and it is

FURTHER ORDERED, NISI, that the tariff for Rolling Ridge Water System be submitted with the semi-annual rate of $139.82; and it is

FURTHER ORDERED, NISI, that the tariff for Echo Lake Woods Water System be submitted with the semi-annual rate of $100.15; and it is

FURTHER ORDERED, that all persons desiring to respond to this order increasing in rates be notified that they may file written comments or a written request for public hearing before this commission no later than August 29, 1990; and it is

FURTHER ORDERED, that such notice be given by one-time publication of this order in a newspaper having general circulation in the territories served and notice be given to each customer of the affected system by first class mail no later than August 14, 1990; and it is

FURTHER ORDERED, that these rates shall become effective 30 days from the date of publication and post date of the first class mailing unless a hearing is requested as provided herein or the Commission otherwise directs.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1990.

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NH.PUC*08/07/90*[51059]*75 NH PUC 527*Incentives for Conservation and Load Management

[Go to End of 51059]

75 NH PUC 527

Re Incentives for Conservation and Load Management

DE 89-187
Order No. 19,905

New Hampshire Public Utilities Commission

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August 7, 1990

ORDER ruling that "lost revenues" resulting from conservation and load management (C&LM) program implementation may be recovered from ratepayers, defining the circumstances under which financial incentives for C&LM program implementation would be warranted, and approving a utility-specific financial incentive mechanism.

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1. CONSERVATION, § 1 — Financial incentives — Generic investigation.

[N.H.] The following issues were before the commission in a generic investigation of financial incentives for conservation and load management; (1) the appropriateness of financial incentives for conservation and load management (C&LM) where "financial incentives" referred to dollars over and above the incremental direct costs of C&LM and recovery of "lost revenues", if any; (2) the appropriate treatment and means of determination of "lost revenues" recognizing that they may present a disincentive to C&LM; (3) the review and evaluation of a shared savings approach to financial incentives to C&LM; and (4) the review and evaluation of a specific shared savings incentive proposal for C&LM made and supported by Granite State Electric Company. p. 531.

2. CONSERVATION, § 1 — Financial incentives — Generic investigation.

[N.H.] The recovery of the direct costs of

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conservation and load management programs was not at issue in a generic investigation of financial incentives for conservation and load management. p. 532.

3. EXPENSES, § 19 — Conservation and load management — Program cost recovery — Electric utilities.

[N.H.] Electric utilities are entitled to recovery of prudent incremental direct costs of conservation and load management programs that have been shown to be cost-effective and consistent with the principles of least cost integrated resource planning; utilities may seek recovery of direct costs in the context of a base rate case or they may propose some other recovery mechanism. p. 532.

4. CONSERVATION, § 1 — Promotion — Benefits — Public policy.

[N.H.] The commission's interest in promoting conservation and load management is to capture its benefits for ratepayers, utilities, and the public at large and to implement public policy as it relates to utility resource planning. p. 539.

5. CONSERVATION, § 1 — Promotion — Purpose — Least cost integrated resource planning.

[N.H.] The commission is not interested in promoting conservation and load management (C&LM) to achieve societal goals other than utility least cost integrated resource planning, but it recognizes that societal benefits do exist as a consequence of C&LM program implementation when it is part of prudent least cost planning. p. 539.

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6. CONSERVATION, § 1 — Program implementation — Public benefits — Cost responsibility.

[N.H.] It is not within the role of the commission to require ratepayers to pay for benefits resulting from a decision by a utility to implement conservation and load management programs where the benefits of the programs accrue to the public as residents and citizens rather than as ratepayers. p. 539.

7. CONSERVATION, § 1 — Program implementation — Societal benefits — Uneconomic resource decisions.

[N.H.] Societal benefits other than utility least cost integrated resource planning that accrue as a result of conservation and load management program implementation may not be used to justify utility resource decisions that are not economic for ratepayers. p. 539.

8. CONSERVATION, § 1 — Program implementation — Cost-effectiveness — Low-income customer programs — Equity.

[N.H.] To the extent that conservation and load management programs for low-income customers are cost-effective, equity demands that such programs should be offered, even if the low-income programs are not the *most* cost-effective. p. 539.

9. EXPENSES, § 19 — Conservation and load management — Program cost recovery — Lost revenues.

[N.H.] Lost revenues (lost fixed cost recovery) represent a cost of conservation and load management program implementation and as such may be recovered from ratepayers. p. 540.

10. CONSERVATION, § 1 — Program implementation — Cost recovery — Lost revenues.

[N.H.] To the extent that costs associated with conservation and load management (C&LM) programs go beyond the direct costs of the programs, utilities should be "made whole" — i.e., they should at least be left in the same financial condition that would have occurred but for the implementation of the C&LM programs; accordingly, utilities should be allowed to recover "lost revenues" or "lost fixed cost recovery" that result from C&LM program implementation. p. 540.

11. CONSERVATION, § 1 — Program

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implementation — Cost recovery — Lost revenues.

[N.H.] In a generic investigation of conservation and load management (C&LM), "lost revenues" (also known as "lost fixed cost recovery") was defined as the net revenue impact of documented reduced sales due to utility C&LM programs; lost revenues equate to the portions of utility rate prices that contribute to recovery of utility fixed costs. p. 540.

12. REVENUES, § 5 — Lost revenues — Conservation program implementation — Calculation.

[N.H.] In calculating a utility's lost revenues resulting from conservation and load management program implementation, the impact of any applicable automatic adjustment rate mechanisms must be taken into account. p. 540.

13. REVENUES, § 5 — Lost revenues — Conservation program implementation — Calculation.

[N.H.] In calculating a utility's lost revenues resulting from conservation and load management (C&LM) program implementation, the commission must take into account the revenue impacts of sales made as a result of capacity and energy made available through utility C&LM programs, retention of customers that would be lost but for C&LM programs, and rate design associated with C&LM. p. 540.

14. CONSERVATION, § 1 — Program implementation — Financial incentives — Ratepayer benefits.

[N.H.] Financial incentives for utility implementation of conservation and load management (C&LM) programs are warranted where the utility can demonstrate that the C&LM program for which it seeks incentive payments offers extraordinary benefits to ratepayers over the long term; the benefits should be over and above what would accrue to ratepayers as a consequence of prudent utility management. p. 540.

15. CONSERVATION, § 1 — Program implementation — Financial incentives — Performance based incentives — Shared savings.

[N.H.] Financial incentives for utility implementation of conservation and load management (C&LM) programs should be performance based; that is, incentives earned must be tied to savings for ratepayers achieved by the C&LM program; moreover, incentives must take into account both the value of savings and the cost of achieving them. p. 540.

16. REVENUES, § 5 — Conservation program implementation — Financial incentives — Shared savings.

[N.H.] Any financial incentive provided to a utility for implementation of a conservation and load management (C&LM) program that provides extraordinary benefits to ratepayers should be to tied to ratepayer savings achieved by the C&LM program; moreover, incentives must take into account both the value of savings and the cost of achieving them. p. 540.

17. CONSERVATION, § 1 — Program implementation — Financial incentives — Performance based incentives — Performance thresholds.

[N.H.] To determine whether a utility's implementation of a particular conservation and load management (C&LM) program warrants the award of a financial incentive payment, a minimum performance threshold must first be set to differentiate extraordinary efforts from average prudent performance; however, the commission left the designation of thresholds to future reviews of utility-specific C&LM programs. p. 540.

18. EXPENSES, § 19 — Conservation and load management — Program cost recovery — Performance threshold.

[N.H.] The failure of a utility conservation and load management (C&LM) program to meet a performance threshold for eligibility for a financial incentive award would not jeopardize the utility's recovery of direct costs or lost

revenues associated with a commission-approved C&LM program. p. 540.

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19. CONSERVATION, § 1 — Program implementation — Financial incentives — Retail electric utility.

[N.H.] The commission granted, subject to conditions, a conservation and load management (C&LM) financial incentive mechanism proposed by a retail electric utility where it was found that the utility's C&LM program offered extraordinary benefits to ratepayers. p. 542.

20. REVENUES, § 5 — Conservation program implementation — Financial incentives — Shared savings — Retail electric utility.

[N.H.] The commission granted, subject to conditions, a conservation and load management (C&LM) financial incentive mechanism proposed by a retail electric utility where it was found that the utility's C&LM program offered extraordinary benefits to ratepayers; the incentive consisted of a two-part mechanism based on a shared savings approach. p. 542.

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i. CONSERVATION, § 1 — Ratepayer benefits — Shareholder benefits — Electric utilities.

[N.H.] Statement, by the commission, that conservation and load management (C&LM) is an important and valuable utility resource because of the benefits it can confer on ratepayers and stockholders over the long term; such benefits accrue to the extent that C&LM represents an efficient and economic utilization of utility and society resources to meet electricity needs. p. 539.

APPEARANCES: Cynthia A. Arcate, Esq. on behalf of Granite State Electric Company; Merrill and Broderick by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; Rath, Young, Pignatelli & Oyer by Eve Oyer, Esq. on behalf of Northeast Utilities Service Company; Thomas B. Getz, Esq. and Sulloway, Hollis and Soden by Margaret H. Nelson, Esq. on behalf of Public Service Company of New Hampshire; LeBoeuf, Lamb, Leiby & MacRae by Paul B. Dexter, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; Denise R. Johnson, Esq. on behalf of Connecticut Valley Electric Company; Armond Cohen, Esq. on behalf of the Conservation Law Foundation; Joseph W. Rogers, Esq., Assistant Consumer Advocate, on behalf of the residential ratepayers; and Audrey A. Zibelman, Esq. and James T. Rodier, Esq. on behalf of the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On October 18, 1989, the commission issued an order of notice opening a generic investigation into financial incentive for conservation and load management (C&LM) as a result of a C&LM cost recovery proposal which included a financial incentives component filed by Granite State Electric Company (GSEC) on September 1, 1989. The commission found that it was appropriate to investigate the issue of financial incentives for C&LM in a generic docket for all electric utilities rather than to do so a piecemeal basis. The order of notice made GSEC, Public Service Company of New Hampshire (PSNH), the New Hampshire Electric Cooperative,

Inc. (NHEC), Connecticut Valley Electric Company (CVEC) and Concord Electric Company and Exeter and Hampton Electric Company (the UNITIL companies or UNITIL) mandatory parties to the generic proceeding.

On November 9, 1989 a prehearing conference was held in which the parties and the staff stipulated to a procedural schedule. The commission approved the procedural schedule by order no. 19,623 dated December 4, 1989, and its modification by secretarial letter on March

14, 1990.

On December 27, 1989 the Conservation Law Foundation (CLF) made a late-filed motion to intervene in the proceeding. No party objected to CLF's motion and it is hereby granted. CLF participated as a full party in the proceedings.

On March 12, 1990, Northeast Utilities Service Company (NUSCO) filed a petition for late intervention seeking to participate as a full party. By order no. 19,782 (75 NH PUC 215) dated April 9, 1990, the commission granted NUSCO's petition to intervene requiring it to file testimony by April 6, 1990 in accordance with the existing procedural schedule. The commission granted GSEC leave to file, by April 20, 1990, supplemental testimony solely for the purpose of distinguishing its circumstances from NUSCO and PSNH.

Hearings on the merits were held on June 5 and 6, 1990. GSEC, CLF, NUSCO/PSNH, UNITIL and CVEC filed briefs on June 15, 1990.

II. SCOPE OF THE PROCEEDING

[1] The commission's order of notice initiating this proceeding indicated that it was to be a "generic investigation of incentives for conservation and load management". Order of Notice, October 18, 1989, p.2. The issue of incentives for C&LM which had been raised by GSEC in its original proposal for C&LM cost recovery was a generic one which should be addressed first at a general level for all electric utilities and then at an individual utility-specific level. Threshold questions with respect to the appropriateness of financial incentives for, and the existence of disincentives to, C&LM implementation by utilities needed to be considered before the commission could rule on the reasonableness of any specific incentive proposal.

Testimony and proposals filed by the parties on January 12, 1990 and April 6, 1990 further defined the general issues for the commission's consideration by focusing on three areas: 1) recovery of the direct costs of C&LM program development and implementation; 2) recovery of "lost revenues" or "lost fixed costs" as a result of reduced electricity sales due to C&LM; and 3) the opportunity to earn an incentive, a financial reward over and above direct costs and lost revenues, for utility implementation of C&LM programs. In addition to these general issues, GSEC, CLF and staff addressed the specific GSEC incentive proposal. No other utility submitted a specific C&LM cost recovery or incentive proposal for commission approval.

Staff formalized its view of the scope of this proceeding and presented it for the other parties' and the commission's consideration at the prehearing conference on May 31, 1990. Staff identified the following issues as being before the commission for resolution:

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I. *Generic Issues*

A. Appropriateness of financial incentives for C&LM, where "financial incentives" refers to dollars over and above the incremental direct costs of C&LM and "lost revenues", if any.

B. The appropriate treatment and means of determination of "lost revenues", recognizing that they may present a disincentive to C&LM.

C. Review and evaluation of a shared savings approach to financial incentives for C&LM.

II. *Specific Issue*

Review and evaluation of specific shared savings incentive proposal for C&LM made and supported by GSEC.

At the prehearing conference, all of the parties except NUSCO/PSNH agreed with staff's presentation of the scope of the proceeding. NUSCO/PSNH proposed that a second specific issue related to its request for a finding in docket no. DR 89-244 on the recoverability of lost revenues and a formula for their determination be added to the scope of the instant proceeding. Staff and the other parties objected to NUSCO/PSNH's proposal to consider its lost revenues finding as a second specific issue in the instant proceeding. NUSCO/PSNH subsequently withdrew its request to expand the

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scope indicating its understanding that the issues it wanted to see addressed could be covered under staff's issue I.B as outlined above and that testimony and evidence could be presented sufficient to support the finding it would request from the commission in DE 89-187.

The commission finds that the staff articulation of scope is reasonable and we will use that outline as a guide to our deliberations.

A. *RECOVERY OF THE DIRECT COSTS OF C&LM IS NOT WITHIN THE SCOPE OF THIS PROCEEDING*

[2, 3] While several parties (NHEC, UNITIL, CVEC) refer to the recovery of the direct costs of C&LM program development and implementation in their testimony, the commission does not view it as an issue in this proceeding. The commission's policy on recovery of incremental direct costs for C&LM program development and implementation is clear and has been set forth in prior commission orders. *Re Granite State Electric Company*, 75 NH PUC 55 (1990); *Re New Hampshire Electric Cooperative, Inc. et al.*, 75 NH PUC 200 (1990). The commission has found that electric utilities are entitled to recovery of prudent incremental direct costs of C&LM programs which have been shown to be cost-effective and consistent with the principles of least cost integrated resource planning. Utilities may seek recovery of direct costs in the context of a base rate case or they may propose some other mechanism, *e.g.*, one similar to that approved for GSEC in DR 89-154.

If any individual utility has a question about the recoverability of direct costs for its C&LM program, it may petition the commission for consideration of its particular circumstances. As no

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utility has a specific C&LM program before the commission in this proceeding (with the exception of GSEC as discussed later), the commission views the question of recovery of direct costs as outside the scope of this proceeding.

B. *RECOVERY OF LOST REVENUES AND THE APPROPRIATENESS OF FINANCIAL INCENTIVES ARE WITHIN THE SCOPE OF THIS PROCEEDING*

The first general issue before the commission is whether C&LM programs result in costs to the utility beyond the direct costs of the programs and whether these costs should be recoverable. Whether utilities should be allowed to recover these costs depends on whether the utility is left less than whole if they are not recovered. These costs may include what has been referred to as "lost revenues" or "lost fixed cost recovery". They may also include a lost or reduced opportunity for a utility to maintain its financial strength.

The second general issue before us, and the primary focus of this proceeding, is whether and in what circumstances financial incentives for utility implementation of C&LM programs may be appropriate. Here financial incentives refer to payments to utility stockholders over and above the directs costs of C&LM, any lost revenues that may exist due to C&LM, and any other costs incurred by the utility as a result of C&LM. The characteristic feature of a financial incentive as distinguished from recovery for costs incurred by the utility is that it is payment to the utility, over and above costs, that leaves the utility something more than whole. We will consider a shared savings approach to financial incentives for C&LM and GSEC's specific proposal in this contest.

C. *GSEC'S SPECIFIC INCENTIVE PROPOSAL IS WITHIN THE SCOPE OF THIS PROCEEDING*

The one specific issue before the commission is GSEC's particular incentive proposal and we will address it within the framework we have defined for the general issues.

III. POSITIONS OF THE PARTIES

A. *GRANITE STATE ELECTRIC COMPANY*

GSEC does not address the issue of lost

revenues or lost fixed cost recovery other than to suggest that the issue of lost revenues is utility-specific and therefore beyond the scope of the instant proceeding. Rather, GSEC focuses on the question of the appropriateness of financial incentives for C&LM and the specifics of its own incentive proposal.

1. *The Appropriateness of Financial Incentives*

GSEC takes the position that the appropriateness of financial incentives for C&LM should be determined on a case-by-case basis and argues that it "has shown that its specific proposal is an appropriate financial incentive for a utility with a C&LM program of its design, scale and level of implementation." Brief at 3. However, GSEC does offer several arguments in favor of financial incentives which can be characterized as general in nature and applicable beyond

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GSEC's particular circumstances.

GSEC contends that financial incentives for C&LM are necessary because cost recovery for C&LM has a "significant effect on the economic and financial structure of the utility which is very different from the effects of generation." The utility looks less profitable because there is less margin, *i.e.*, return is calculated on fewer and fewer dollars; there are no utility assets behind C&LM; higher costs of capital can result; and the utility's competitiveness within the industry can be hurt. Brief at 4-5. Financial incentives are necessary to overcome these structural problems.

GSEC further argues that financial incentives are appropriate, if properly designed, "to provide a positive signal to utilities to assure that the most effective C&LM measures are implemented." Brief at 6. GSEC "believes that incentives do in fact make sure that the right least cost decisions are made even for a utility that has already endeavored to implement an aggressive and comprehensive C&LM program." GSEC quotes Mr. Schnitzer, CLF's witness, saying that incentives are a small price to pay for the extra benefits that the ratepayer will obtain by virtue of better resource planning decisions being made. Day I, Tr. 82.

2. *The GSEC Incentive Proposal*

GSEC has proposed a two part C&LM incentive based on a shared savings approach. The first part is a fixed "Maximizing" Incentive of 5 percent of the total value created by the program where value is based on the utility's long run avoided costs. The second part is the "Efficiency" Incentive equal to 10 percent of the difference between the value of the kilowatts and kilowatthours saved less the cost of producing the savings, including the cost of the Maximizing Incentive. Brief at 8. The incentive proposal is performance based in that GSEC earns the incentive only when kilowatts and kilowatthours are actually saved.

GSEC proposes to collect the Maximizing Incentive prospectively based on the savings its C&LM program is projected to produce, and the Efficiency Incentive retrospectively after GSEC calculates the actual costs of its 1990 C&LM program. GSEC argues that prospective collection of the Maximizing Incentive is important to send appropriate and timely signals to employees and that the proposal includes provisions to guard against over/undercollections. Brief at 13. The incentive would be collected from the first kilowatt and kilowatthour saved.

GSEC argues that its incentive "proposal is designed to encourage the company to maximize the amount of C&LM achievable in the most efficient manner possible" in that it is performance based, takes into account costs and assures that the Company has an incentive not to "cream skim". Brief at 8. GSEC also notes that its incentive proposal "includes a detailed and inclusive approach to the calculation of benefits or value for its program" as recommended by staff and that staff's generic concerns about avoided costs do not apply because GSEC's power needs are met by its wholesale supplier whose rates are marginal cost-based. GSEC acknowledges that concerns raised by staff about the effects of the Maximizing Incentive "are not unwarranted", but contends that it guards against "cream skimming" and the lost opportunities that causes. Brief at 11-12.

GSEC argues that minimum performance thresholds for earning incentives are not

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appropriate, first, because they have the perverse effect of penalizing utilities like GSEC who have already implemented C&LM, and second, because of GSEC's small size. However, GSEC indicates that it is willing to work with staff to develop a threshold proposal to be applicable to its 1991 CL&M program. GSEC believes no threshold should apply to its 1990 program because it has more than met staff's standard of demonstrating a "good faith effort". Brief at 10; Day I, Tr. 81.

B. *CONSERVATION LAW FOUNDATION*

1. *The Appropriateness of Financial Incentives for C&LM and Recovery of Lost Revenues*

CLF argues that ratemaking treatment of C&LM investments should be customized to each utility's program, first, because of the enormous variation among utilities in the mechanical relationship between C&LM investments and rates, bills, and shareholder profit, and second, because, as a matter of public policy, incentives, lost revenue, and other extraordinary ratemaking treatments should only accompany a specific C&LM program which offers extraordinary benefits. CLF urges the Commission to refrain from granting a general entitlement to new C&LM ratemaking treatments in the absence of specific programs that make substantial progress towards developing the full conservation potential in the state. Brief at 1. CLF states that the commission should only indicate in this docket the general considerations that will in the future support special ratemaking treatment of C&LM investments. Brief at 3.

2. *The GSEC Incentive Proposal*

CLF recommends that the commission approve the GSEC incentive proposal as submitted. Brief at 3. CLF argues that the GSEC incentive proposal meets the threshold test for extraordinary ratemaking treatment because "it is coupled to an actual C&LM program that will substantially reduce the cost of energy services to utility customers, and it will provide important real world information on the level of practically available conservation." Brief at 1-2. CLF supports GSEC's arguments that its incentive will address the utility economic and financial structure problem posed by C&LM investments, and will assure that the right resource planning decisions are made. Brief at 2.

CLF further recommends that the commission approach with caution the application of minimum performance thresholds, seconding GSEC's argument that it would be unfair and counter-productive to penalize utilities like GSEC who have outperformed their peers. CLF suggests tying any performance threshold for GSEC to the level of C&LM effort made by other utilities in New Hampshire over the last two to three years. Brief at 3.

C. *NORTHEAST UTILITIES/PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE*

NUSCO/PSNH believe that the rationales for financial incentives for C&LM are to encourage utilities to implement cost-effective C&LM that yields long term savings and other benefits to ratepayers and, as a tool of public policy, to direct utility investment in conservation measures that "further societal goals other than least cost planning". Brief at 1-2. NUSCO/PSNH argue that traditional ratemaking practices encourage utilities to select supply rather than demand options to meet service load, because they make supply measures more profitable and

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that incentives can "level the playing field" between utility returns on supply and demand options." Brief at 2.

1. *Recovery of Lost Revenues*

NUSCO/PSNH argue that the commission should provide a workable definition of lost revenues in the instant docket and in their request for findings propose the following:

> For purposes of this proceeding, the term "lost revenues" (also known as "lost fixed cost recovery") means the net revenue impact of documented reduced sales due directly to utility C&LM programs. Lost

> revenues equate to the portions of utility rate prices that contribute to recovery of utility fixed costs. In calculating a utility's lost revenues, the impact of any applicable automatic rate adjustment mechanisms (such as ECRM, FPPAC, FAC[1(51)] , etc.) must be taken into account. The intent of the calculation of lost revenues is to restore the utility's net income to the level that would have occurred without the loss of sales from utility C&LM programs.

Brief at 5.

NUSCO/PSNH contend that a definition of lost revenues is crucial to resolve a key ambiguity in the Rate Agreement between the State of New Hampshire and NUSCO. They also argue that their proposed definition of lost revenues offer three advantages: 1) it gives utilities and their investors a solid understanding of what lost revenues will constitute in New Hampshire; it would not limit the commission, staff or utilities in tailoring detailed lost revenue measures to specific C&LM programs; and it is substantively correct. Brief at 5-6.

NUSCO/PSNH state that the commission should find that lost revenues will be recoverable pursuant to specific recovery mechanisms designed in connection with actual C&LM programs and that lost revenues must be documented as really lost due to the utility programs. Brief at 7-8. They argue that the commission should not determine that lost revenues will be reduced by the "opportunity value" of freed-up capacity that could possibly be sold, or by C&LM programs that in addition to providing system benefits also enhance the value of service provided to specific customers and thereby contribute to their decisions to remain customers of PSNH. Finally, NUSCO/PSNH not that the specific rate structure of a utility must be accounted for in structuring lost revenue recovery. Brief at 9-11.

2. *The Appropriateness of Financial Incentives*

NUSCO/PSNH raise issues similar to GSEC's regarding the financial implications for utilities of C&LM implementation. NUSCO/PSNH argue that "under traditional ratemaking methodologies, a utility will only realize profit if it invests in supply measures" and that "C&LM forces the utility to forego profit that would have been available had supply measures, rather than C&LM measures, been utilized." Brief at 11. NUSCO/PSNH contend that C&LM will reduce a utility's net profit, return on equity and stock value, essentially increasing its cost of capital. Brief at 12. They further argue that in fairness, if utilities are directed to utilize their own resources and expertise "to implement programs important to the Commission or the State", they

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should be treated in a manner similar to other private companies providing C&LM service to ratepayers. Brief at 13.

NUSCO/PSNH echo GSEC's and CLF's views that mechanisms for calculating and providing incentives to utilities need to be utility-specific, and argue that a return on C&LM investments should be sufficient to provide a meaningful incremental contribution to utilities' overall returns on equity. Brief at 13.

NUSCO/PSNH agree with staff that shared savings approaches to incentives, properly designed, are effective and preferable to return on equity adjustments and other indirect incentives. Brief at 14. They suggest that the Western Massachusetts Electric Company (Northeast Utilities' Massachusetts subsidiary) program "can provide a model for structuring an effective C&LM incentive program for PSNH" but do not offer a PSNH-specific proposal at this time. Brief at 14. Like GSEC and CLF, NUSCO/PSNH caution against the setting of performance thresholds, noting that "some types of societal goals" will be harder to pursue through C&LM if there are thresholds and arguing that if the incentives are properly structured, thresholds are unnecessary. Brief at 15-16.

Additionally, NUSCO/PSNH request that the commission make six findings of fact which are discussed *infra*.

D. *THE UNITIL COMPANIES*

The UNITIL companies support the development of policies and procedures for incentives and cost recovery for C&LM indicating

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that their primary concern is with recovery of "all program costs". Brief at 2-3.

1. *Recovery of Lost Revenues*

UNITIL supports full recovery of net lost revenues associated with C&LM. It does not believe that utilities experience little or no lost revenues if rates are based on marginal cost principles and requests that the commission "not rely on rate design as the sole means for utilities to recover lost revenues". Brief at 4-5.

2. *The Appropriateness of Financial Incentives*

The UNITIL companies support the concept of incentives for C&LM and generally support the proposal of GSEC, but urge the commission to be flexible in any policy it may adopt. Brief at 5.

E. *CONNECTICUT VALLEY ELECTRIC COMPANY*

CVEC supports financial incentives for C&LM but indicates that recovery of lost revenues is its critical issue. CVEC sees lost revenues as "a powerful disincentive to the aggressive pursuit of conservation". Memorandum at 4. In support of its position, CVEC requests the following findings of fact based on the evidence it cites:

Recovery of Lost Revenues

1. Effective C&LM leads to a reduction in electricity sales.

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2. Reduced sales of electricity lead to a reduction in both utility revenues and costs.

3. When rates exceed marginal costs, C&LM programs tend to reduce revenues by more than they reduce costs.

4. Under traditional ratemaking, revenues lost due to C&LM programs will not be recovered for the period of "regulatory lag" between rate adjustments.

5. C&LM programs for utilities whose rates exceed marginal costs result in lost revenues.

6. Lost revenues provide a disincentive to aggressive implementation of utility C&LM programs.

7. Marginal cost pricing mitigates, but does not eliminate, the problem of lost revenues.

8. Embedded revenue requirements may exceed the total marginal cost of service so that even with marginal cost based rates, lost revenues will still occur.

9. Rate redesign to marginal cost based pricing should not be a prerequisite for recovery of lost revenues due to C&LM, if circumstances make a move to marginal cost pricing undesirable.

10. Recovery of lost revenues leaves a utility in the same financial position it would have been in if it had not implemented C&LM programs.

The Appropriateness of Financial Incentives

11. Since recovery of lost revenues leaves a utility indifferent to C&LM versus supply options, a positive incentive is necessary to accomplish aggressive C&LM implementation.

12. Positive financial incentives for C&LM send very strong signal to utilities that the commission is concerned about utility implementation of cost-effective C&LM.

13. Financial incentives set the framework in which utility acting in its own best interest also carries out the public policy adopted by the commission and the state.

14. Financial incentives can be tied directly to utility C&LM performance and effectively allow it to earn an additional return.

15. Financial incentives are more appropriate and more effective in influencing utility behavior than commission "micro-management".

16. Appropriate financial incentives for C&LM will vary by utility and should be determined on a case-by-case basis.

17. A shared savings approach to incentives is appropriate for all New Hampshire utilities, but specific elements, including determinations of program value, cost,

percentage of savings retained, and performance standards, should be determined for each utility on a case-by-case basis.

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18. To recover financial incentives, over and above direct costs and lost revenues, a utility must demonstrate a good faith effort to implement C&LM aggressively.

19. Failure to achieve a minimum target level of savings should not bar a utility from recovery of financial incentives and, under no circumstances, preclude recovery of direct costs and lost revenues.

Request for Findings at 1-4.

CVEC rejects quantitative performance standards. It argues that incentives should be earned for every kilowatthour saved so that a utility pursuing C&LM but not achieving a target is not treated in the same manner as a utility not pursuing C&LM at all, and the implementation of more innovative, untested programs is not discouraged. Memorandum at 6. CVEC suggests that the commission measure a utility's good faith effort to implement C&LM when the utility seeks recovery of the incentive, answering essentially the same questions as a prudence examination. Alternatively, CVEC proposes an incentive system with performance standards that would reward a utility for all kilowatts and kilowatthours saved but at an increasing rate as more savings are achieved. Memorandum at 7.

F. *THE NEW HAMPSHIRE ELECTRIC COOPERATIVE*

NHEC testified that it does not believe financial incentives for C&LM are appropriate for a cooperative because its ratepayers and owners are one and the same. Exh. NHEC-1 at 2. NHEC indicates that if its financial goals (margin requirement, maintenance of adequate equity level) are being met it needs no further incentive to pursue cost-effective C&LM programs. Exh. NHEC-1 at 2. NHEC is most concerned about lost revenues and the timing of cost recovery for C&LM expenditures. Exh. NHEC-1 at 3.

G. *THE COMMISSION STAFF*

The commission staff presented testimony on the issues of the appropriateness of financial incentives for C&LM, recovery of lost revenues, the shared savings approach to financial incentives and GSEC's specific incentive proposal. Exh. PUC-1.

1. *Recovery of Lost Revenues*

Staff testified that lost revenues due to C&LM programs are a disincentive to C&LM implementation and that, under certain conditions, compensation should be allowed for them. Staff characterized these conditions as considerations that should be taken into account in the calculation and determination of lost revenues. Day II, Tr. 45. They are:

(1) lost revenues must be documented as really lost due to C&LM;

(2) a utility's rate design and movement toward marginal cost based rates must be considered in calculating lost revenues;

(3) a utility's C&LM programs must be evaluated consistently with marginal and avoided costs and designed to maximize savings of kilowatthours and kilowatts that have the highest marginal costs.

Exh. PUC-1 at 16-18.

Staff also indicates that if a utility can sell capacity or energy that is available because of

C&LM implemented by that utility, and the revenues from those sales are retained by the utility, the utility should credit those revenues in any calculation of lost revenues due to C&LM. Day II, Tr. 54. Additionally, staff defines reduced revenues from customers for whom the utility implemented C&LM in order to keep them on the system as revenue retention rather than revenue loss and not recoverable as a cost of C&LM. Day II, Tr. 54-55. Lastly, staff does not include in lost revenues "secondary effects" of any reduced sales as a result of electricity price increases from passing on to ratepayers the costs of C&LM. Day II, Tr. 55.

Staff agreed with NUSCO/PSNH that, as a general matter, the intent of any calculation of lost revenues and consequent recovery of them is to restore the company's net income to the

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level that would have occurred without the loss of sales due to the C&LM programs. Day II, Tr. 60.

2. *The Appropriateness of Financial Incentives*

Staff does not make a specific recommendation regarding financial incentives for C&LM. It expresses two concerns and discusses several potential advantages.

First, staff asks whether utilities are asking for financial incentives to do what prudent resource planning and utility operations would already require them to do. In particular, staff points out that GSEC's parent company's resource plans indicate that C&LM has been a high priority for its system for several years and that the direct costs of C&LM have already been incorporated into rates. Exh. PUC-1 at 7.

Staff's second concern is with the relationship of incentives for C&LM to return on equity and risk. Staff believes that utilities should not be rewarded twice for implementing C&LM: once, through an incentive mechanism, and again through an additional return on equity. Staff also takes the position that once C&LM has become a routine part of utility business, special incentives would not be appropriate. Exh. PUC-1 at 10.

On the other hand, the potential advantages to incentives for C&LM are that they would send a strong signal to utilities about how important the commission considers aggressive implementation of cost-effective C&LM; they may provide a more efficient and effective means of ensuring that utilities move forward with C&LM than vigilant regulatory oversight; and they can be used to correct disincentives to C&LM in the traditional utility framework. Exh. PUC-1 at 11-12.

Staff prefers a shared savings approach to incentives because it is direct and performance based. Exh. PUC-1 at 18-19. Also, it can be applied generally to all of the utilities, although specific elements should be tailored to each utility's situation. Exh. PUC-1 at 22. Staff testified that a shared savings approach should base the calculation of the value of savings on long term avoided or marginal costs and should take into account the costs of achieving those savings. Day II, Tr. 53.

Staff recommends that, "[i]f the commission decides to approve a shared savings approach to incentives, the utilities should be required to provide detailed documentation of their calculations of value, and demonstrate their consistency with other avoided cost-based rates and payments.

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The utilities should also be required to determine the value of C&LM savings based on when they occur." Exh. PUC-1 at 20. With respect to measuring savings, staff believes that actual measurements are preferable to estimates. However, in the near term staff recommends that the utilities be allowed to base their initial savings calculations and incentive payments on estimates with the requirement that they develop methods for measuring actual savings within a reasonable time frame. Exh. PUC-1 at 21.

Staff also recommends that the commission set a minimum performance threshold for C&LM implementation before utilities can earn incentives as a means of objectively determining what constitutes a good faith effort by the utilities. Exh. PUC-1 at 22.

3. *The GSEC Incentive Proposal*

Staff generally views GSEC's incentive proposal as acceptable (Exh. PUC-1 at 22), but suggests three modifications or conditions. First, staff sees a need for minimum performance thresholds in the GSEC proposal and indicates that it would be willing to work with GSEC to determine an appropriate performance threshold for it. Day II, Tr. 50.

Staff also expresses concerns about the impacts of the Maximizing Incentive component of GSEC's incentive proposal. Staff believes this component may introduce a distortion into the alliance of customer and company interests with respect to C&LM implementation and recommends that the commission require GSEC to study the impacts of the Maximizing Incentive further and report back on them. Exh. PUC-1 at 25-27; Day II, Tr. 49.

Lastly, staff argues that the Maximizing Incentive should be earned after the fact, like the Efficiency Incentive, to enable the

commission to determine whether the utility has achieved an acceptable minimum level of performance. Retrospective recovery would also forestall a potential psychological problem of reducing an incentive payment in one year because of poor performance in a prior year. Day II, Tr. 90-92.

IV. COMMISSION ANALYSIS

A. *GENERAL*

The commission commends the parties for the quality of their testimony and briefs. The issues before us are complex and deserve our careful and deliberate attention. C&LM program implementation is still a new function for most of New Hampshire's electric utilities and with this proceeding we have an opportunity to shape the scope and pace of its future development.

The Role of C&LM

[i] In prior proceedings, the commission has identified cost-effective C&LM as an important resource for electric utilities. *Re Public Service Company of New Hampshire, et al.*, 73 NH PUC 117 (1988); *Re UNITIL Service Corporation*, 74 NH PUC 357 (1989); *Re Public Service Company of New Hampshire*, 74 NH PUC 345 (1989); *Re Connecticut Valley Electric Company*, 74 NH PUC 334 (1989); *Re New Hampshire Electric Cooperative, Inc.*, 74 NH PUC 375 (1989); *Re Granite State Electric Company*, 75 NH PUC 55 (1990); *Re New Hampshire Electric*

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Cooperative, Inc. et al., 75 NH PUC 200 (1990). We view C&LM as an important and valuable utility resource because of the benefits it can confer on utility ratepayers, particularly over the long term. These benefits accrue to the extent that C&LM represents an efficient and economic utilization of the utility's and society's resources to meet electricity needs. Well designed and implemented C&LM programs not only benefit ratepayers, but should also benefit utility stockholders. Ensuring that this is the case is the subject of the instant proceeding.

[4, 5] The commission's interest in promoting C&LM is to capture its benefits for ratepayers, the utility and the public at large and to implement public policy as it relates to utility resource planning. *N.H. Law Ch. 226*. It is in this context that C&LM programs are "important to the Commission". NUSCO/PSNH Brief at 13. Least cost integrated resource planning is the means by which utilities can ensure that they are meeting their customers' needs with the most efficient utilization of society's resources.[2(52)] While utility ratepayers clearly benefit from cost-effective resource planning decisions, the general public concomitantly benefits when society's resources are used efficiently. The commission's interest is not in using the utility and its ratepayers as a means to achieving "societal goals *other than* [utility] least cost [integrated resource] planning", as suggested by NUSCO/PSNH (NUSCO/PSNH Brief at 2, emphasis added), but we recognize that societal benefits do exist as a consequence of C&LM implementation when it is part of prudent least cost planning.

[6, 7] The commission's role is to ensure that the utilities provide adequate, safe and reliable service to their customers at just and reasonable rates. Reviewing utility resource planning and requiring that utilities plan according to accepted least cost planning principles falls within that mandate. While least cost planning also serves concomitant societal goals, where a utility chooses to pursue resources for "societal goals" beyond those relevant to utility resource planning and where benefits accrue to the public as residents and citizens rather than as ratepayers, the commission does not expect that a utility will seek to pass the costs of those resources on to ratepayers. Our role is not to require that the pay for these benefits through their electricity rates. Our interest and the utilities' obligation and responsibility is to ensure that utilities develop C&LM to its full, cost-effective potential as a utility resource consistent with utility resource planning principles. The societal benefits that accrue are positive consequences but they cannot be used to justify utility resource decisions that are not economic for ratepayers.

[8] Staff refers to a "public policy" rationale for utility C&LM program implementation

when discussing the range of C&LM programs to be offered to ratepayers. Day II, Tr. 59. The public policy interest to which staff refers, that of assuring that low-income customers are served with C&LM as well as other customers, does fall within the commission's mandate. The issue is one of equity. To the extent that C&LM programs for the low-income are cost-effective, even if not the most cost-effective C&LM programs, they should be offered so that this class of customers has an opportunity to participate and benefit directly from C&LM. All customers benefit from wise least cost planning decisions made by utilities, but those customers who can participate directly in the C&LM programs offered benefit additionally, obtaining immediate savings to themselves in addition to the system savings seen by all customers.

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B. *RECOVERY OF LOST REVENUES*

[9-13] Utilities should be allowed to recover the prudently incurred costs of providing service to their customers To the extent that there are costs associated with C&LM program implementation that go beyond the direct costs of the programs, utilities should be "made whole", *i.e.*, they should at least be left in the same financial condition that would have occurred but for the implementation of the C&LM program. What has been referred to as "lost revenues" or "lost fixed cost recovery" falls into this category.

All of the parties to this proceeding have testified that where rates are higher than marginal costs or include a component to recover fixed costs, sales not made because of utility C&LM programs result in lost revenues to the utility. While the parties agree that lost revenues due to C&LM programs result in real costs to the utility, they differ in their views of the factors that should go into their determination and whether a general determination or definition of lost revenues can be fashioned in the absence of the specifics of a particular C&LM program.

The commission finds that lost revenues (lost fixed cost recovery) represent a cost to the utility of C&LM program implementation and as such are recoverable from ratepayers. We further find that the general definition of lost revenues proposed by NUSCO/PSNH is acceptable and we will adopt it for the purposes of this proceeding. The commission also finds that other factors, in addition to the impact of any applicable automatic rate adjustment mechanisms (such as ECRM, FPPAC, FAC), may need to be taken into account in specific utility circumstances. In particular, we find that rate design, the revenue impacts of sales made as a result of capacity and energy made available by C&LM savings, and whether C&LM programs have been undertaken as part of an integrated least cost resource plan or as a means to retain customers who would otherwise leave the system need to be considered in determining lost revenues. We will not set forth at this time how these, and other utility- and program-specific factors not enumerated here, would be factored into lost revenue recovery but will leave that to case-by-case consideration. The commission reiterates that our intent with respect to the recovery of lost revenues is to ensure that the utility is made whole for the costs of its C&LM programs and the point of comparison is what utility costs and revenues would have been absent utility C&LM.

C. *THE APPROPRIATENESS OF FINANCIAL INCENTIVES*

[14-18] The question of the appropriateness of financial incentives to utilities for implementation of C&LM appears to the commission to be less straightforward than the issue of lost revenue recovery. With lost revenues there is a consensus that utilities should be made whole; accordingly, these costs ought to be recoverable, and debate focuses on how to determine them. There is no such consensus with respect to financial incentives for C&LM. Two seemingly different rationales for financial incentives have been offered by the parties: one based on the indirect financial impacts C&LM program implementation can have on the utility, and the other based on providing the utility with a reward or positive incentive to pursue C&LM because of its benefits to ratepayers over the long term.

All of the utility parties, with the exception of NHEC, raise the issue that within a

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traditional ratemaking framework utilities are financially disadvantaged by pursuing C&LM as distinguished from supply-side resource options. They argue that return is earned on fewer dollars; there are no utility assets behind C&LM; net profit, return on equity and stock value will be reduced, all leading to higher costs of capital and a financially weaker utility. This rationale for financial incentives could be characterized as cost-based. That is, incentives are appropriate as compensation for real costs that utilities incur in pursuing C&LM.

The commission does not find this argument compelling as a rationale for incentives which we view as payments over and above costs. While there appears to be theoretical merit to the utilities' position, they offer little evidence to support it. In fact, on cross-examination GSEC, the utility whose parent company can be said to have done the most with C&LM over the last several years, acknowledged that "over the last fifteen years [it] ... has significantly out-performed every other electric utility in the Northeast with regard to shareholder value." Day I, Tr. 30.

The second rationale for financial incentives is more persuasive, especially as captured in CLF's brief. It is also consistent with our view of our policy interest in C&LM. This rationale argues that incentives "should only accompany a specific C&LM program which offers extraordinary public benefits". CLF Brief at 1. Prudent management requires that utilities make least cost planning decisions and pursue C&LM programs to the extent that they are consistent with those decisions. Incentives should not be given as a matter of course for what is prudent utility operation. However, in many planning decisions there are ranges of reasonableness. Within that range there are alternatives that benefit both ratepayers and stockholders although perhaps to differing degrees. It is utility management's responsibility to choose among the options in that range. When utility managers choose options that offer extraordinary benefits for ratepayers, something over and above what prudent utility management requires, financial incentives may be warranted. To the extent that the commission wishes to influence utility decisions within that range of reasonableness, to secure benefits for ratepayers that would not occur in ordinary circumstances, it is appropriate to offer utility managers financial incentives. Viewed from this perspective, the second rationale for financial incentives may capture some of the first. An incentive to capture extra benefits for ratepayers may overcome utility managers' and stockholders' perceptions of financial loss from pursuing C&LM.

The commission finds that financial incentives for utility implementation of C&LM are warranted where the utility can demonstrate that the C&LM program for which it seeks incentive payments offers extraordinary benefits to ratepayers over the long term. These benefits should be over and above what would accrue to ratepayers with prudent utility management. Where decisions are made within a range of reasonableness, the utility should demonstrate that they have been made towards the end of the range which provides greater benefits to ratepayers.

The above rationale raises the issues of quantifying C&LM savings and determining what constitutes extraordinary benefits to ratepayers. These issues are best resolved by providing that any incentive for utility C&LM implementation be performance based; that is, incentives earned must be tied to savings for ratepayers achieved by the C&LM program. Incentive mechanisms must also take into account both the value of savings and the costs of achieving them.

The savings from utility C&LM programs must be quantified, not only to earn an incentive,

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but also to justify recovery of direct costs and lost revenues. This argues for actual measurement of savings. However, the commission notes that at the current stage of C&LM development and implementation, actual measurements are not readily available. We will therefore adopt staff's recommendation that utilities be allowed to base their initial savings calculations on estimates but that they must commit to developing a method for measuring actual savings within a reasonable time frame. What constitutes a reasonable time frame will be decided on a case-by-case basis as specific utility C&LM programs come before us for review.

Staff also raises several considerations

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regarding the determination of the value of C&LM savings, that is, the dollar value per kilowatt and kilowatthour saved as distinguished from the number of kilowatts and kilowatthours saved. In addition, staff and the other parties raise concerns that particular methodologies or mechanisms for providing incentives must be utility- and program-specific. Therefore, the commission will not set forth a particular method for calculating the value of C&LM savings or providing incentives at this time. We simply note that the considerations raised by staff will be taken into account in the quantification of savings and determination of incentives for specific utility C&LM programs as they are proposed.

The commission is still left with the task of identifying what constitutes "extraordinary" benefits to ratepayers. Staff proposes minimum performance thresholds as one way of differentiating a level of utility performance that warrants the payment of incentives. Exh. PUC-1 at 21. The utility parties and CLF express concerns that minimum performance thresholds may be counterproductive, penalizing utilities that have already engaged in extraordinary C&LM measures and making others more, rather than less, reluctant to begin. CLF suggests that the most that can be required is a threshold "pegged to the level of C&LM effect made by other utilities in New Hampshire over the last two-three years". CLF Brief at 3.

The commission finds that in order to determine whether financial incentives for C&LM should be paid to utilities both a quantification of benefits/savings to ratepayers and a minimum performance threshold are necessary. A minimum performance threshold is necessary to differentiate the extraordinary from average prudent performance. A number of questions have been raised, but the issues relating to the setting of performance thresholds have not been explored fully in this proceeding. Therefore, while the commission finds that meeting a minimum performance threshold is necessary before a utility can earn financial incentives for C&LM, we will leave the determination of thresholds to future reviews of utility-specific C&LM programs. We will require utilities to include with any requests for financial incentives for C&LM, proposals for setting appropriate minimum performance thresholds for their circumstances.

To respond to a concern raised by CVEC (CVEC Memorandum at 8), failure to meet minimum performance threshold will not jeopardize a utility's recovery of the direct costs of C&LM or lost revenues for a C&LM program that has been approved by the commission in the course of a least cost planning review or a separate cost recovery proceeding.

D. *THE GSEC INCENTIVE PROPOSAL*

[19-20] The one specific issue before the commission for resolution in this proceeding is approval of GSEC's proposed incentive mechanism. Given the framework developed herein, the first question to be answered is whether GSEC's C&LM program offers extraordinary benefits.

Both GSEC and CLF argue that the GSEC C&LM program does offer extraordinary benefits to ratepayers. They further argue that providing incentives to GSEC will ensure that its program continues to provide and expand on these benefits. The commission's review of the GSEC program leads us to concur. GSEC's C&LM program is comprehensive serving all ratepayer classes and GSEC has demonstrated a commitment to C&LM by planning, developing and undertaking this program earlier than most of the other utilities in New England.

Therefore, the commission approves the GSEC incentive proposal with the following conditions:

(1) GSEC will study the impacts of the Maximizing Incentive and report to the commission by June 30, 1991. Because we are already over six months into 1990 and only one month away from GSEC's 1991 C&LM filing, we will not require a report on GSEC's findings with that filing.

(2) GSEC will propose with its 1991 C&LM filing a method for setting an objective minimum performance threshold for the earning of incentives if it wishes to earn incentives for its 1991 C&LM program.

(3) GSEC will file with the commission

within twenty days of the date of this order a current estimate of its projected 1990 C&LM program's kilowatt and kilowatthour savings. The commission is aware from GSEC's monthly reports that actual expenditures for the program are running behind GSEC's original estimates.

(4) GSEC will meet with staff to attempt to develop a joint proposal to the commission for basing incentive payments for its 1990 C&LM program on the revised estimate of savings. Pending the successful development of a joint proposal, no minimum performance threshold for earning incentives will be applied to GSEC's 1990 C&LM program.

(5) If GSEC's current C&LM factor will be insufficient to recover its costs including the incentive, GSEC will file revised tariff pages reflecting the inclusion of the incentive within thirty days of the date of this order.

(6) GSEC will file testimony with its 1991 C&LM program addressing the issue of the timing of the payment of the Maximizing Incentive. The commission will determine in that proceeding whether it should be paid prospectively or like the Efficiency Incentive. For 1990 it will be treated as if paid prospectively.

V. FINDINGS

NUSCO/PSNH and CVEC have submitted requests for the commission to make certain findings with respect to the issues in the instant proceeding.

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A. *NUSCO/PSNH'S REQUEST FOR FINDINGS*

NUSCO/PSNH's requested findings, filed as an attachment to their Brief dated June 15, 1990, are:

1. For purposes of the Findings set forth below, the term "lost revenues" (also known as "lost fixed cost recovery") means the net revenue impact of documented reduced sales due directly to utility conservation and load management ("C&LM") programs. Lost revenues equate to the portions of utility rate prices that contribute to the recovery of utility fixed costs.

2. For purposes of the Findings set forth below, the term "appropriate incentive" means a utility recovery in addition to its costs (including lost revenues), designed to provide the utility with a meaningful incremental contribution to such utility's overall returns on equity.

3. In calculating a utility's lost revenues, the impact of any applicable automatic rate adjustment mechanisms (such as ECRM, FPPAC, FAC, etc.) must be taken into account. The intent of the calculation of lost revenues is to restore the utility's net income to the level that would have occurred without the loss of sales from utility C&LM programs.

4. The level of detail used for calculating lost revenues and any other authorized C&LM investment incentive for each utility should be based on case-by-case analyses. For example, such analyses could include, but not be limited to, an evaluation of whether time-differentiated sales reductions and rate prices or averaging techniques would be appropriate consistent with existing data and data made available through each utility's particular monitoring and evaluation plan.

5. In the event that electric utilities undertake and implement C&LM programs approved or directed by this Commission, such utilities' rates shall be adjusted as necessary to recover fully any resultant lost revenues.

6. In the event that electric utilities undertake and implement C&LM programs approved or directed by this Commission, such utilities' rates shall be adjusted as necessary to recover, in addition to the costs and lost revenues of such programs as defined by this Commission, appropriate incentives.

NUSCO/PSNH's requested findings are consistent with the foregoing report and analysis and are hereby approved with the following modifications.

The commission approves finding #2 subject to the general framework for incentives that

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we set forth in this report and the clarification that compensation for lost revenues is a separate issue from the establishment of appropriate incentives. Additionally, whether a utility actually achieves "a meaningful incremental contribution" to its return on equity will depend its C&LM program performance. The commission has endorsed the concept of performance-based incentives where the amount of incentive earned depends on the C&LM savings and benefits actually achieved.

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In finding #4, NUSCO/PSNH offer an example of a case-by-case analysis of lost revenues where "an evaluation ... would be appropriate consistent with existing data and the data made available through each utility's particular monitoring and evaluation plan." The commission approves this finding with the modification that we may also require utilities to acquire new data in order to calculate lost revenues at a level of detail we determine to be appropriate.

B. *CVEC'S REQUEST FOR FINDINGS*

CVEC's requested findings, listed *supra*, are approved to the extent that they are consistent with the foregoing report and analysis.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby

ORDERED, that lost revenues (lost fixed cost recovery), as defined in the commission analysis in the foregoing report, represent a recoverable cost to utilities of conservation and load management (C&LM) program implementation to the extent that such recovery is reasonable and consistent with the public good; and it is

FURTHER ORDERED, that the general definition of lost revenues proposed by Northeast Utilities Service Company and Public Service Company of New Hampshire (NUSCO/PSNH) is reasonable and consistent with the commission analysis in the foregoing report and is hereby adopted; and it is

FURTHER ORDERED, that the commission will consider factors, including *inter alia*, rate design, the revenue impacts of sales made as a result of capacity and energy made available by C&LM savings, and whether C&LM programs have been undertaken as part of a least cost integrated resource plan or to retain customers who would otherwise leave the system, as well as those identified in NUSCO/PSNH's general definition of lost revenues, in its determination of recoverable lost revenues; and it is

FURTHER ORDERED, that financial incentives for utility implementation of C&LM programs, which are defined as payments to a utility over and above its costs where costs include direct costs and lost revenues, are warranted and consistent with the public good where the utility can demonstrate that the C&LM program for which it seeks incentive payments offers extraordinary benefits to ratepayers over the long term; and it is

FURTHER ORDERED, that financial incentives for utility implementation of C&LM programs be performance based, take into account both the value of the C&LM savings achieved and the costs of achieving them; and it is

FURTHER ORDERED, that as a condition of the continuing ability to earn incentives, the savings from utility C&LM programs be quantified such that a utility may initially earn financial incentives based on estimates of savings, but must commit to developing a method for measuring actual savings within a reasonable time as discussed in the foregoing report; and it is

FURTHER ORDERED, that minimum performance thresholds be required as a prerequisite for earning financial incentives; and it is

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FURTHER ORDERED, that any utility seeking to earn a financial incentive for C&LM submit with its request a proposal for appropriate minimum performance thresholds; and it is

FURTHER ORDERED, that Granite State Electric Company's incentive proposal is reasonable and consistent with the commission analysis in the foregoing report and the public good and is hereby approved with the following conditions:

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1. GSEC will study the impacts of the Maximizing Incentive and report to the commission by June 30, 1991.

2. GSEC will propose with its 1991 C&LM filing a method for setting an objective minimum performance threshold for the earning of incentives if it wishes to earn incentives for its 1991 C&LM program.

3. GSEC will file with the commission within twenty days of the date of this order a current estimate of its projected 1990 C&LM program's kilowatt and kilowatthour savings.

4. GSEC will meet with staff to attempt to develop a joint proposal to the commission for basing incentive payments for its 1990 C&LM program on the revised estimate of 1990 program savings. Pending the successful development of a joint proposal, no minimum performance threshold for earning incentives will be applied to GSEC's 1990 C&LM program.

5. If GSEC's current C&LM factor will be insufficient to recover its costs including the incentive, GSEC will file revised tariff pages reflecting the inclusion of the incentive within thirty days of the date of this order.

6. GSEC will file testimony with its 1991 C&LM program addressing the issue of the timing of the payment of the Maximizing Incentive. For 1990 it will be treated as if paid prospectively; and it is

FURTHER ORDERED, that NUSCO/PSNH's request for findings submitted with their brief on June 15, 1990, is consistent with the commission analysis in the foregoing report and is hereby approved with the clarifications that compensation for lost revenues is a separate issue from the establishment of appropriate incentives, whether a utility achieves a meaningful incremental contribution to its return on equity depends on its C&LM program performance, and the commission may require utilities to acquire new data in order to calculate lost revenues at an appropriate level of detail; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company's request for findings, submitted with its memorandum on June 15, 1990, is hereby approved to the extent that it is consistent with the commission analysis in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 1990.

FOOTNOTES

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[1]Energy Cost Recovery Mechanism, Fuel and Purchased Power Cost Adjustment, and Fuel Adjustment Charge.

[2]Least cost integrated resource planning refers to an approach to utility resource planning that considers all resource options, both demand- and supply-side, evaluating them consistently and according to equivalent criteria. These criteria may include reliability, diversity, flexibility, and environmental, safety and economic factors *inter alia*, in addition to cost. *Re Public Service Company of New Hampshire et al.*, 73 NH PUC 117 (1988); *N.H. Law Ch. 226*.

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[Go to End of 51060]

75 NH PUC 545

Re Northern Shores Water Company

DE 90-055
Order No. 19,908

New Hampshire Public Utilities Commission

August 8, 1990

ORDER granting a temporary franchise to a water company and establishing temporary rates for water utility service.

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1. CERTIFICATES, § 125 — Water — Temporary franchise.

[N.H.] A temporary franchise was granted to a water company for the provision of utility service in a limited area; the company, which had been providing service in the area for approximately 20 years, initially had been exempt from applying for a franchise because prior to 1973, state statute provided that a water system serving less than 30 customers was not a public utility. p. 546.

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2. RATES, § 630 — Temporary rates — Grounds for granting — Water utility service.

[N.H.] Temporary rates were established for water service provided by a company that previously had been exempt from public service regulation; temporary rates at the level of its current charges were granted in consideration of the fact that without temporary rates the company would be providing service without compensation. p. 546.

By the COMMISSION:

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I. Procedural History

On February 5, 1990, Northern Shores Water Company (Northern Shores) filed a petition for authority to establish a water utility in a limited area in the Town of Tilton, New Hampshire pursuant to RSA 374:22; and implicitly, to establish rates, therefore, pursuant to RSA Chapter 378.

A prehearing conference was held on June 1, 1990, at which time the commission made Tilton Northfield Aqueduct Company (Tilton Northfield) a party to this proceeding.

By letter dated June 7, 1990, Northern Shores filed a petition for temporary rates. The company requested that temporary rates be set at the current level.

On June 25, 1990, the commission issued an Order of Notice scheduling a hearing for July 10, 1990, to address the petition for temporary rates. The temporary rate hearing was held in conjunction with the commission's hearing on Docket Number DE 89-197, Investigation of Tilton Northfield Franchise Rights, to ascertain the progress of Tilton Northfield towards serving the areas in Tilton known as Lochmere.

II. Positions of the Parties

Northern Shores claims it needs the revenues which would be generated through temporary rates to pay its operating expenses.

Tilton Northfield does not object to Northern Shores continuing to supply water service, operating as it has in the past, as long as it does not try to expand its water service area. Tilton Northfield does object to the proposed temporary rates.

Staff has no objections to the temporary franchise operation or to the granting of temporary rates at the current level of rates of Northern Shores.

III. Commission Analysis

[1, 2] Based on the evidence presented, we find that Northern Shores has been providing service to residents of a community on the shores of Silver Lake in Tilton, New Hampshire for approximately 20 years within the Tilton Northfield franchise area. It was initially exempt from applying for a franchise because prior to 1973, RSA 372:4, provided that a water system serving less than thirty customers was not a public utility.

Northern Shores is approximately four miles from the end of Tilton Northfield water lines. Tilton Northfield has never sought to acquire Northern Shores nor extend its mains to serve Northern Shores customers.

The evidence was that the service provided by Northern Shores is adequate. In addition, Northern Shores has approvals of the Department of Environmental Services as required by RSA 374:22.

In view of the evidence, and in consideration of the fact that without temporary rates Northern Shores will be supplying service without compensation, we believe it both fair and in the public interest to grant Northern Shores a temporary franchise. The purpose of the temporary franchise is to allow Northern Shores to charge temporary rates at the level of its current rates. This authority is of an interim nature and will expire at the conclusion of this proceeding should

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the commission determine that a permanent franchise shall not be awarded.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Northern Shores Water Company is granted a temporary franchise

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confined to the customer area that it presently serves; and it is

FURTHER ORDERED, that Northern Shores Water Company is granted the right to collect temporary rates at its current level; and it is

FURTHER ORDERED, that this order will be in effect until permanent service to the area is decided in on-going proceedings.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1990.

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NH.PUC*08/09/90*[51061]*75 NH PUC 547*Eastern Utilities Associates/UNITIL Corporation

[Go to End of 51061]

75 NH PUC 547

Re Eastern Utilities Associates/UNITIL Corporation

DF 89-085
Order No. 19,912

New Hampshire Public Utilities Commission

August 9, 1990

ORDER authorizing a party to a proceeding to review the proposed acquisition of one public utility holding company by another to premark certain exhibits and to move the entrance of the premarked exhibits into the record following the testimony of the witness sponsoring the exhibits.

EVIDENCE, § 16 — Admissibility — Premarked exhibits — Preservation of objections.

[N.H.] The commission authorized a party to a proceeding to review the proposed acquisition of one public utility holding company by another to premark certain exhibits and to move the entrance of the premarked exhibits into the record following the testimony of the witness sponsoring the exhibits; the right of any party to object to the introduction of the exhibits was specifically preserved.

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By the COMMISSION:

ORDER

The New Hampshire Public Utilities Commission having before it a request by Eastern Utilities Associates to premark certain exhibits to be used at the hearing of the above referenced matter, hereby orders as follows:

WHEREAS, the purpose of this proceeding is to allow the Public Utilities Commission to make a determination of whether Eastern Utilities Associates' (EUA) request for approval to acquire shares of UNITIL Corporation (UNITIL) is in the public interest under RSA 374:33 (1990); and

WHEREAS, proper determination of the public interest can best be achieved by a full and fair adjudication of material and relevant facts; and

WHEREAS, EUA has represented to the commission that the exhibits it is seeking to premark are necessary to the creation of a full and complete record for the commission's consideration and the information contained therein was not available prior to the time that EUA filed its direct case; and

WHEREAS, the premarking of exhibits lies within the commission's discretion; it is hereby

ORDERED, that EUA's proposed list of exhibits is accepted for identification purposes; and it is

FURTHER ORDERED, that EUA may move the entrance of the premarked exhibits into the record at the end of the oral testimony of the EUA witness whom the company has identified as the witness who will be sponsoring the exhibit; and it is

FURTHER ORDERED, that the right of any party to object to the introduction of any premarked exhibit is specifically preserved.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1990.

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NH.PUC*08/10/90*[51062]*75 NH PUC 548*Spring Wood Hills Water Company, Inc.

[Go to End of 51062]

75 NH PUC 548

Re Spring Wood Hills Water Company, Inc.

DE 90-051
Order No. 19,913

New Hampshire Public Utilities Commission

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August 10, 1990

ORDER adopting a schedule for a proceeding to review a petition for a franchise to provide water service and establish rates therefore.

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1. CERTIFICATES, § 158 — Procedure — Adoption of schedule — Water franchise petition.

[N.H.] The commission adopted a schedule for a proceeding to review a petition for a franchise to provide water utility service. p. 548.

2. RATES, § 640 — Procedure — Adoption of schedule — Water utility service.

[N.H.] The commission adopted a schedule for a proceeding to establish rates for water utility service associated with a petition for a franchise. p. 548.

APPEARANCES: Robert Fryer, Esq. on behalf of Spring Wood Hills Water Company, Inc.; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

[1, 2] On April 20, 1990, Spring Wood Hills Water Company, Inc. filed a petition to provide water service to a limited area in the Town of Derry, New Hampshire and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 13, 1990, the commission issued an order of notice setting a prehearing conference for July 27, 1990 to establish a procedural schedule and to address matters on intervention. At said hearing, the parties stipulated to the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Hearing on the Issue of Temporary Rates and Franchise.	August 30, 1990
Company Testimony on the Issue of Permanent Rates	August 30, 1990
Staff Data Requests	September 13, 1990
Company Responses to Staff Data Requests	September 27, 1990
Staff Testimony	October 25, 1990
Company Data Requests	November 8, 1990
Staff Responses to Company Data Requests	November 29, 1990
Settlement Conference	December 13, 1990
Hearing on the Merits	December 20, 1990

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The commission finds the above procedural schedule to be in the public interest.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the procedural schedule set forth in the foregoing report, be, and hereby is adopted.

By order of the Public Utilities Commission of New Hampshire this tenth day of August, 1990.

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NH.PUC*08/13/90*[51063]*75 NH PUC 549*Southern New Hampshire Water Company, Inc.

[Go to End of 51063]

75 NH PUC 549

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,915

New Hampshire Public Utilities Commission

August 13, 1990

ORDER granting a temporary rate increase for water utility service.

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1. RATES, § 81 — Powers of state commissions — Temporary rates — Reasonableness.

[N.H.] In any proceeding involving the rates of a public utility, the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding, reasonable temporary rates; provided, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property used and useful in the public service, less accrued depreciation. p. 551.

2. RATES, § 648 — Evidence — Burden of proof — Temporary rates.

[N.H.] The burden of proof to support a request for a temporary rate increase is on the utility requesting the increase. p. 551.

3. RATES, § 634 — Temporary rates — Evidence — Burden of proof — Water utility.

[N.H.] A request for a temporary increase in water utility rates was approved where the utility had proven by a preponderance of the evidence that it was entitled to temporary rate relief; however, the commission noted that its grant of temporary relief should not be construed as an adjudication of permanent rate issues, where a more stringent analysis of disputed issues would

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be performed. p. 551.

4. RATES, § 630 — Temporary rates — Factors affecting grant — Water utility.

[N.H.] In support of its grant of a temporary increase in rates for water utility service, the commission found that the utility had made significant capital improvements since its last rate order and was earning well below its last allowed rate of return. p. 551.

5. RATES, § 130 — Reasonableness — Character of service.

[N.H.] Under appropriate circumstances, lack of adequate service constitutes grounds for denying rate relief that may otherwise be supported. p. 551.

6. RATES, § 630 — Emergency rates — Factors affecting grant — Financial crisis — Water utility.

[N.H.] A temporary increase in water rates was granted where it was found that the utility was experiencing a "financial crisis" as that term was used by the New Hampshire Supreme Court in *Petition of Public Service Commission of New Hampshire*, 97 N.H. 549 (1951). p. 551.

APPEARANCES: Steven V. Camerino, Esq. on behalf of Southern New Hampshire Water Company, Inc.; Joseph Rogers, Esq. of the Office of the Consumer Advocate on behalf of the residential ratepayers; Leonard Smith and John Ratigan, Esq. on behalf of the Town of Hudson; Fay Halsband, on behalf of the Maple Hills Association; Susan Lawrence, Richard Lewis and Robert Comie on behalf of the Green Hills Association; and Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

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On December 1, 1989, Southern New Hampshire Water Company, Inc. (SNHW or Southern) filed a notice of intent to file rate schedules pursuant to N.H. Admin. Rules, Puc 1603.02. On January 5, 1990, Southern followed its notice with a submission of its full rate case. Said case was rejected pursuant to RSA 541-A:14 II(a)(supp.) by order no. 19,711 (February 12, 1990), because SNHW failed to file complete test year data, rate design information and a depreciation study.

On February 28, 1990, Southern filed a motion for reconsideration and rehearing of order no. 19,711. The motion was served on the Office of the Consumer Advocate (OCA or Consumer Advocate). The SNHW motion had attached a stipulation between Southern and commission staff dated February 16, 1990, which stipulation reflected certain commitments by Southern to supplement its filing and the position of staff with respect to the acceptability of those commitments. Over the March 7, 1990 objection of the OCA, the commission accepted the stipulation insofar as it provided that Southern supplement its filing.

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The stipulation also deferred the requirement for the filing of depreciation study. Since that requirement had been imposed by commission order, *Re Southern New Hampshire Company, Inc.*, 73 NH PUC 305, 314 (1988), (order no. 19,153), it could not be amended or modified without providing for notice and an opportunity to be heard pursuant to RSA 365:28. Such notice was provided by order no. 19,754 (75 NH PUC 169) and a hearing was scheduled and held on April 3, 1990. Subsequent to the issuance of order no. 19,754 and prior to the April 3, 1990 hearing, Southern filed a request for emergency rates pursuant to RSA 378:9 in a document labelled "study of depreciation".

At the April 3, 1990, hearing, Southern represented and the parties did not dispute that Southern had supplemented its filing to address all deficiencies specified in order no. 19,711 other than Southern's failure to file a depreciation study. Southern also requested that the document labelled as a "Study of Depreciation" be accepted as satisfying the commission requirement or in the alternative, the commission's requirement be waived. After review of the record and of the evidence and argument taken at the April 3, 1990, hearing the commission issued report and order no. 19,802 (75 NH PUC 243) (April 4, 1990) rejecting Southern's claim that the documents submitted satisfied the commission's requirement granting for a depreciation study and in the alternative its request that the requirement be waived.

On May 9, 1990, the OCA filed a motion for rehearing seeking: (1) rehearing of order no. 19,802; (2) dismissal of the instant docket until such time as Southern complies with order no. 19,153 in its entirety; and (3) such other relief as is just and proper. *See Motion* at 18-19. On May 14, 1990, the commission issued report and order no. 19,826 (75 NH PUC 282) rejecting the Consumer Advocate's motion for rehearing (motion).

By appeal dated June 11, 1990 the OCA sought to overturn two procedural orders of the commission. Simultaneously with the filing of its appeal the OCA filed a motion asking the court to suspend the operation of the commission orders no. 19,754 and 19,802 and to stay any further commission proceedings in Southern's pending rate case until the court adjudicates the OCA's appeal.

On June 21, 1990 and June 28, 1990, the commission held two days of hearings on the issue of temporary rates/emergency rates in the case at hand.

II. *Position of the Parties*

Southern took the position that due to its financial situation, immediate temporary rate relief in the amount of $750,000, a 18.7% rate increase, or 67% of its permanent rate increase request, was appropriate, just and reasonable, and necessary for the continued financial viability of the company.

The Office of Consumer Advocate took the position that there were reasonable grounds to question the books and records of the company and its testimony supporting said books and records specifically the prudency and used and usefulness of Southern's investments. The OCA further stated that if the commission determines that temporary rates are appropriate, they

should be established at current levels. The other parties excluding staff to the case joined in

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the Consumer Advocate's position.

Staff took the position that based on company testimony that it could "survive" until the end of the year with the present rate structure and that a depreciation study would be available within six to twelve weeks, the commission should postpone temporary rates at the requested level until the filing of the depreciation study in order to alleviate the need for the OCA's appeal.

At said hearings the parties, excluding the company, stipulated to the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

First Set of Data Requests from all Intervenors and Staff to the Company.	July 31, 1990
Company Data Responses.	August 31, 1990
Second Set of Data Requests from all Intervenors and Staff to the Company.	September 21, 1990
Public Hearing and Site Viewing, South Range Road (subject to confirmation).	September 26, 1990
Company Data Responses.	October 22, 1990
Testimony From All Parties Except Company	November 20, 1990
Company Data Requests.	December 14, 1990
Staff & Intervenor Responses to Company Requests.	January 14, 1991
Rebuttal Testimony from All Parties.	January 24, 1991
Settlement Conference.	January 31 and February 1, 1991
Hearings on the Merits	February 4-8 & Feb. 11-15, 1990

The company proposed the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Data Requests by Staff, the OCA and Intervenors.	July 13, 1990
Company Data Responses.	August 10, 1990
Staff, OCA and Intervenor Testimony.	August 24, 1990
Company Data Requests to Staff, OCA and Intervenors.	September 7, 1990
Staff, OCA and Intervenor Data Responses.	October 5, 1990

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Rebuttal Testimony of all Parties.	October 12, 1990
Hearings on the Merits.	October 29 – November 2, 1990 & November 5-9, 1990

III. *Commission Analysis*

[1-6] RSA 378:27 provides, in pertinent part, that

> [i]n any proceeding involving the rates of a public utility ... the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports.

The burden of proof for meeting the above requirements is the company's. RSA 378:8.

The commission finds that the company has proven by a preponderance of the evidence for the purposes of temporary rates that it is entitled to temporary rate relief. This should not be construed as an adjudication of permanent rate issues where legitimate issues raised by the parties will be fully explored.

Page 551

From the record the commission finds that there are certain undisputed facts in this temporary rate proceeding.

First, Southern has made significant capital investments over the course of the past two years since Southern's last rate order. See *Re Southern New Hampshire Water Company, Inc.* 73 NH PUC 305 (1988); *Re Southern New Hampshire Water Company, Inc.*, DR 88-055. Those investments total approximately nine million dollars, See Temp. Rate Ex. #3, and that those investments are diffused over its service area in pumps, mains, wells, etc. and cannot be isolated to one or a few discreet items.

It was further undisputed that the company was earning well below its last allowed rate of return of 11.14%.

1(53) Robert Phelps, Assistant Treasurer of SNHW, testified that the company was earning 6.15% on its investments during the 1989 test year. See Tr. Day 1, p. 77. This testimony is further corroborated by the commission's analysis of the company's 1989 annual report on file with the commission, administratively noticed pursuant to RSA 541-A:18 V. *See also Legislative Utility Consumers' Council v. Public Service Company of New Hampshire*, 119 N.H. 332, 351 (1979). Our analysis of said annual report shows a rate of return of 6.84%.(54)

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2

The requested temporary rate increase of $750,000 would result in a rate of return of approximately 8.5% to 8.9% according to the testimony of Mr. Phelps (See Tr. Day 2, p. 136). This testimony is further supported by an analysis of SNHW's 1989 annual report on file with the commission. If $750,000 is added to the 1989 revenue stream of SNHW it would result in a rate of return of 9.19%,[3(55)] well below SNHW's last determined rate of return of 11.14%.

Even if the commission were to accept the OCA's arguments that investment in certain discreet projects should be disallowed, the record supports inclusion of the remaining investment in rate base calculations solely for temporary rate purposes. Given the record, we cannot accept the argument that we must infer that all investment should be disallowed because a portion of diffuse investments have been drawn into question. *Appeal of McKenney*, 120 N.H. 77, 81 (1980); *LUCC v. Public Service Company of New Hampshire*, 119 N.H. 332, 340 (1979) (it is the commission's role to resolve issues of fact, conflicts of opinion and credibility).

Thus, it follows that the company has met its burden of proof, for the purposes of temporary rates, pursuant to RSA 378:27, in establishing the reasonableness of a $750,000 temporary rate surcharge on the cost of the property of the utility used and useful in the public service. Although the commission is not compelled to grant a temporary rate increase and could as requested by the OCA, set temporary rates at current levels, we believe that it is in the public interest to grant the requested increase both to ensure that the financial viability of the company (to the extent that it is legitimate) is not ended and to reduce the effect of any potential permanent rate increase to ratepayers by reducing or alleviating the need for any rate recoupment.

It must be emphasized that the less stringent standard of analysis employed for temporary rate purposes will not suffice in our investigation of whether permanent rate relief is justified. In this context, adequacy of service will play an integral role in these proceedings. Utilities are entitled to just and reasonable rates for the services and commodities they provide; however, it is equally true that ratepayers are entitled to receive adequate service if said rates are to be just and reasonable in fact and not theory. This commission will not require ratepayers to experience the full brunt of a rate increase where the service they receive is inadequate. SNHW is hereby placed on notice that, under appropriate circumstances, the commission deems lack of adequate service to be grounds for denying rate relief that may otherwise be supported. However, it is equally true that if a utility makes expenditures to improve the quality of service, it is entitled to be compensated for its investment. See generally TR. Day 1, p. 91.

Finally, we address the claim by the OCA that Southern has disavowed its need for emergency rates through the prefiled testimony of Mr. Phelps; thus, questioning the underpinnings of Report and Order No. 19,802 (75 NH PUC

243). The commission finds that Mr. Phelps' testimony concerning "emergency rates" was based on his perception of that term and not the legal definition of the term. See

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Transcript Day 1, p. 71-72.

Furthermore, based on the commission's analysis of the annual report and the testimony of Mr. Phelps, the commission finds that Southern is currently experiencing a "financial crisis" as that term was used by the New Hampshire Supreme Court in *Petition of Public Service Company of New Hampshire*, 97 N.H. 549 (1951) in defining emergency rates: pursuant to RSA 378:9. See Transcript, Day 2, p. 127-130.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc. be, and hereby is, granted a temporary rate increase in the amount of $750,000 to be applied proportionately across all rate classes effective upon the
date of this order; and it is

FURTHER ORDERED, that the procedural schedule set forth by all the parties excluding the company is adopted (as noted in the commission's letter dated July 24, 1990); and it is

FURTHER ORDERED, that public hearings shall take place in the following municipalities on the following dates:

September 11, 1990 — Raymond, N.H.
September 26, 1990 — Derry, N.H.
October 17, 1990 — Hudson, N.H.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1990.

FOOTNOTES

[1]The commission recognizes the existence of a dispute over how far earnings are below the authorized rate of return and whether the company is entitled to relief notwithstanding its low book earnings.

2

[Graphic(s) below may extend beyond size of screen or contain distortions.]

SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.
RATE OF RETURN ON RATE BASE

Plant in Service	28,479,872
Less: Accumulated Depreciation	1,187,235
Less: CIAC	6,806,255
	20,486,382
Less: Property Held for Future Use	173,615
Less: Utility Acquisition Adjustment	416,404
	19,896,363

Working Capital:		
Deferred Taxes		(549,024)
Customer Advances		(87,607)
Customer Deposits		(13,243)
Operation & Maintenance	1,472,681	
Less: Purchased Water	120,284	
	1,352,397	
Monthly Billings 45/365=12.33%		166,751
Rate Base		19,413,240
Operating Income		1,328,475
Rate of Return		6.84%

3

[Graphic(s) below may extend beyond size of screen or contain distortions.]

SOUTHERN NEW HAMPSHIRE WATER, INC.
RATE OF RETURN ON RATE BASE

Plant in Service		28,479,872
Less: Accumulated Depreciation		1,187,235
Less: CIAC		6,806,255
		20,486,382
Less: Property Held for Future Use		173,615
Less: Utility Acquisition Adjustment		416,404
		19,896,363
Working Capital:		
Deferred Taxes		(549,024)
Customer Advances		(87,607)
Customer Deposits		(13,243)
Operation & Maintenance	1,472,681	
Less: Purchased Water	120,284	
	1,352,397	
Monthly Billings 45/365=12.33%		166,751
Rate Base		19,413,240
Operating Income 1,328,475 + 455,400		1,783,875
Rate of Return		9.19%

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[Go to End of 51064]

75 NH PUC 555

Re Nuclear Emergency Planning

DE 90-125
Order No. 19,916

New Hampshire Public Utilities Commission

August 14, 1990

ORDER assessing costs of nuclear emergency planning against the nuclear operating division of an electric utility.

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1. ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Commission jurisdiction.

[N.H.] State statute provides that the director of the New Hampshire Office of Emergency Management shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electric generating plant; the chairman of the public utilities commission shall assess a fee from the utility, as necessary, to pay for the cost of preparing the plan and providing the equipment and material to implement it. p. 556.

2. ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Commission jurisdiction.

[N.H.] State statute provides that costs incurred by the New Hampshire Office of Emergency Management in preparing, maintaining, and operating nuclear planning and response programs associated with nuclear electric generating plants shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility in such proportions as the chairman of the public utilities commission determines to be fair and equitable. p. 556.

3. ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Commission jurisdiction.

[N.H.] The role of the chairman of the public utility commission with respect to the assessment against utilities of the costs incurred by the New Hampshire Office of Emergency Management in preparing, maintaining, and operating nuclear planning and response programs associated with nuclear electric generating plants is limited to two functions: (1) a determination as to whether the costs associated with a requested assessment were in fact incurred in association with nuclear emergency response planning; and (2) the assessment of the costs proportionately among all utilities that have applied for a license to operate a nuclear generating facility. p. 556.

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4. ATOMIC ENERGY — Nuclear emergency planning — Cost assessment — Electric utility.

[N.H.] Costs incurred by the New Hampshire Office of Emergency Management in preparing, maintaining, and operating nuclear planning and response programs associated with a nuclear electric generating facility were assessed against the nuclear operating division of an electric utility where the chairman of the commission found that the costs contained in the assessment request were related to the preparation and implementation of a nuclear emergency response plan for that facility. p. 556.

By the COMMISSION:

REPORT

On August 6, 1990, the New Hampshire Office of Emergency Management (NHOEM) submitted a request for an assessment against the New Hampshire Yankee Division of Public Service Company of New Hampshire (NHY) for the estimated cost to maintain the State of New Hampshire local community Radiological Emergency Response Plans (RERP) for the Seabrook Station Nuclear Power Plant. The request addresses the estimated annual costs

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associated with personnel, training, current expenses, and equipment incurred by State agencies and outside support agencies which have responsibilities with respect to the Seabrook Station RERP. The requests for State agencies are based on Fiscal Year 1989 and 1990 expenditures and the State Fiscal Year 1991 budget. The total requested assessment consists of two parts: (1) $1,292,003 for State agency and outside support agency costs; and (2) the direct provision of certain equipment and/or services in support of the RERP. Also incorporated in this assessment is annual maintenance expenses in the amount of $156,967 for local municipalities, which assessment has already been made. See *Nuclear Emergency Planning*, 75 NH PUC 41 (1990) (Order 19,676) and Order No. 19,757 (75 NH PUC 177) (March 15, 1990). The breakdown of the items to be assessed in this order is as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Class	*Amount*
10 Personnel – perm.	$ 248,082
20 Current Expenses	81,846
30 Equipment	30,000
40 Indirect Costs	37,572
46 Consultants	95,000
50 Personnel (Temp. OT)	177,230
60 Benefits	127,594
70 In-State Travel	13,969
80 Out-of-State Travel	7,733
90 Other State Agencies	316,010
94 Local Support	
1(56)	156,967

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TOTAL ASSESSMENT	$1,292,003

NHOEM requests that it be permitted to require that payments of the above assessment be drawn on anticipated monthly expenditures and that NHOEM be allowed to adjust monthly cash draws based on previous monthly expenditures. The rationale for the NHOEM billing mechanism is to minimize the potential for excess funds at the end of the fiscal year.

The equipment and/or services to be provided directly by NHY in support of the RERP are as follows:

A) Maintenance of a contract for the provision of emergency worker thermo luminescent dosimeters and emergency worker dosimetry evaluation service. NHRERP volume 1, section 2.7.2(57)

B) Maintenance and upkeep of reception/ decontamination center equipment and support vehicles. NHRERP vol. 1, sec. 2.1, pg. 2.4-3.

C) Maintenance and upkeep of state transportation staging area support equipment. NHRERP vol. 1, sec. 2.7, pg. 2.4-5.

D) Maintenance and upkeep of the New Hampshire Incident Field Office facilities, Joint Telephone Information Center and Media Center. NHRERP vol. 1, sec. 2.4, pgs. 2.4-2/2.4-6, see also sec. 2.3-6.

E) Maintenance and upkeep of the alert and notification system for the Seabrook Emergency Planning Zone (sirens and tone alert radios). NHRERP Vol. 1, sec. 2.1, pg. 2.1-7.

F) Maintenance and upkeep of New Hampshire Monitoring Team equipment. NHRERP vol. 1, sec. 2.5, pg. 2.5-8.

G) Provision of instructor personnel to support annual training requirements. NHRERP vol. 1, sec. 3.3.

H) Document Control and distribution support. NHRERP vol. 1, sec. 2.3.

I) Production and distribution of emergency public information. NHRERP vol. 1, sec. 2.3.

J) Special needs support. NHRERP vol. 1, sec. 2.1-4, pgs. 2.1-4, 2.3-3.

[1-4] RSA 107-B sets forth the Commission's jurisdiction over the assessment of these costs. It provides in pertinent part as follows:

107 B:1 Nuclear Emergency Response Plan.

I. The director of emergency management shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electrical generating plant. The chairman of

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> the public utilities commission shall assess a fee from the utility, as necessary, to pay for the cost of preparing the plan and providing the equipment and materials to implement it.
>
> 107-B:3 Assessment.
>
> I. The cost of preparing, maintaining, and operating the nuclear planning and response program shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility which affects municipalities under RSA 107-B:1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

The chairman's function under this chapter is a limited one. In *Appeal of Hollingsworth*, 122 N.H. 1028 (1982), the New Hampshire Supreme Court upheld the chairman's finding that the statute did not provide the chairman with the authority to conduct an independent evaluation of civil defense (now NHOEM) cost data or to challenge its scope or amount. The Court stated at 1033:

> We agree with the chairman's interpretation of his limited role under RSA 107-B (Supp. 1981). The delegation of legislative authority to the chairman in that statute is extremely narrow and almost ministerial in nature. Under RSA 107-B:1 (Supp. 1981), the only independent evaluation of requested assessments that the PUC chairman is authorized to make is whether the cost is one of "preparing the plan and providing equipment and material necessary to implement it". The chairman made this evaluation and disallowed those charges relating to the CDA's personnel expenses for overseeing the formulation of the evacuation plan. Once the chairman authorized the assessment, his only remaining function was to assess the cost proportionately among all utilities that have applied for an operating license for the Seabrook plant. *See* RSA 107-B:3 (Supp. 1981).

The NHOEM submits, and the supporting schedules support, that the above stated costs will provide the resources and personnel required by the various State agencies and outside agencies.

Pursuant to RSA 107-B:1, I have reviewed the NHOEM's request and supporting data. I find that the budget costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. I also find that the direct assessment of equipment and/or services is related to preparing the RERP and providing equipment and/or services necessary to implement it. I therefore approve the assessment of $1,292,003 and the direct provision of equipment and/or services as specified above. Additionally, the NHOEM proposed billing mechanism is reasonable. Accordingly, NHOEM is authorized to require that NHY payments of this assessment be drawn on anticipated monthly expenditures and, further, NHOEM is authorized to adjust monthly cash draws based on previous monthly expenditures.

My order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that I hereby certify that $1,292,003 for estimated annual costs associated with personnel, training, current expenses and equipment incurred by State agencies and outside support agencies plus the incorporation of local administration and training costs as previously assessed in Order 19,676, and the direct provision of equipment and/or services as specified in the foregoing report be assessed against the New Hampshire Yankee Division of Public Service Company of New Hampshire pursuant to RSA 107-B; and it is

FURTHER ORDERED, that NHOEM be authorized to require NHY to make payments against the total financial assessment of $1,292,003 on a monthly basis; and it is

FURTHER ORDERED, that the payments of this assessment by NHY be drawn on anticipated monthly expenditures; and it is

FURTHER ORDERED, that NHOEM is authorized to adjust monthly cash draws based

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on previous monthly expenditures; and it is

FURTHER ORDERED, that the year end balance for Fiscal Year 1990 be applied as a credit to reduce the total financial assessment; and it is

FURTHER ORDERED, that NHOEM provide the Treasurer of the State of New Hampshire with the amount of each monthly installment by the 15th day of the previous month (with an information copy to be provided to the Chairman of the New Hampshire Public Utilities Commission) so that the Treasurer may then bill NHY in accordance with the NHOEM statement; and it is

FURTHER ORDERED, that NHY make payment on or before the end of the same month.

By order of the Chairman of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1990.

FOOTNOTES

[1]As noted above, local support costs have already been assessed in Section 1 of Order 19,676. This previous assessment is being incorporated in this order. Accordingly, this order should not be construed as imposing an additional assessment for local support.

[2]References in this and subsequent items are to the New Hampshire Radiological Response Plan (NHRERP).

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NH.PUC*08/17/90*[51065]*75 NH PUC 558*Northeast Utilities/Public Service Company of New Hampshire

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Movants: John V. Hilberg and Campaign for Ratepayers Rights

DR 89-244
Order No. 19,917

New Hampshire Public Utilities Commission

August 17, 1990

ORDER denying a joint motion for rehearing of an order approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. PROCEDURE, § 32 — Rehearing — Standing — Ratepayer advocacy group.

[N.H.] A statewide ratepayer advocacy group had no standing to move for rehearing of an order approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire where the group was not a party and made no claim that it had suffered an injury as a result of the order; an alleged interest in the impact of the rates prescribed by the order was insufficient to meet the requirements for standing. p. 559.

2. PROCEDURE, § 32 — Rehearing — Grounds for denial — Electric rate plan.

[N.H.] The commission denied a joint motion for rehearing of an order approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire where the motion failed to show good cause to grant rehearing. p. 559.

3. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — State commission approval.

[N.H.] On rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission reaffirmed its finding that it was not required to perform a traditional statutory rate-making analysis in determining that the rates prescribed by the plan were just and reasonable. p. 560.

4. RATES, § 124 — Reasonableness — Bankruptcy reorganization — Electric rate plan — Commission approval.

[N.H.] On rehearing of an order approving an electric rate plan for resolving the Chapter 11

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bankruptcy proceeding of Public Service Company of New Hampshire, the commission reaffirmed its finding that the rates prescribed by the order were just, reasonable and based on the preponderance of the evidence within the jurisdiction of the commission as mandated by RSA Chapter 362-C. p. 560.

5. RATES, § 170 — Jurisdiction and powers — Bankruptcy reorganization — Electric rate plan — State commission approval — Statutory requirements.

[N.H.] In denying motions for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire,

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the commission rejected the movants claim that the order was unlawful in that it violated traditional statutory rate-making standards; it was found that a state statute (RSA Chapter 362-C) requiring the commission to determine whether the rate plan was in the public good and whether the rates established under the plan were just and reasonable did not require, and in fact precluded, the use of traditional statutory rate-making standards. p. 560.

By the COMMISSION:

REPORT

On August 9, 1990, John V. Hilberg and the Campaign for Ratepayers Rights (movants or petitioners) moved for Rehearing of the commission's report in DR 89-244 of July 20, 1990, and order no. 19,889 (75 NH PUC 396) of the same date.

John V. Hilberg (Hilberg) was admitted as an intervenor and is a party within the meaning of RSA 541:3. Campaign for Ratepayers Rights (CRR) is admittedly not a party, simply filing a statement of position on May 29, 1990, not part of the record evidence in this proceeding. CRR claims standing, as a "person directly affected" by the commission's report and order of July 20, 1990, to "... apply for rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order ... ."

CRR did not demonstrate that its interests have been "directly affected" by the Commission's Order. As a party in interest, Hilberg is not required to show that his interests were "directly affected" as a precondition to consideration of his motion for rehearing. However, Hilberg did not demonstrate "good reason" for granting his motion, as outlined, *infra*.

[1-2] CRR claims "standing" based on its alleged status as a statewide organization "concerned about the impact of electric rates". Motion at 2. CRR makes no claim in its complaint that CRR has suffered an injury in fact required as precondition to "standing" for appeal. *New Hampshire Banker's Association v. Nelson*, 113 N.H. 127, 128-129 (1973). CRR has simply alleged interest in the impact of the rates prescribed in the order, without showing that it has been adversely affected or aggrieved by the order. "Special interest" is not enough to gain standing for appeal. *Sierra Club v. Morton*, 405 N.H. 727, 734-735 (1972) (denying Sierra Club standing to sue under the Administration Procedure Act where no personal injury in fact was alleged).

CRR's post-hearing and post-final order attempt to secure appellate standing should be denied on the further ground that CRR did not actively participate in the hearings although CRR's representative was present at the hearings and declined an invitation to participate. CRR's failure to offer evidence at the hearings to support claims now made for the first time should disqualify CRR from standing to appeal. For these reasons CRR's motion should be denied. However, we address *infra*, substantive issues purporting to be raised by CRR's and Hilberg's joint motion and will deny the motion on the merits for the reasons set forth in our report herein.

While Hilberg participated in the hearings by cross-examining witnesses and filing a brief, he did not offer any evidence to support the argument and claims made for the first time in his motion.

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CRR and Hilberg's joint motion fails to

show good cause to grant rehearing of issues which should have been presented at the hearing. It is the commission's opinion that no "good reason" for rehearing has been presented in the motion. Accordingly, for this reason and the reasons cited above the motion should be denied.

The motion asserts four grounds for rehearing:

1. The findings of the Commission are not supported by a preponderance of the evidence;

2. The Order is without jurisdiction of the commission in that it violates RSA 378:7, :27 and :28;

3. The Order fails to balance the interests of consumers and investors, and sets unjust and unreasonable rates in violation of the state and federal constitutions. N.H. CONST. pt. 1, art. 15; U.S. CONST. amend. V and XIV;

4. The manner in which the rates set forth in the Rate Plan were determined violates the state and federal constitutions. N.H. CONST., pt 1, art. 15; U.S. CONST. amend. V and XIV.

Except for Ground 1 above, movants assert for the first time in Grounds 2, 3 and 4 matters not presented for determination by the commission in this proceeding or included in its order. With reference to Ground 3, Hilberg did not argue or raise the issue of violation of RSA 378:7, 27 and 28. Nor did Hilberg argue that the commission set unjust and unreasonable rates in violation of the state and federal constitutions (Ground 3), or claim that the manner in which the rates set forth in the Rate Plan were determined violates the state and federal constitutions (Ground 4). Grounds 3 and 4 are due process arguments claiming violation of N.H. constitution of pt. 1, Art, 15 and U.S. Const. Amend. V and XIV. Since these due process arguments were neither presented during the hearing nor addressed in the commission order, the due process arguments were improperly included in the motion for rehearing and not appropriate issues to be raised on Appeal. *Appeal of Campaign for Ratepayers Rights*, (New Hampshire Nuclear Decommissioning Finance Committee) N.H. Supreme Court Slip Opinion, August 1, 1990.

Apart from the constitutional argument, which was improperly raised as a ground for rehearing, Ground 3 also asserts that the "... order fails to balance the interests of consumers and investors, and sets unjust and unreasonable rates ... ."

[3-5] On rehearing, we affirm our order prescribing just and reasonable rates based on a preponderance of the evidence within the jurisdiction of the commission mandated by RSA Chapter 362-C (HB1-FN adopted December 18, 1989).

RSA 362-C:1 outlines legislative findings that:

> I. The health, safety and welfare of the people of the state of New Hampshire and orderly growth of the state's economy require that there be a sound system for the furnishing of electric service.
>
> II. The bankruptcy of the state's largest electric utility, Public Service Company of

New Hampshire, has threatened the adequacy, reliability and cost of electric service.

III. The present and predicted growth in electric service demands in the state of New Hampshire requires a prompt resolution of the bankruptcy and reorganization of Public Service Company of New Hampshire.

IV. For the reasons stated in paragraphs I-III, the public utilities commission should be authorized to determine whether a proposed agreement relating to the reorganization of Public Service Company of New Hampshire and, upon receipt of required regulatory approvals, the acquisition of Public Service Company of New Hampshire by Northeast Utilities, would be consistent with the public good and whether the rates for electric service to be established in connection with the reorganization are just and reasonable and should be approved.

As directed by RSA 362-C:3 the commission has determined that the implementation of the agreement between the state of New Hampshire and Northeast Utilities (RSA 362-C:2 I) for the acquisition of PSNH by NU will be consistent with the public good and notwithstanding any other provision of law has established and placed in effect the level of rates and the Fuel and Purchased Power Adjustment

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Clause as maintained for Public Service Company of New Hampshire, or its successor, in accordance with the Agreement. The commission has determined that the rates are just and reasonable and its report and order should be approved on appeal.

The commission's findings and conclusion that the rates prescribed by the State/NU Rate Plan were reasonable were fully documented and disclosed by a rational process. Report at pp. 40-62.

The movants' argument that the commission did not establish rate base value for PSNH by a rational process is predicated on the erroneous assumption that RSA 378 controls the determination of just and reasonable rates in this proceeding. The Rate Plan precludes traditional analysis of each component. RSA 362-C does not contemplate the review of just and reasonable rates on the basis of RSA 378:27 and 28 an specifically excludes such constraint in the qualifying phrase "notwithstanding any other provision of law."

The commission order clearly pointed out and articulated the reasons why the determination of the level of just and reasonable rates by traditional ratemaking methodology, is precluded by the Rate Agreement's prescribing the level of retail rates over the seven year fixed rate period. Report at 48. The report analyzes each element of the formula used under traditional ratemaking methodology ($R = O + (B \times r)$) to determine whether the ultimate rates are just and reasonable. While the commission could not derive a precise rate by applying the traditional formula, the commission could and did test the reasonableness of the prescribed rates by applying traditional rate analysis to each component of the rate paradigm, concluding that the Rate Plan equitably balances the interests of investors and consumers.

The rate base is the investment of $2.3 billion by NU required by the negotiated settlement of PSNH's bankruptcy case. The rate base was not "backed out" of a level of revenues, as asserted

by Hilberg. The investment rate base of $2.3 billion consisted of $800 million non-Seabrook assets, $700 million of Seabrook Assets, and an acquisition premium of $800 million. The Acquisition Premium of $800 million is the difference between the acquisition price of $2.3 billion and the total of Seabrook assets of $700 million and non-Seabrook assets of $800 million. The Acquisition Premium is not a payment for PSNH assets in excess of net book value and therefore is not an acquisition premium as the term is normally defined in traditional regulation. Report at 64. The Acquisition Premium is a regulatory asset in PSNH's rate base paid for by NU as part of the acquisition price for PSNH and enables the utilization of tax benefits and scheduling asset amortization consistent with financial requirements and limits on rate recovery by PSNH. Report at 66. Petitioners allege that the Acquisition Premium appreciates the value of PSNH's assets. In fact, there is no mark-up but rather, the $2.3 billion paid by NU is a mark-down, less than the depreciated book value of PSNH's assets, which were recorded at $3.7 billion on PSNH's regulatory books and $2.6 billion on its financial books. Nor has the commission changed its investment rate base methodology "to fair value" from "original cost". The $2.3 billion bankruptcy value and corresponding investment rate base value is less than PSNH's original cost estimates.

Hilberg proposes a "New Hampshire Plan" structured like the NU Rate Plan but containing a regulatory asset of $250 million representing synergies rather than an Acquisition Premium of $800 million. By this stratagem, he writes off $550 million of NU's investment of $2.3 billion for PSNH to emerge from bankruptcy. In the alternative, he proposes that the value of Seabrook would be recognized as $700 million plus whatever additional prudent costs that would not result in destructive rates. No evidentiary foundation was presented for this proposal. Contrary to petitioner's assertion in Supplement to Motion, the commission properly ruled at p. 57 of its report that Mr. Hilberg's New Hampshire Plan is beyond the scope of this proceeding. RSA 362-C:5 authorized the commission to approve and implement an alternative Reorganization Plan, which will resolve the PSNH bankruptcy case. Mr. Hilberg's plan was not presented to the Bankruptcy Court. Nor is there any evidence that the Plan would affirmatively resolve the bankruptcy case, or

could withstand judicial review of the proposed treatment of costs of the Seabrook investment or that without merger with NU the Plan would be workable and serve the public good. The proffer of hypothetical rate plans and the speculative outcome of rate proceedings as standards of just and reasonable rates against which to measure the NU Plan is a will-'o-the-wisp.

The commission compared rates under the Rate Agreement, with foreseeable rates under traditional ratemaking and concluded that rates resulting from traditional ratemaking would probably be higher than under the Rate Agreement, stating that "clearly we cannot predict the precise level of rates under traditional ratemaking. Nor is such determination required to determine whether the Rate Plan serves the public good with just and reasonable rates over the fixed rate period." Report at 51.

The commission compared the Rate Agreement with plans proposed by PSNH and found PSNH's alternative proposals were substantially higher. Report at 50. Retail rates under traditional ratemaking from an assumed $1.8 — 2.9 billion Seabrook investment were

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substantially higher than rates under the Rate Plan. Report at 51.

Under traditional ratemaking, Stand-Alone PSNH could seek $1.5 billion or more for Seabrook as part of its $2.3 billion investment ($2.3 billion minus non-Seabrook assets of $800 million). Report at 53-55 outlines record evidence, tending to substantiate Seabrook value between $1.5 — 1.8 billion.

Comparisons with traditional ratemaking support the reasonableness of the Rate Plan. Comparing rates under this agreement with rates forecasted for other New England utilities show that the rates under the Rate Plan are competitive with other New England utilities. Report at 55-56.

The Bankruptcy Court confirmed the fairness of the compromise reorganization and concluded that the Rate Agreement represented ..." a fair and equitable settlement well within the range of results reasonably expected in a litigated rate case." Report at 59.

The commission's scoping order stated that we will determine "whether these rates equitably balance investor and consumer interests so that rates will produce a reasonable return to investors without imposing an undue burden on ratepayers and the economy of the state of New Hampshire." Report at 42. We concluded: "Our analysis and review of substantial evidence in this proceeding confirms the conclusion that the rates are just and reasonable, fairly balancing the interests of investors and ratepayers". We further stated that "the compromise Rate Plan yields the minimum rates necessary to finance the payment of the $2.3 billion bankruptcy compromise to PSNH creditors and equity holders without unduly burdening ratepayers or the N.H. economy." Report at 43. Hilberg claims that this is an improper standard against which to measure rates under the plan (Motion at 4), ignoring the teachings of *Appeal of Conservation Law Foundation*, 127 N.H. at 638, "Thus a reasonable rate is the rate resulting from a process that must consider the competing interests of investors and customers and must determine the appropriate recognition that each deserves." We have observed this mandate throughout our report.

Hilberg further takes issue with a seven year fixed rate period, likening the Rate Plan to a seven year test period rather than the traditional test year adjusted. Fixed stable rates over seven years only marginally over the rate of inflation are a fundamental aspect of the Rate Plan to enable NU to acquire PSNH and resolve the bankruptcy. The commission determined that the proposed financing of the $2.3 billion buyout supported by the Rate Plan served the public good. Report at 139. The commission's reasoning was consistent with the scope of the commission's responsibility in approving a financial plan as defined by the Supreme Court in *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 614 (1986). See *Report* at 139-141.

The commission summarized the object of the financing as follows:

- to consummate the Compromise Joint plan confirmed by the Bankruptcy Court,
- to terminate the bankruptcy proceeding,
- to enable the acquisition of PSNH by

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NU,

• To stabilize safe and reliable electric power service at reasonable rates over the seven years of the Rate Agreement, and

• to serve the economy of the State.

Thus, consistent with the N.H. Supreme Court's precept we have determined that the object of the financing was reasonably required for use in discharging NU's and Reorganized PSNH's obligation to provide safe and reliable service.

We have also determined that NU's plans to consummate the Joint Reorganization Plan confirmed by the Bankruptcy Court and implementation of the Joint Plan by the Rate Agreement between the State and NU are economically justified when measured against any "adequate alternatives." No adequate alternative to the NU financing plan and acquisition have been presented either to the Bankruptcy court or this commission. Nevertheless, based on record evidence we have examined and evaluated the rate structure under traditional ratemaking for Stand-alone PSNH and under alternative rate plans *supra*. We have concluded that the rates produced by the Rate Plan represent a fair and equitable compromise within the ambit of results reasonably to be anticipated in a litigated rate case by Stand-alone PSNH. Our evaluation of record evidence relating to the Rate Plan compels the conclusion that the Joint Reorganization Plan and Rate Agreement will serve the public good.

We now address the question of whether the capitalization resulting from NU's plans would be supportable. As demonstrated by our analysis of the rate support for the resulting capital structure of Reorganized PSNH, with and without Seabrook operating, Stand-alone PSNH with and without Seabrook operating, and NAEC with and without Seabrook operating, the resulting capitalization is supportable by reasonable rates.

We further concluded that the resulting capitalization of Reorganized PSNH, with and without Seabrook operating, Stand-alone PSNH with and without Seabrook operating, and NAEC with and without Seabrook operating was supportable by reasonable rates projected under the Rate Plan. Report at 141-160.

The reasonableness of rates under the Rate Plan was further confirmed by our analysis of the cost of capital and rate of return for Case 1: Reorganized PSNH Seabrook Operates, Case 2: Reorganized PSNH Seabrook Cancelled, Case 3: Stand-alone PSNH Seabrook Operates, and Case 4: Stand-alone PSNH Seabrook Cancelled. Report at 45-47.

The rate of return over the seven year period in the base Case 1 (Seabrook operating) is on average less than the cost of capital, although higher in 1994-1996. Investor interests in securing a rate of return at least equal to the cost of capital are subordinated to assure the workability of the compromise Rate Plan.

Our analysis of rate of return and cost of capital was consistent with traditional ratemaking methodology within the scope of the seven year projection of operating revenue, expenses and return on projected investment.

Hilberg's claim that increased rates were imposed upon rates determined in Docket No. DR

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86-122, (1987) which suffered from "methodological deficiencies" ignored the fact that the return on equity of 15% and the rates were affirmed on appeal. *Appeal of Public Service Company of N.H.*, 130 N.H. 757 (1988). The current proceeding projects cost of equity at 13.25% and an average rate of return of 11.63%. Report at 45 Fn. 4), Additional schedule p. 6 of 8.

Contrary to Hilberg's assertion, the return on equity is supported by the record.

Although the balancing process cannot technically be derived by traditional ratemaking, the commission's analysis of the Rate Plan demonstrated that the prescribed rates balanced investor and ratepayer interests so that the equity collar would preclude the return on equity from exceeding 13.25% over the fixed rate period on a cumulative net present value basis and could not fall below 8% in 1993, 9% in 1994, 9.75% in 1995 and 10.5% in 1996. Report at 72-75.

Hilberg concludes that the evidence establishes that $800 million is the book value of non-Seabrook assets and $700 million is the value of Seabrook for a total PSNH value of

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$1.5 billion. $800 million of investment accounted for by the acquisition premium adjustment would not be allowed. This proposal would of course defeat the bankruptcy settlement and the Compromise Rate Plan and would not be in the public good. The Hilberg/CRR plan would compel PSNH to seek recovery through traditional ratemaking of a fraction of its total investment and would result in unconstitutional confiscation of its property.

Hilberg outlines further specification of grounds for rehearing at pp. 15-21 of his motion. His argument is predicated on a Seabrook rate base of $1.5 billion, notwithstanding the commission finding on the basis of record evidence that the Seabrook rate base is $700 million. Having raised this red herring, he then argues that the commission must then determine that rates resulting from a $1.5 billion Seabrook investment would cause a "death spiral" by imposing rates higher than the market will bear, unless the commission finds otherwise. The argument is specious. The Federal Energy Regulatory Commission — not this commission — determines the wholesale rate for Seabrook generation based on the $700 million rate base for Seabrook. Hilberg argues a speculative value of $500 million for Seabrook based on a theoretical application of the claimed value of United Illuminating Company's (UI) 17.5% Seabrook share to PSNH's 35.6% share. Motion at 17. His bootstrap evaluation is not supported by the record evidence in this proceeding or by the findings of the Bankruptcy Court, and misrepresents the evidence presented in DE 90-076, the UI sale/leaseback of 35-39% of its Seabrook investment.

Hilberg also argues that the commission failed to evaluate a traditional rate case criterion by applying a "used and useful methodology" which would disallow any excess capacity resulting from overpricing Seabrook in the market. The commission found that the rates for Reorganized PSNH with Seabrook operating were just and reasonable. Base Case 1 Report at 45. We do not believe rates resulting from valuation of Seabrook at $700 million will be excess to market rates. Even if Seabrook's operation terminates, the Seabrook Unit Power Contract allows recovery from PSNH of all costs incurred for Seabrook. We have found that the Unit Power Contract is reasonable, ensures a fair balance of investor and rate base interests in the event that Seabrook operates or is cancelled and results in reasonable charges to PSNH and to PSNH's ratepayers.

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Report at 111. NU's Requested Finding 1.f granted at 179. While we are of the opinion based on record evidence that Seabrook power will be used at reasonable rates and will be useful for assured capacity, we do not consider that further analysis of this concept will serve any useful purpose in the light of our finding that the public interest is served by the Seabrook Power Contract.

In response to Ground 4, p. 17, Motion, the commission did not find that the Rate Plan depends on the institution of rate structure changes; rather the commission found that rate design assumptions incorporated in NU's sales forecast for PSNH do not have much impact as modeled. The commission specifically did not find that "a rate structure change is necessary to support the maintenance of the projected 2.3% annual growth" as asserted by the motion at p. 17. We further noted that no party has argued that the NU sales forecast is unreasonable. Report at 91. The commission's order that PSNH consult with commission staff and propose a sequence for a rate design proceeding by January 1, 1991, did not imply a commission forecast of the result of the hearing requiring legislative approval.

In response to Ground 5, p. 18, the commission affirms its original finding that the public good is not conditioned on a merger with NU. Our reasons for this conclusion are fully set forth at pp. 125-129 of our Report.

Grounds 6, 7 and 8 for rehearing pp. 18-20 Motion are interrelated and assert that the commission erred in not reviewing and determining in this proceeding a least cost plan. We affirm our acceptance of NU's commitment to abide by our existing and any future least cost planning requirements, and our finding that NU/PSNH will be required to comply with all resulting and future least cost integrated and other resource planning requirements of the commission in any case. Oversight of the least cost planning process is a continuing obligation

of this commission as is NU's commitment to the commission's policy on conservation and least cost planning. Least cost planning will assure that PSNH's utilization of the resources listed in the Twenty Year Resource Plan and made available by the Rate Agreement will result in rates that continue to be just and reasonable. For these reasons and those impressed in the commission report we deny grounds 6, 7, 8 of the Motion for Rehearing.

Ground 9 of the Motion avers that the commission erred in finding that the agreement was in the public good in regard to off-system sales. We affirm our finding regarding off-system sales. The commission evaluated and adopted Staff Recommendation 4 interpreting FPPAC so that "... energy and power costs flowing through to ratepayers will not include (i) the cost of any purchase of capacity made in order to replace a portion of PSNH capacity sold that causes PSNH to be unable to meet its allocated capability responsibility or (ii) the incremental cost of energy required to replace energy from resources sold pursuant to capacity sales contracts entered into after the First Effective Date. Joint Recommendation at ¶ 4: Tr. May 25 at 86-89." Report at 97.

The commission balanced the interests of ratepayers in mitigating capacity costs to the extent of any impairment of allocated capacity responsibility and avoiding the burden of the incremental cost of energy required to replace energy from capacity resources sold in the future. Our analysis of capacity and energy exchanges also considers the benefits to New Hampshire

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ratepayers of capacity transfer agreements and the Sharing Agreement with NU resulting in a fair allocation of costs between PSNH and NU System companies. Report at 170.

As arbiter between the interests of the customers and the interests of regulated utilities, we exercised a balanced and fair judgment of the merits of overall capacity and energy revenues and, we believe, properly concluded that the public good was well served. RSA 363:17a.

Ground 10 challenges the commission's finding that the proposed financing for the merger acquisition will be in the public good, on the basis the commission made no finding that the IDA financing is either consistent with the public good or legally available as to the purpose anticipated or the projected amounts. The commission examined all aspects of the proposed financing and concluded that the proposed financing serves the public good. Report at 139. In Table III, the embedded cost of debt of 10.25% included taxable IDB at 10.56% and tax exempt IDB at 8.87%. Report at 138. We examined the terms and conditions of the financing and found that the issuance of the securities to finance the Joint Plan should be authorized as serving the public good. Report at 140.

Our examination of financial projections including costs of IDB pollution control revenue and refunding bonds lead to our conclusion that the Joint Plan may be financed and that projected revenues generated by reasonable rates will be adequate to support the capital structure and NU's (and affiliates) operations to provide safe, reliable and reasonably priced service. Report at 42. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 614 (1986).

The commission specifically found that the issuance of up to $120 million of tax exempt pollution control revenue bonds by the New Hampshire Industrial Development Authority, the issuance of up to $232.5 million of the exempt pollution control revenue bonds by the IBA and the issuance of up to $300 million of taxable pollution control revenue bonds by IDA are consistent with the public good. Report at 186-187 approving NU's requested *Approvals* 15 J, K and L. These authorizations were subject to terms to be offered at the time of issuance.

Legal availability of IDA financing is implicit in this analysis. The commission is not obligated to determine whether the issuance of particular IDB's by the Industrial Development Authority is in the public good or within the scope of IDB's authority. The issuance of IDA's is within the discretion of the Governor and Council on recommendation by the IDA. RSA 162-I:9. If CRR succeeds in contravening the IDB financing, we presume alternative financing means will be sought by NU and presented to this commission for review and

approval.

Conclusion

The findings of the commission were supported by a preponderance of the evidence. Hilberg/CRR have failed to sustain their burden of proving by a clear preponderance of the evidence that the commission order is unjust or unreasonable. RSA 541:13. On appeal, the N.H. Supreme Court should so find as a matter of law and should affirm the commission's report

Our order will issue accordingly.

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ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Motion for Rehearing on Behalf of John Victor Hilberg and Capaign for Ratepayers Rights filed and supplemented on August 9, 1990, and amended by filing of August 13, 1990, is denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 1990.

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NH.PUC*08/17/90*[51066]*75 NH PUC 566*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 51066]

75 NH PUC 566

Re Northeast Utilities/Public Service Company of New Hampshire

Petitioners: Martin Rochman, Edward Kaufman, and Robert Richards

DR 89-244
Order No. 19,918

New Hampshire Public Utilities Commission

August 17, 1990

ORDER denying an application for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. PROCEDURE, § 32 — Rehearing — Grounds for denial — Lack of standing — Lack of good cause — Electric rate plan.

[N.H.] In denying an application by individual stockholders in Public Service Company of New Hampshire (PSNH) for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission found that the stockholders lacked standing to appeal the order and that the application for rehearing did not assert any "good reason" to grant a rehearing as required by state statute. p. 567.

2. RATES, § 124 — Reasonableness — Bankruptcy reorganization — Electric rate plan — Commission approval — Constitutional requirements.

[N.H.] In denying an application by individual stockholders in Public Service Company of New Hampshire (PSNH) for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission rejected claims that the order deprived the stockholders of property rights and denied the stockholders their rights to equal protection under the law. p. 568.

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3. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — State commission approval.

[N.H.] On rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission reaffirmed its finding that it was not required to perform a traditional statutory rate-making analysis in determining that the rates prescribed by the plan were just and reasonable. p. 568.

By the COMMISSION:

REPORT

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On August 8, 1990, Messrs. Rochman, Kaufman and Richards (RKR), record or beneficial stockholders of PSNH, filed an application for rehearing of Commission Report and Order No. 19,889 (75 NH PUC 396) (Final Order) approving the Rate Agreement between the state of New Hampshire and Northeast Utilities (Rate Agreement) relating to the reorganization of Public Service Company of New Hampshire (PSNH). RKR's application for rehearing alleges that approval of the Rate Agreement denies PSNH and its common stockholders their constitutionally protected property rights and that RSA Chapter 362-C is unconstitutional. RKR states in the alternative that the commission should condition its Final Order upon the United States Bankruptcy Court's confirmation order becoming final and nonappealable.

[1] RKR were not parties to this proceeding. The commission denied RKR's petition to intervene in order nos. 19,814 (75 NH PUC 263), May 7, 1990, and 19,831 (75 NH PUC 292), May 17, 1990. The commission also denied Richards' motion for reconsideration of denial of his intervention in this proceeding, order no. 19,830 (75 NH PUC 291), May 17, 1990. RKR's current application for rehearing under RSA 541:3 does not show that either the commission proceeding or the commission's Final Order "directly affected" their interests. Nor does the application for rehearing assert any "good reason" to grant a rehearing as required by RSA 541:3.

As PSNH stockholders, RKR's rights are derivative of PSNH's rights. PSNH was a full party to these proceedings, supported the Rate Agreement and did not request reconsideration of order no. 19,889. Also, since RKR's rights have already been adjudicated by the Bankruptcy Court, RKR have suffered no "injury in fact" by the commission's Final Order; since RKR's rights are derivative, RKR are not "directly affected" by the NHPUC proceedings. The gravamen of RKR's claim of injury is the alleged diminution in the value of PSNH's corporate assets resulting from the Rate Plan compared to a theoretical PSNH rate case valuing Seabrook and total assets at a higher level. However, the assertion of diminution in value of corporate assets is not direct harm granting a shareholder the right to sue in his own right. The exception to the general rule, not here alleged, is that the interests of the complaining stockholders are distinct from the interests of other shareholders.

RKR's claim of lost value is unwarranted, resting on the fragile ground, not supported by

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credible evidence, that PSNH would receive higher rates in a contested rate proceeding than under the Rate Agreement. The Bankruptcy Court rejected this claim in finding the rates under the Rate Agreement represent "a fair and equitable settlement and compromise well within the range of results reasonably expected in a litigated rate case." Our analysis confirmed the Bankruptcy Court's finding. Report at 58; see also Report at 59-63.

The rights of RKR as PSNH stockholders are determined by the Bankruptcy Court's confirmation order, which refers the Rate Agreement for implementation to the commission. RKR's interests result from the Court's resolution of the bankruptcy, not from NHPUC's implementation of the confirmed Joint Plan under RSA 362-C.

RKR have sought to protect their rights by appeal of the Bankruptcy Court's confirmation of the Rate Plan to the United States District Court for the District of New Hampshire. 28 U.S.C. §§157, 158. RKR do not have the right to seek an ancillary remedy in the N.H. Supreme Court. RKR do not have standing in the New Hampshire State forum to claim injury by the Rate Agreement and the commission's Final Order and therefore have no standing to complain that their constitutional rights have been violated by the commission's order or that RSA Chapter 362-C is unconstitutional.

It is the commission's opinion that RKR's application should also be denied because it does not offer "good reason" for rehearing. RKR's application for rehearing merely restates the issues and arguments in previous filings and presents no new evidence or issues. See petition to intervene of Robert C. Richards dated April 23, 1990 and supplement to petition to intervene of Robert C. Richards dated April 25, 1990, denied by order no. 19,814 (75 NH PUC 263) May 7, 1990; petition to intervene of

Edward Kaufman dated May 3, 1990 and petition to intervene of Martin Rochman dated May 4, 1990, denied by order no. 19,831 (75 NH PUC 292) May 17, 1990 and motion for reconsideration of denial of intervention of Robert C. Richards dated May 9, 1990; denied by order no. 19,830 (75 NH PUC 291) May 17, 1990.

[2] RKR claims that approval of the Rate Agreement violated RKR's constitutional rights by retrospectively changing ratemaking standards for PSNH, depriving RKR of property rights without compensation, and denying PSNH investors of their right to equal protection under the law. The commission has concluded that the Rate Agreement has not caused the alleged constitutional injuries either to PSNH or RKR.

There are no retrospective changes since there has been no impairment of a vested legal right. Neither investors nor PSNH had a vested right to have rates set pursuant to RSA 378:27, :28. PSNH joined with NU and the state in supporting the Rate Agreement, and suspended its own reorganization plan before the Bankruptcy Court. PSNH does not claim any violation of its constitutional rights. RKR have no standing to so assert.

[3] As to RKR's claim of a vested right to just and reasonable rates by traditional ratemaking under RSA 378:27, :28, RSA 362-C establishes an appropriate *modus operandi* for just and reasonable rates not restricted by the methodology prescribed in RSA 378:27, :28. See Report at

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48-49 and 139-141. The rate methodology under the Rate Agreement was just and reasonable. Report at 40-58; *See also* commission findings and approvals, Report at 181-189, Approvals 1 and 2 at 181. There is no vested right to have just and reasonable rates determined by RSA 378:27, :28, although the commission applied traditional rate making analysis under RSA 378:27,;28 to the extent feasible.

We reject RKR's argument that the Rate Agreement retrospectively changes ratemaking standards applicable to PSNH.

Secondly, there is no merit to RKR's claim that approval of the Rate Agreement will deny PSNH its right to recover a reasonable return on its investment in PSNH and violates the constitutional prohibition against taking property for public use without just compensation. Amendments V and XIV, of the U.S. Constitution and Article 12 of the New Hampshire Constitution.

The Bankruptcy Court held and the commission confirmed that the Rate Agreement produces a result that is within the range reasonably to be expected in a litigated rate case and the Rate Agreement does not produce a lesser value than the estimated value resulting from litigation. See Final Order at 58. In this circumstance, there can be no taking. While RKR offered no proof that there will be a diminution in value, whatever conjectural lower value would result from the Rate Plan compared to a litigated rate case is attributable to the Bankruptcy Court's adjudication and PSNH's election to use RSA 362-C to determine just and reasonable rates by implementing the Bankruptcy Court's confirmation of the reorganization plan. Therefore, the commission's Final Order did not impair the value of RKR's investment.

Third, the Rate Agreement does not deprive RKR of their equal protection rights to recover their investment under the same standards governing protection of investor rights in other utilities. The standard of RSA 362-C is consistent with legislative findings that the PSNH bankruptcy should be expeditiously resolved and that reliable electric service at reasonable, stable rates is essential to serve the public interest. The seven year fixed rate schedule would have been impossible of attainment under traditional ratemaking principles.

RKR also argues that RSA 362-C is unconstitutional *per se*, because the statute denies PSNH and its investors of the right to higher rates. We recognize that the commission is not empowered to determine the constitutionality of RSA 362-C. We may nevertheless express our view that the statute should be upheld if the constitutional issue reaches the N.H. Supreme Court for its definitive ruling. The statute clearly serves the express governmental purposes of RSA 362-C:1. RSA 362-C:3 authorizes the NHPUC to determine whether implementation of the Agreement and prescribed just and reasonable rates will serve the

public good. The statute does not proscribe PSNH from seeking approval of rates higher than those set in the Rate Agreement, e.g. RSA 378:27, :28, although as a practical matter or even as a matter of law, PSNH's joinder in NU's reorganization plan precluded proceedings by PSNH for an alternative rate setting plan.

RSA 362-C authorized the commission to implement the Rate Plan if the plan served the public good. Based on comprehensive analysis of public policy considerations and record

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evidence, the commission found that the plan served the public good. The commission was free to reject the plan if it did not serve the public good, whether or not an alternative reorganization plan to resolve the PSNH bankruptcy had been offered in evidence. The commission analysis of possible alternatives by traditional ratemaking concluded that the rates under the Rate Plan better served the public good than the alternatives. See Final Order at 49-55.

Even if there was a flat prohibition against any other rate plan pending NHPUC review of the plan confirmed by the Bankruptcy Court, PSNH would not be restrained from submitting an alternative higher priced plan through the bankruptcy process if the Rate Plan had been rejected. In our opinion RSA 362-C is constitutional and RKR's claim of unconstitutionality as a ground for rehearing is dismissed.

Finally, RKR argues, that the commission should condition the effectiveness of its Final Order upon the confirmation order of the Bankruptcy Court becoming final and nonappealable. If this condition were imposed, there would be interminable delays before the final appellate adjudication of the confirmation order was consummated. Indefinite delay in implementing the commission's Final Order would result. PSNH status in limbo would not serve the public good.

RKR's motion for stay was denied by the Bankruptcy Court on June 19, 1990 on the ground that $1.5 billion of financing would be jeopardized, and the public interest in insuring predictable rates for N.H. ratepayers would be defeated. On appeal to the U.S. District Court for the District of New Hampshire, a stay was requested and denied.

We will deny RKR's request to impose a condition to stay our Final Order until the appeal process for the confirmation order has been exhausted. Such conditions will not serve the public good.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Application of Martin Rochman, Edward Kaufman and Robert Richards for Reharing of Order Approving Rate Agreement on August 8, 1990, is denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 1990.

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NH.PUC*08/17/90*[51067]*75 NH PUC 569*Northeast Utilities/Public Service Company of New Hampshire

[Go to End of 51067]

75 NH PUC 569

Re Northeast Utilities/Public Service Company of New Hampshire

Movant: Hydro Intervenors

DR 89-244
Order No. 19,919

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New Hampshire Public Utilities Commission

August 17, 1990

ORDER denying an application for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. PROCEDURE, § 32 — Rehearing — Grounds for denial — Electric rate plan.

[N.H.] The commission denied a motion for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire where the motion did not assert any injury in fact and presented no new evidence that could not have been presented at

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the original hearing or which was not previously considered by the commission. p. 570.

2. BANKRUPTCY — Chapter 11 reorganization — Electric rate plan — Rate base determination — Acquisition premium.

[N.H.] In denying a motion for rehearing of an order that approved an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire, the commission reaffirmed all of its findings with respect to an acquisition premium provided for in the rate plan, including its finding that the acquisition premium constituted a regulatory asset. p. 570.

By the COMMISSION:

REPORT

The commission issued Order no. 19,889 (75 NH PUC 396) on July 20, 1990, in docket DR 89-244 approving the petition of Northeast Utilities Service Company (NU) for approval and implementation of an Agreement between the Governor and the Attorney General of the State of New Hampshire and NU regarding the reorganization of the Public Service Company of New Hampshire (PSNH). A Motion for Rehearing was filed on August 9, 1990 by the Hydro Intervenors (Granite State Hydropower Associates, Inc., Penacook Hydro Associates, Errol Hydroelectric Limited Partnership, Briar Hydro Associates, Pembroke Hydro Associates, and Gregg Falls Hydroelectric Associates). This Order addresses said Motion for Reconsideration.

HYDRO INTERVENORS MOTION
FOR REHEARING ON FINAL REPORT
AND ORDER

[1] The Hydro Intervenors requested reconsideration of eleven findings of fact and rulings of law which will be addressed individually below. We will deny the Hydro Intervenors' request for reconsideration because, *inter alia*, they do not assert any injury in fact and they present no new

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evidence that could not have been presented at the original hearings or which was not previously considered by the commission. Although the Hydro Intervenors assert that they anticipate attempts by NU and the State to renegotiate or rescind the rate orders under which they operate, any such action will be addressed in subsequent proceedings and are not within the scope of this proceeding. We concur with the assertions of NU and PSNH in their objection to the Hydro Intervenors' request for reconsideration that until such action is attempted, neither the Rate Agreement nor the final Order affects the Hydro Intervenors' interests. Northeast Utilities Service Company's and Public Service Company of New Hampshire's Objection to the Motion for Rehearing of Hydro Intervenors, dated August 14, 1990, at 4. Additional reasons for denying the request for reconsideration are discussed below in relation to each specific request:

[2] 1. The Hydro-Intervenors' request for reconsideration of our granting of NU Request no. 1.d (page 179 of Report accompanying Order no. 19,889):

> The establishment and amortization of the regulatory asset known as the "acquisition premium" are reasonable and facilitate the resolution of the PSNH bankruptcy by achieving a balance between PSNH investors' demands for prompt recovery of their investment and the ratepayers' interest in maintaining affordable rates.

The Hydro-Intervenors assert that this finding is not reasonable in that the establishment of the Acquisition Premium "... requires ratepayers to pay costs that are not associated with any assets used and useful in the public service" and is not "justified by any synergies, and is not a bona fide acquisition adjustment in the traditional utility ratemaking sense." See Commission finding on Hydro Request No. 3, at page 192 of the Report; Tr. III, pages 110-111; Report at page 67."

The Hydro Intervenors are correct in their assertion that the Acquisition Premium is not

justified by any synergies, in that synergies as that term is defined by NU, applies only to the investment adder. The Hydro Intervenors are mistaken, however, in their assertion that the Acquisition Premium is not a regulatory asset. The State, in its objection to the Hydro Intervenors' request for reconsideration correctly noted that the Acquisition Premium was a part of the Rate Plan which the Legislature expressly authorized the commission to approve. In deliberating on RSA 362-C, the Legislature was informed of and considered the features of the Rate Plan, including the treatment of the Acquisition Premium as a regulatory asset. Report accompanying Order no. 19,889 at page 69; Tr. Apr 18 at pages 95 and 111; Tr. Apr 9 at 123-127; Tr. Apr 17 at 147-153; Tr. May 1 at 78, 179-180, 183-188, 211.

Although the Acquisition Premium is not a payment for PSNH assets in excess of net book value, and therefore, is not an acquisition premium as the term is normally defined in traditional regulation, it constitutes a regulatory asset of approximately $800 million that is "used and useful in the public service." The finding is reasonable and is in the public good for reasons set forth in Report accompanying Order no. 19,889 at, *inter alia*, pages 64-71. The Acquisition Premium meets the policy goal of the reorganization of PSNH to balance expeditious recovery of creditors' and shareholders' investment with minimal rate increases anticipated by rate payers. Id. at page 66; Tr. Apr 9 at 123-127; Tr. Apr 17 at 147-153; Tr. May 1 at 179-180.

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2. The Hydro Intervenors' second request for reconsideration concerns the granting of State Request no. 13, referred to on page 29 of the report. State Request 13 is:

> The structure of the Rate Agreement, which incorporates an acquisition premium, is a benefit to ratepayers, particularly as it allows effective use of available tax credits and amortizes a large part of the Acquisition Premium, and therefore NU's acquisition price, within the fixed rate period.

While the Hydro Intervenors assert that they do not object to the effective use of available tax credits nor to the amortization of a large portion of the acquisition costs within the fixed rate period, nonetheless, as we previously indicated on page 71 of our Report, to accommodate the interests of the Hydro Intervenors we would have to redefine or effect a change in the accounting treatment of the Acquisition Premium in such a manner that would likely require approval of the bankruptcy parties and the bankruptcy court and would delay PSNH emergence from bankruptcy while unnecessarily risking the Agreement's ultimate success. It would not be in the public interest to do so.

We also disagree that the Agreement as approved is misleading. Separating the Acquisition Premium from Seabrook costs will resolve the PSNH bankruptcy and will reduce rates under the agreement. Report accompanying Order no. 19,889 at 65-71.

The Hydro Intervenors further request the commission to rule that they are entitled to review NU's revenue ruling request, as currently filed with the Internal Revenue Service (IRS). The commission previously ruled on this issue, that once the revenue ruling request is filed with the IRS, it will be made available to the parties. Tr. May 24 at page 132. This ruling continues to be in effect and once finalized, copies of all pertinent tax ruling requests filed by NU, once filed in final form with the IRS, shall be served on all parties and filed with the commission.

3. The Hydro Intervenors' request for reconsideration of our granting of State Request no. 15, discussed on page 30 of the Report. State Request No. 15 reads as follows:

> The rate arrangements between PSNH and the SPPs are not affected by the Rate Agreement and the changes to them will require separate proceedings.

This request offers no information in addition to that previously filed by the Hydro Intervenors on January 25, 1990, as a Motion for Rehearing of Commission's Report and Order no. 19,674 (75 NH PUC 30) (dated January 19, 1990) regarding the scope of this proceeding. This request for reconsideration is denied for

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the same reasons cited in said Order no. 19,715 (75 NH PUC 106) and *supra* at 2.

4. The Hydro Intervenors' request for reconsideration of our partial denial of their Request no. 1, discussed on page 191 of the Report. The Hydro Intervenors cite NU's Third Amended Disclosure Statement, Section VII A at page 71 of NU Exhibit 1-E as supporting their assertion that the Acquisition Premium is attributable to PSNH's Seabrook assets:

> The fixed rate increases provided in the Rate Plan are lower than the rates which PSNH contends it would be entitled to collect under traditional ratemaking principles,

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> once Seabrook is providing service to consumers and rate changes are authorized by the NHPUC. In effect, implementation of the Plan will result in recovery of $1.4 billion, or approximately fifty percent of the Seabrook investment.

Witness John Noyes, at several times during his testimony, explained that the language in question refers to the creditor perspective only and is not indicative of the viewpoints of other parties. Tr. Apr 20 at page 182; Tr. Apr 17 at pages 176-177. This request for reconsideration is denied for reasons cited on page 191 of the Report accompanying Order no. 19,889.

5. The next Hydro Intervenors' request for reconsideration concerns the denial of Hydro Request no. 2, discussed on pages 191-192 of the Report.

> The $700 million value assigned to Seabrook under the Rate Agreement is a negotiated value which has no rational basis other than being a value to accomplish all the things NU wanted to accomplish in the Rate Agreement.

The Hydro Intervenors assert that the requested finding is framed in language used by NU's own witness, John Noyes. NU's perspective is not necessarily identical to that of other parties to the Agreement. In fact, however, Mr. Noyes and Mr. Busch testified that, from the State's perspective, the market value of Seabrook power was a concern shared by NU; Tr. Apr 18, at pages 179-180 and pages 223-224. The record further indicates that the $700 million value for Seabrook also reflects an attempt by the parties to maintain a 5.5 percent rate path and zero level FPPAC charges. We do not consider such considerations to be irrational.

6. The Hydro Intervenors asked for reconsideration of the partial denial of their Request no. 4, discussed on pages 192-193 of the Report. The Hydro Intervenors Request No. 4 reads as follows:

> The $800 million "Acquisition Premium" is not related to and not justified by, the "synergies" that NU claims will result from the acquisition of PSNH.

In our Report accompanying Order no. 19,889, at pages 192-193, we explained that "[i]t is true that the Acquisition Premium was not calculated based on the aggregate savings attributable to synergies." "Synergies" was defined by NU as pertaining only to the investment adder and was not used to calculate or justify the acquisition premium. However, the requested finding asks us to find that the Acquisition Premium is "not related to" these synergies that NU claims will result from the acquisition of PSNH. The request was partially denied to emphasize the importance of attaining the cost savings (referred to as "synergies" in the context of the investment adder) attributable to NU's acquisition and management of PSNH if the projected 5.5 percent annual rate increases are to support the $2.3 billion capitalized value of the company, including the Acquisition Premium. In fact, one of the criteria we consider in determining whether inclusion of an acquisition premium in rate base is "for the public good," is "... whether the purchasing utility can achieve economies in the operation of the purchased assets, particularly in cases where the selling utility is involved in bankruptcy proceedings." *Greenville Electric Lighting Company and Public Service Company*, 56 NH PUC 188 at pages 192-193 (1971) and *N.H. Electric Coop. and Franconia Paper Company*, 56 NH PUC 253 at page 261 (1971); see *Public Service Co. v. New Hampton*, 101 NH 142, 150-51, 136, A.2d 591,

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598 (1957) and *Appeal of the Public Service Co. of New Hampshire,* 124 NH 479, 486, 471, A.2d, 1182, 1186 (1984). Accordingly, this request for reconsideration is denied.

7. The Hydro Intervenors request for reconsideration of our denial of their Request no. 5 discussed on page 193 of the Report. The Hydro Intervenors' Request no. 5 is:

> The $800 million "Acquisition Premium" cannot be characterized as an acquisition adjustment in the traditional utility ratemaking sense of a premium paid for assets above their depreciated original cost.

The Hydro Intervenors assert that our denial of their Request no. 5 was not supported by any reference to testimony in the record in that it contradicts our Report at page 67 that "in the traditional sense as used by Bonbright there is no true acquisition premium requiring justification by demonstration of the public good." Our problem with the Hydro Intervenors' request is the language that the Acquisition Premium "cannot be characterized as an acquisition adjustment" in the traditional utility ratemaking sense. The methodology by which the Acquisition Premium was developed in this proceeding is, as we state at page 64 of the Report, not an acquisition premium as the term is normally defined in traditional regulation. However, the Rate Agreement's accounting treatment of the Acquisition Premium is consistent with generally accepted accounting principles and is allowable under New Hampshire law. Testimony of staff witness Sullivan, Tr. May 4 at pages 60-63. Thus, although the Acquisition Premium in this case was not developed in accordance with traditional methodology, it has an equivalent result and may be treated as such under the unique circumstances of this case.

8. The Hydro Intervenors requested reconsideration of our denial of their Request no. 6, discussed at page 193 of the Report. The requested finding is as follows:

> The treatment of $800 million of the $2.3 billion purchase price as an acquisition premium or acquisition adjustment is not justified on the record under traditional accounting principles.

This request for reconsideration offers nothing additional from what was considered by the commission in rendering its decision in Order no. 19,889 and is denied for reasons set forth in the Report accompanying Order no. 19,889 on pages 193-194 and *supra* regarding Hydro Request no. 5.

9. The Hydro Intervenors' request for reconsideration of our denial of their Request no. 7, discussed on page 194 of the Report. Hydro Intervenors' Request no. 7 is as follows:

> Regardless of what it is called, where it is placed as an asset, or how quickly it is amortized, the $800 million "Acquisition Premium" represents additional Seabrook costs (beyond the $700 million assigned value of Seabrook) recovered under the Rate Agreement.

The Hydro Intervenors assert that the record "overwhelmingly confirms that the $800 million `Acquisition Premium' represents additional Seabrook costs to be recovered under the Rate Agreement." Motion at 5. This request offers nothing in addition to what was previously proffered by the Hydro Intervenors in support of their original request and is denied for the reasons cited in the Report accompanying Order no. 19,889 at pages 191-194. Also, although under traditional ratemaking, it may, depending on the results of appropriate proceedings, be

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more appropriate for the Acquisition Premium to be assigned to the Seabrook investment, such an allocation was not effected here. Although investors may relate the Acquisition Premium to recovery of their Seabrook investment, other parties may instead relate the Acquisition Premium to value placed on the resolution of the PSNH bankruptcy and of the Seabrook issue as well as on various tax benefits accruing from the $700 million evaluation of Seabrook. Tr. Apr 26 at 97. Also, as we indicated on page 65 of our Report, if the Rate Plan were structured to add the Acquisition Premium to Seabrook value on NAEC, overall capital costs debt and equity would be higher than

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under the Rate Plan. Assigning the Acquisition Premium to the value of Seabrook would also increase the FPPAC because additional depreciation of capital costs would be flowed through to ratepayers and cash flow to NU would be reduced since the Acquisition Premium would be recovered over the life of the plant (approximately forty years) instead of over a twenty year period. Report accompanying Order no. 19,889 at page 65; Staff Exhibit 4 at page 13. This request for reconsideration is denied.

10. The Hydro Intervenors request for reconsideration of the denial of their Requested Ruling of Law no. 2, discussed in the Report accompanying Order no. 19,899 at page 195. This requested ruling is:

> The statutory basis for calculation of rate base is the cost of the property of the utility used and useful in the public service less accrued depreciation.

The Hydro Intervenors argue that the commission has departed from the standard of "the cost of property used and useful in the public service." Our denial of this ruling of law, however, did not constitute a departure from the used and useful standard. It was denied only in that it does not go far enough in finding the statutory basis for the calculation of rate base. RSA 378:27, which incorporates the language used by the Hydro Intervenors in its requested ruling of law, provides only part of the statutory basis for defining a utility rate base. Various other statutes, including RSA 378:30(a), the so-called anti-CWIP statute, further define what utility investments may be incorporated into rate base. RSA 378:28, regarding permanent rates, contains broader language than RSA 378:27, which pertains to temporary rates:

> *RSA 378:28 PERMANENT RATES.* So far as possible, the provisions of RSA 378:27 shall be applied by the commission in fixing and determining permanent rates, as well as temporary rates. Nothing herein contained shall preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon.

RSA 378:28 specifically provides that the provisions of RSA 378:27 shall be applied by the commission only "[s]o far as possible ..." and allows the commission to receive and consider "any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon."

The Hydro Intervenors also have an overly restrictive view of the "used and useful" concept. As addressed *supra*, the Acquisition Premium is a regulatory asset. It is used and useful in the public service in that it is part of a negotiated settlement that resolves the PSNH bankruptcy and

creates an opportunity for rates that are substantially lower than what they would be if the Acquisition Premium were assigned to Seabrook value. Report accompanying Order no. 19,889 at pages 64-65. It is irrelevant that there is no "accrued depreciation" to be deducted over time from the Acquisition Premium. Rather, most of the acquisition is amortized over seven years and the remainder is amortized over twenty years, resulting in lower longer term costs to rate payers than would occur if the Acquisition Premium were treated as Seabrook costs to be depreciated over the forty year life of the plant. *Id.* Furthermore, amortization of the Acquisition Premium will result in an amortization reserve, which will be used in the future to offset the inclusion of the Acquisition Premium in the rate base for future ratemaking purposes. In any event, the $2.3 billion price paid by NU under the Rate Plan does not exceed the depreciated book value of PSNH's assets, which were recorded at $3.7 billion on PSNH's regulatory books and $2.6 billion on its financial books. Ex. NU 3J, Noyes and Sabatino Rebuttal Testimony at 8.

New Hampshire regulation is not as inflexible as the Hydro Intervenors assert. "Neither federal or State statutes, nor the decisions and regulations of the PUC itself, prevent the PUC from approving the inclusion in the rate base of the total purchase price of any of the property under consideration here, so long as it found that a sale at that price would be for the

public good." *Appeal of PSNH, supra* at page 486. The New Hampshire Supreme Court has held that, "... there is no simple formulation that describes the standard of usefulness, *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. at 690-91 PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct 675 (1923); *New Eng. Tel. & Tel. Co. v. State*, 98 N.H. at 218-19, 97 A.2d at 219. Prior case law has invested the commission with flexibility in determining what may qualified as used and useful, *LUCC*, 119 N.H. at 343-344, 402 A.2d at 633-634, thus necessarily providing scope for policy judgments." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986). This interpretation accords with decisions in other jurisdictions. The Pennsylvania Commission held that the "used and useful" standards is a "flexible rate-making tool whose definition to some extent is shaped by the individual circumstances of each case. Whether property is used and useful in providing service to the customers of a utility is a question of necessity must be resolved on the basis of a case-by-case analysis." *Pennsylvania Pub. Utility Commission v. Metropolitan Edison Co.*, 54 Pa PUC 276, 284, 37 PUR4th 77, 85 (1980). Thus, to the extent that the "used and useful" standard is applicable to the Acquisition Premium, there is substantial record support for the commission approval of the Acquisition Premium under RSA 378:28.

The Hydro Intervenors assert that during the proceedings, they requested and were denied the opportunity to conduct further discovery on the justness and reasonableness of the proposed rate. This request was previously denied by Report and Order no. 19,834 (dated May 22, 1990) and Order no. 19,859 (dated June 21, 1990) denying reconsideration of Order no. 19,834. The requests for further discovery were denied because, *inter alia*, the information requested by the Hydro Intervenors would be unduly burdensome to produce, would be of minimal value with respect to the ultimate issue of whether the rate agreement is in the public good, is untimely, would disrupt the orderly proceeding of this docket, the alternative treatments of the Acquisition Premium proposed by the Hydro Intervenors leading to the discovery request could result in substantial changes to the Rate Agreement, and the requested information would have minimal

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probative value. There is a limit as to how many times a party can seek reconsideration of the same issue. The Hydro Intervenors' current request provides no additional information that could not have been presented at the hearings or that was not previously considered by the commission. Accordingly, the request is denied.

11. Finally, the Hydro Intervenors' requested reconsideration of our partial denial of their Request for Ruling of Law no. 3, discussed on pages 195-196 of the Report. The request reads as follows:

> The special statute enacted by the legislature that governs this case, RSA Ch. 362-C, does not supersede traditional ratemaking principles under New Hampshire law.

The Hydro Intervenors' argument in favor of this request is incomprehensible. First, they base their request on the "grounds set forth in the Hydro Intervenors' Requests for Findings of Fact and Rulings of Law dated June 8, 1990." The only grounds set forth in said filing relating to this request are as follows:

> a) Statutes *in pari materia* are to be construed together. — *State Employees' Association v. Public Employee Labor Relations Board*, 118 N.H. 885, 890 (1978).
>
> b) In the absence of clear evidence to the contrary, a new statute will not be deemed to effect a repeal by implication of an existing statute. — *Arnold v. City of Manchester*, 119 N.H. 859, 863 (1979).

The two principles of law are well stated but the Hydro Intervenors do not specify how they would have these principles apply to the case at bar.

The Hydro Intervenors allege that the Order fails to recognize that RSA 362-C:1, IV, specifically directs the commission to decide whether the proposed rates are "just and reasonable," and whether the Rate Agreement is in the public good. RSA 362-C:1, IV and our Orders in this docket speak for themselves. Our Scoping Orders clearly state that NU must

demonstrate that the rates are "just and reasonable" under New Hampshire law and that the rate agreement is in the public good. Order no. 19,714 (dated February 14, 1990); Order. no. 19,703 (dated February 05, 1990), Report accompanying Order no. 19,674 (dated January 19, 1990), pages 3-8. These factors are discussed throughout our Report and Order no. 19,889, primarily at pages 40-63. The commission specifically found, *inter alia*, that the implementation of the agreement would be consistent with the public good ... ." The commission's findings of fact and rulings of law, together with the specific finding at page 4 of Order no. 19,889, reflect full consideration of the body of law relating to just and reasonable rates.

The Hydro Intervenors did not object to any of the Scoping Orders except on the limited issue of whether or not the commission's authority to re-examine small power producer rate orders should be addressed in this docket. *See* Order no. 19,715 (February 14, 1990) (denying Hydro Intervenor motion to include small power production issues in this proceeding). The Hydro Intervenors did not, and are not now, seeking reconsideration of this issue. They appear to be interested in changing the Rate Agreement to enhance their chance of success in possible future hearings on whether or not their rate orders should be rescinded. Tr. Apr. 26 at 23-27 and

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89-90. The record is clear, as discussed above, that prospects of delaying the proceedings and endangering the Rate Agreement for the sole purpose of accommodating the amorphous special interests of the Hydro Intervenors would not be in the public interest. For these reasons, as well as for reasons cited in the Report at page 196, this request for consideration is denied.

Our Order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the Hydro Intervenors' Motion for Rehearing on Final Report and Order, Including Findings of Fact and Rulings of Law filed on August 9, 1990, is denied.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 1990.

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NH.PUC*08/20/90*[51068]*75 NH PUC 576*EnergyNorth Natural Gas, Inc.

[Go to End of 51068]

75 NH PUC 576

Re EnergyNorth Natural Gas, Inc.

DR 90-045
Order No. 19,920

New Hampshire Public Utilities Commission

August 20, 1990

ORDER approving contracts between a gas distribution utility and certain interruptible customers.

RATES, § 384 — Gas — Interruptible service — Contracts — Gas distribution utility.

[N.H.] Contracts between a gas distribution utility and certain interruptible customers were approved where the contracts were consistent with a commission approved stipulation.

By the COMMISSION:

ORDER

WHEREAS, on July 8, 1990, EnergyNorth Natural Gas, Inc (ENGI) filed the following proposed modified contracts for interruptible gas service:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Contract No.Company Name.

100	Alltex Standard Union Division
101	Brox Industries
102	Catholic Medical Center
103	E&R Laundry
104	Lakes Region General Hospital
105	Lockheed-Sanders Associates
106	Manchester Knitted Fashions
107	Nashua Corp. — Nashua, NH
108	Nylon Corporation of America
109	Tilton School

and;

WHEREAS, the modified contracts are filed pursuant to a commission approved stipulation between the parties in DR 90-045 (see Report and Order No. 19,875 [75 NH PUC 366]); and

WHEREAS, staff has reviewed said contracts and finds them to be consistent with the above mentioned stipulation; it is hereby

ORDERED, that the above proposed contracts between ENGI and certain interruptible customers be, and hereby are, approved.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1990.

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NH.PUC*08/20/90*[51069]*75 NH PUC 577*Southern New Hampshire Water Company, Inc.

[Go to End of 51069]

75 NH PUC 577

Re Southern New Hampshire Water Company, Inc.

DE 89-132
Order No. 19,921

New Hampshire Public Utilities Commission

August 20, 1990

ORDER denying a motion to dismiss a petition for authorization to acquire certain interests of a water utility.

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1. PROCEDURE, § 29 — Disposal of issues — Involuntary dismissal.

[N.H.] If, from the alleged facts, the commission can discern a basis for granting a petition, the commission must deny a motion for involuntary dismissal of the petition. p. 578.

2. EMINENT DOMAIN, § 4 — Right to appropriate property — Municipal annexation — Statutory considerations.

[N.H.] State statute RSA 38 sets forth the procedures by which municipalities may exercise eminent domain authority over public utility property. p. 578.

3. EMINENT DOMAIN, § 4 — Acquisition of utility facilities — Compensation — Commission powers.

[N.H.] The commission has the power to set the amount of compensation that a municipality must pay for the acquisition of utility property by eminent domain, in those circumstances in which the parties are unable to reach an agreement. p. 578.

4. MUNICIPAL DISTRICTS, § 4 — Acquisition of utility facilities — Eminent domain — Amendment of utility franchise.

[N.H.] A finding in a prior order that the public interest did not require amendment of the franchise of a water utility did not preclude a municipality from petitioning to acquire utility property located within the franchise area by eminent domain. p. 578.

5. MUNICIPAL DISTRICTS, § 4 — Acquisition of utility facilities — Eminent domain — Village district status.

[N.H.] The commission found that it was appropriate to proceed with its investigation of a petition to acquire utility property by eminent domain notwithstanding the fact the petitioner's status as a village district was the subject of a pending court proceeding; however, if the court should ultimately find that the petitioner is not a valid village district, the commission would terminate the investigation. p. 578.

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By the COMMISSION:

REPORT AND ORDER ON MOTION
TO DISMISS

I. *Procedural History*

On August 7, 1989, Amherst Village District (Amherst) petitioned the New Hampshire Public Utilities Commission to commence an investigation under RSA 38:9 (1990), for the purpose of determining whether Amherst should be permitted to acquire any interests of Southern New Hampshire Water Company (Southern or SNHW) in a designated area in the town of Amherst. In a response filed on October 13, 1989, Southern denied Amherst's factual allegations and affirmatively alleged that Amherst was not entitled to relief under RSA 38. Thereafter, on October 27, 1989, Southern moved to dismiss Amherst's petition. On November 3, 1989, Amherst responded to Southern's motion.

II. *Positions of the Parties*

A. *Southern New Hampshire Water Company*

Southern makes primarily three arguments in support of its motion. According to Southern, Amherst is not entitled to relief under RSA Chapter 38, since it failed, *inter alia*, to identify adequately the property sought to be acquired, properly expand the boundaries of the village district to include the areas that may be acquired, or submit its proposed contract with Pennichuck Water Works for approval by the Commission under RSA Chapter 374.

Southern further claims that Amherst's petition is barred by *res judicata*. According to Southern, the Commission's Report and Order 19,478 (74 NH PUC 248) in Docket No. 88-112, in which the commission declined to revoke Southern's franchise to serve the area in question, bars Amherst's claims that its acquisition of Southern's property is in the public interest.

Southern's third argument is that the commission's determination in the Report and Order 19,249 (73 NH PUC 484) in Docket No. 88-112, in which we held that we did not have the authority to consider whether Amherst was a valid village district, precludes us from addressing the merits of Amherst's petition. In connection with this last argument, Southern notes that the issue of whether or not Amherst is a valid village district is the subject of a pending Hillsborough County Superior Court proceeding.

Amherst Village District

Amherst Village District denies Southern's contention that it is not a village district with standing to petition under RSA Chapter 38. Amherst supports its argument by attaching as exhibits a copy of the 1951 enabling legislation of the General Court creating the District and a September 12, 1988, letter of the Board of Selectmen filed with the Secretary of State pursuant to RSA 52:24. Amherst further denies that it was required to expand its boundaries before proceeding with this petition. The company further notes that if necessary, it is willing to make its acquisition of the Southern property expressly contingent upon the approval of the Selectmen to expand the district boundaries to encompass the subject area.

Amherst also disputed Southern's *res judicata* arguments. Amherst argued that in Order 19,478, the Commission expressly noted the availability of RSA 38 as a mechanism for Amherst to acquire Southern's franchise. Amherst further argues that the pending Superior Court proceeding does not deprive the commission of the authority to investigate the merits of Amherst's petition under RSA 38.

III. *Commission Analysis*

[1-5] The standard for granting involuntary dismissals in New Hampshire requires us to assume the truth of all the facts Amherst Village District alleged in its petition and also to interpret all inferences raised from those facts in the light most favorable to Amherst. If, from the alleged facts we can discern a basis for granting Amherst's petition, we must deny the motion. *Proctor v. Bank of New Hampshire*, 123 N.H.

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395, 398 (1983). When viewed in accordance with this standard, we find that the allegations contained in Amherst's motion raise a meritorious claim for relief under RSA 38:9 and 10 (1990), thereby precluding involuntary dismissal.

RSA Chapter 38 sets forth the procedure by which municipalities may exercise eminent domain authority over public utility property.[1](58) Specifically, RSA 38:9 and 10 confer upon this commission the power to set the amount of compensation that the municipality must pay to the public utility in those circumstances in which the parties are unable to reach agreement. In its Petition, Amherst alleges it is seeking to acquire a portion of Southern's franchise area and that the parties are unable to reach agreement on the amount of compensation, if any, due to Southern. If assumed to be true, these allegations are clearly sufficient to withstand a motion to dismiss.

In reaching this conclusion we are not unmindful of Southern's arguments that Amherst's failure to follow certain notice and filing requirements precludes the Village District from proceeding with its petition. These arguments, if valid, raise material fact issues which we will consider during the course of this proceeding. They do not establish grounds for dismissing the petition.

We also are not persuaded by Southern's arguments that our order in Docket DE 88-112, in which we addressed the issue of whether Southern's franchise should be amended, is *res judicata* to the current petition. Our investigation in that proceeding involved our authority under RSA Chapters 365 and 374 to investigate the adequacy of Southern's service and, if appropriate, to amend its franchise in a manner consistent with the public interest. Our primary concern was the adequacy of Southern's water service to the area in question. Thus, as we stated in Order 19,478, our ultimate decision that the public interest did not require amendment of Southern's franchise does not preclude Amherst from petitioning to acquire Southern's property under Chapter 38.

Finally, we find no merit to Southern's suggestion that we should stay this proceeding pending resolution of Superior Court proceeding in which Southern is challenging Amherst's status as a village district. Clearly, if the Superior Court rules that Amherst is not a valid village district, Amherst could not exercise eminent domain authority and our investigation necessarily would terminate. However, in the absence of a contrary Superior Court ruling, we find that it is appropriate to proceed with our investigation.

IV. *Prehearing Conference*

In accordance with our determination that Amherst's petition should not be dismissed, we are scheduling a prehearing conference for September 21, 1990, at 10:00 o'clock in the forenoon. The purpose of the conference is to provide the parties an opportunity to identify the material factual issues, to the extent possible, determine which of those facts are not in dispute, and propose a procedural schedule for an adjudication of the disputed facts.

Our order will issue accordingly.

ORDER

Based upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Motion to Dismiss is hereby denied; and it is

FURTHER ORDERED, that the parties shall appear for a prehearing conference on September 21, 1990, at 10:00 o'clock in the forenoon, for the reasons set forth in the foregoing report.

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By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1990.

FOOTNOTES

[1]RSA 38:2 defines municipality as "any city, town, or *village district* within the state." (Emphasis added).

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NH.PUC*08/22/90*[51070]*75 NH PUC 580*Eastern Utilities Associates/UNITIL Corporation

[Go to End of 51070]

75 NH PUC 580

Re Eastern Utilities Associates/UNITIL Corporation

DF 89-085
Order No. 19,922

New Hampshire Public Utilities Commission

August 22, 1990

ORDER granting, subject to conditions, a motion to intervene out of time in a proceeding to determine whether the proposed acquisition of one public utility holding company by another would be in the public good.

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1. PROCEDURE, § 39 — Time limitations — Intervention.

[N.H.] The commission has discretion to grant untimely motions to intervene, provided that it determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. p. 581.

2. PARTIES, § 19 — Intervenors — Associations — Ratepayer advocacy group — Untimely intervention — Conditions.

[N.H.] A ratepayer advocacy group was authorized to intervene out of time in a proceeding to determine whether the proposed acquisition of one public utility holding company by another would be in the public good where it was found that such intervention would not impair the orderly and prompt conduct of the proceeding; however, intervention was made subject to the following conditions: (1) the intervenor must take the record as it finds it and may not be the cause for any amendment to the established procedural schedule; (2) the intervenor must comply with all protective orders issued in the proceeding; and (3) the intervenor must make every effort to coordinate its efforts with the Office of the Consumer Advocate; moreover, the commission found that inasmuch as the ratepayer advocacy group was not represented by counsel, it may impose further restrictions if necessary to prevent the unauthorized practice of law. p. 581.

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By the COMMISSION:

REPORT

I. *Procedural Background*

This docket was opened by Order of Notice dated February 9, 1990, for commission investigation into whether EUA's proposed acquisition of UNITIL is in the public good. In said order of notice, the commission established March 9, 1990, as the last day for submitting motions to intervene and scheduled a prehearing conference to address procedural matters for March 12, 1990. Hearings on the merits commenced on August 9, 1990.

On August 9, 1990, the Campaign for Ratepayers Rights (CRR) filed a Petition to Intervene in this proceeding, nearly five months after the last aforementioned date for intervention established by the commission. In its petition, CRR asserts that its

> position is separate and distinct from all other parties to the case in that it has no obligation to either stockholders and investors, different classes of customers, or the state and as such is able to evaluate the evidence and arrive at a position on issues based solely upon the consideration of what is best for its members. Petition at 1.

Additionally, CRR seeks to "reserve[s] the right to exercise all rights under the law to protect the interests that form the basis for the CRR intervention should the evolution of the case warrant such activity." *Id.* at 2.

According to CRR's Petition, CRR "is a non-profit organization incorporated under the laws of New Hampshire", and is being represented in this proceeding by its Executive Director, Robert Cushing, Jr. CRR also asserts that it is "the only statewide organization acting on behalf of the interests of residential ratepayers." *Id.* at 1.

II. *Applicable Law*

Matters of intervention are governed by RSA 541-A:17 which provides, in pertinent part:

541-A:17 Intervention.

I. The presiding officer shall grant one or more petitions for interventions if:
(a) The petition is submitted in writing to the presiding officer's notice of the hearing at least three (3) days before the hearing;
(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time,

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upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceeding either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

(a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
(b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
(c) Requiring 2 or more intervenors to combine their presentation of evidence and argument, cross-examination and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interests which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

III. *Commission Analysis*

[1, 2] It is uncontroverted that CRR's petition to intervene is untimely and, therefore, does not meet the requirements of RSA 541-A:17, I. Therefore, whether to grant the motion is at the discretion of the commission pursuant to RSA 541-A:17, II so long as the commission determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

Based upon CRR's pleading, it is evident that CRR's interests are already represented by the OCA. CRR's motion states that it is "... acting in the interests of residential ratepayers ..."; i.e., the precise statutory mission of the OCA. RSA 363:28. We are also concerned that CRR does not appear to be represented by counsel in this proceeding. *See* N.H. Admin. Rules Puc 201.03. Nevertheless, we find that an additional residential ratepayer voice would be in the interests of justice. In this instance, the common interests served by the CRR and the OCA and the lack of attorney representation trigger commission conditions relating to the second statutory element of intervention so that CRR participation to advocate common interests will not impair the orderly and prompt conduct of the proceeding. Thus, we find that pursuant to RSA 541-A:17, III, IV, and V, it is necessary to attach three immediate conditions to CRR's intervention.

First, CRR must take the record in this proceeding as it now finds it. Further, CRR's intervention, in and of itself, shall not be the cause for any amendment to the established

procedural schedule.

Second, CRR's intervention is subject to compliance with the commission's protective orders

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in this proceeding, especially our companion order issued today regarding the objections of the Office of the Consumer Advocate and CRR to our procedures for treatment of confidential matters arising during the course of this proceeding.

Third, CRR shall make every effort to coordinate its participation with the OCA.

The third condition arises *inter alia* from the issue of whether Mr. Cushing's representation of CRR constitutes the unauthorized practice of law. The statutory option of *pro se* representation under RSA 311:1 has been held by the Supreme Court to be inapplicable to corporations or unincorporated associations. *State v. Settle,* 129 N.H. 171, 178 (1987). The commission rule governing practice before the commission must be construed in accordance with the *Settle* decision. N. H. Admin. Rules, Puc 201.03 provides, *inter alia*: "Any person may appear before the commission in his own behalf, by attorney authorized to practice in this state, or by agent thereunto authorized in writing". Only natural persons may appear in their own behalf; corporations and unincorporated associations cannot appear *pro se. State v. Settle, supra*.

Therefore, the issue before us is whether Mr. Cushing's representation of CRR is authorized by other provisions of RSA 311:1, which permit any person of good character to appear on behalf of a party. In addressing this very question, the Supreme Court determined that

> ...RSA 311:1 cannot be read in isolation, but must be read in conjunction with other statutory provisions, court rules, case law, and the Code of Professional Responsibility, all addressed to the unauthorized practice of law. RSA 311:1 provides: "A party in any cause or proceeding may appear, plead, prosecute or defend, in his proper person or by any citizen of good character." Enacted at the same time as that statute, however, was RSA 311:7, which provides: "No person shall be permitted *commonly* to practice as an attor-
> ney in court unless he has been admitted by the court and taken the [statutory] oath ... ."
>
> * * *
>
> It is clear that the legislature, when it enacted RSA 311:1 and its predecessors, did not intend to give nonlawyers free rein to practice law in circumvention of other statutory restrictions and of the powers delegated to this court to regulate the practice of law in the courts of this State. Our holding turns upon a statutory interpretation of the provisions of RSA chapter 311. A statute must be read as a whole and all of its sections considered together.

Bilodeau v. Antal, 123 N.H. 39, 42 and 44. (1983) (emphasis added) (citations omitted).

Nonetheless, the court concluded that:

> ... [O]ur holding today does not involve the situation in which a nonlawyer might appear once as a representative of a party. Nor do we mean to suggest that there is any single factor to determine whether someone is engaged in the unauthorized practice of law and, consequently, may be prohibited from undertaking the legal representation of another. That determination must be made on a case-by-case basis.

Id. at 45.

Thus, our reading of the Court's conclusion is that we have been accorded substantial latitude

to regulate the participation of nonlawyers where, as here, the nonlawyer does not "commonly" appear before the commission. The instant proceeding involving a determination of whether EUA's proposed acquisition of UNITIL is in the public interest will necessitate commission adjudication of complex factual issues and, accordingly, is being conducted under the formal procedures applicable to adjudicatory proceedings (*e.g.*, formal notice, sworn testimony and the right of cross-examination).

The commission must comply with technical procedural requirements when it engages in adjudicatory proceedings. *See e.g.*, RSA 541-A:16-21 (Supp.) It is these types of technical requirements that demand of participants practical competence and ethical responsibility. *State v. Settle*, supra. As a result, we have asked CRR

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to consult with the OCA to attempt to litigate common interests through an attorney. As a result of the outcome of that consultation, as well as other factors affecting the conduct of this proceeding, we may find it necessary at some future point in the hearing to impose additional conditions or restrictions on CRR's participation. The imposition of such restrictions on participation in the adjudicatory aspects of the proceeding is consistent with the commission's authority to control its proceedings. RSA 541-A:17, III (Supp.); N.H. Admin. Rules, Puc 203.02(c).

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof, the petition to intervene of the Campaign for Ratepayers Rights is granted effective August 9, 1990, subject to the conditions enumerated in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1990.

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NH.PUC*08/22/90*[51071]*75 NH PUC 583*Eastern Utilities Associates/UNITIL Corporation

[Go to End of 51071]

75 NH PUC 583

Re Eastern Utilities Associates/UNITIL Corporation

DF 89-085
Order No. 19,923

New Hampshire Public Utilities Commission

August 22, 1990

ORDER, in a proceeding to determine whether the proposed acquisition of one public utility holding company by another would be in the public good, establishing procedures for the

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treatment in evidentiary hearings of evidence subject to a claim of exemption from public disclosure.

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1. PROCEDURE, § 16 — Production of documents — Exemptions — Public disclosure.

[N.H.] State statute RSA 91-A:5, IV, exempts from public disclosure, *inter alia*, "confidential, commercial, or financial information"; accordingly, parties to commission proceedings have the right to object to the public in disclosure of information that they believe falls within the exemption. p. 585.

2. PROCEDURE, § 16 — Production of documents — Exemptions — Public disclosure.

[N.H.] A state statute that exempts from public disclosure "confidential, commercial, or financial information" does not itself define what financial or commercial information is also confidential; accordingly, to determine which portion of financial or confidential information filed in a commission proceeding is also confidential, the commission must balance the benefits of disclosure against the harm of disclosure; if, on balance, the significant interest of the public in disclosure outweighs the harm to either an individual party or the public, the information must be made public. p. 585.

3. EVIDENCE, § 33 — Confidential information — Exemption from public disclosure — Material introduced in evidentiary hearings.

[N.H.] In establishing procedures for handling confidential information in a proceeding to determine whether the proposed acquisition of one public utility holding company by another would be in the public good, the commission rejected the contention that the state Right to Know Law requires public access to all information introduced during an evidentiary hearing; it was found that such a contention ignored the fact that the state Right to Know Law specifically exempts confidential, commercial or financial information from public disclosure. p. 585.

4. EVIDENCE, § 33 — Confidential information — Exemption from public disclosure — Material introduced in evidentiary hearings.

[N.H.] The mere fact that information subject to an exemption from public disclosure under the terms of the New Hampshire Right to

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Know Law is introduced at an evidentiary hearing does not result in a *per se* requirement that the exemption is removed; rather, the commission must apply a balancing test to the information for the purpose of ascertaining whether the benefits of public disclosure are greater that the harms alleged by the utility. p. 585.

APPEARANCES: Eastern Utilities Associates ("EUA") by Richard A. Samuels, Esq. of McLane, Graf, Raulerson & Middleton, P.S.; Donald E. Williamson, Esq. and David A. Fazzone, Esq. of Gaston & Snow; Unitil Corporation ("UNITIL") by Dom D'Ambruoso, Esq. of

Ransmeier & Spellman; Elias G. Farrah, Esq., and Paul K. Connolly, Esq. of LeBoeuf, Lamb, Leiby & MacRae; City of Concord by Paul Cavanaugh, Esq.; Office of Consumer Advocate on behalf of consumers by Michael Holmes, Esq. and Joseph Rogers, Esq.; Audrey A. Zibelman, Esq. and James T. Rodier, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The purpose of this Report and Order is to set forth the procedures that the commission will use in the evidentiary hearings for the treatment of evidence that the parties claim is exempt from public disclosure under RSA 91 A:5, (IV) (1990) and to rule on motions made by the Office of the Consumer Advocate (OCA) and the Campaign for Ratepayer's Rights (CRR) on this procedure.

I. *Introduction*

Hearings on the above entitled matter commenced on August 9, 1990. At the beginning of the hearings, the commission set forth the following procedure for the treatment of confidential matters during the evidentiary proceedings. First, it shall be the responsibility of the attorneys to advise the commission when the subject matter of oral testimony is information which a party is claiming to be confidential and exempt from public disclosure within the meaning of RSA 91-A:5 IV. The portion of the transcript containing the examination on the claimed confidential information will then be segregated from the public transcript and sealed for a period of ten (10) days after the receipt by the parties of the transcript. At that time the transcript will be unsealed and opened to the public unless the parties seeking exemption from public disclosure under the statute persuade the commission that the harm to the party of disclosure outweighs the benefits of disclosure to the public. This process requires the parties seeking to protect the information to make an initial *prima facie* showing that the harm of disclosure outweighs the public benefits. Upon objection, the party seeking to protect the information will bear the burden of demonstrating that the commission should continue to balance the foregoing interests in favor of non-disclosure. This procedure is designed to allow for an efficient and fair administrative proceeding while at the same time ensuring maximum availability to the public of the evidentiary record. The commission believes that in many instances parties who initially claim confidentiality will find upon review of the transcript that confidential treatment is no longer necessary. Additionally, the commission believes the procedure will provide it with an opportunity fully and fairly to deliberate upon any claims of exemption from public disclosure.

The Office of Consumer Advocate (OCA) and the Campaign for Ratepayers Rights (CRR) orally objected to the commission's procedure at the August 9, 1991 hearing. The OCA also filed a written objection on August 9, 1990, in which it argued the commission is without authority to treat any matters as confidential during the evidentiary hearing. Both the CRR and OCA contend that under RSA Chapter 91-A, *et. seq.*, all evidence introduced during the evidentiary hearing is *per se* public and, consequently, the commission may neither limit public participation nor temporarily seal the transcript. For the reasons set forth below, we believe that the commission's outlined procedure fully comports with both the letter and

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spirit of New Hampshire's Right-to-Know law.

II. *Commission Analysis*

[1-4] The New Hampshire Right-to-Know law, RSA 91-A:1, *et seq*, creates a presumption favoring the public disclosure of information that forms the basis of this commission's conduct. This commission is committed to the principles set forth in the legislation:

> Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

RSA 91-A:1 (1990).

The fact, however, that this commission favors public disclosure does not permit us to require public dissemination of all information that we receive. Specifically, RSA 91-A:5, IV (1990), exempts from public disclosure, *inter alia*, "confidential, commercial, or financial information". This provision indisputably gives both EUA and UNITIL the right to object to the public disclosure of information that they believe falls within the exemption. The statute does not itself define what financial or commercial information is also confidential. We recognize that the commission records contain a substantial amount of financial and commercial information, most of which is public. To determine which portion of financial and commercial information is also confidential, we must balance the benefits of disclosure against the harm of disclosure. If, on balance, the significant interest of the public in disclosure outweighs the harm to either an individual party or the public, the information must be made public. *Perras v. Clements*, 127 N.H. 603, 605, (1986); *Mans v. Lebanon School Board*, 112 N.H. 160, (1972).

We believe that our procedure for handling confidential information fully comports with the statutes and interpretive supreme court decisions. Under our procedure, all parties and intervenors who sign the non-disclosure certificate are entitled to the claimed confidential information. Further, the burden is on the party claiming confidentiality to demonstrate the validity of its claim. In the absence of specific proof that the disclosure of the information will create greater harm to the party than the public will be benefitted, we will allow public access and dissemination. We believe the process will secure the substantive rights of the parties and public under the Right-to-Know law and permit maximum disclosure consistent with the express legislative policy.

The OCA and CRR arguments ignore the exemptions contained in RSA 91-A:5 (IV). Instead, they contend that we must interpret RSA 91-A:2, to permit public access to all information introduced during an evidentiary hearing. In support of its argument, the OCA relies on the New Hampshire Supreme Court's decision in the *Society for the Protection of New Hampshire Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1975). We do not believe that decision supports the OCA's arguments.

The issue in *Society* was whether RSA Chapter 91-A obligated the Water Supply and Pollution Control Commission to place into the record all information it relied upon in granting a permit to the Public Service Company of New Hampshire to construct a nuclear power plant. The genesis of the complaint was the Society's concern that the commission's decision was based upon certain legal advice that it received during an executive session. While concluding that the

commission was entitled to consult with its staff in a closed executive session, the New Hampshire Supreme Court noted that the "intervenors" were "entitled to examine all of the evidence relied upon by the commission in making its final decision" *Id.* at 195.

As is evident from the above discussion, the treatment of information that is exempt from public disclosure was not an issue in the *Society decision*. The New Hampshire Supreme Court's conclusion that parties must be able to examine the entire record accordingly has no bearing on the issue of whether a non-party member of the public has the right to be present during the portion of an evidentiary hearing in which non-public information is being discussed. Hence, we find the OCA's reliance on that decision to

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be without merit.

The OCA and CRR's arguments are also contrary to basic precepts of statutory construction. It is a fundamental principal of statutory construction that unambiguous statutes must be interpreted in accordance with the plain meaning of their terms. *Private Truck Council of America, Inc. v. State*, 128 N.H. 466 (1986); *Chemical Bank v. Rinden Professional Ass'n.*, 126 N.H. 688 (1985). Further, statutes should not be construed in a manner that produces absurd or illogical results. *State v. Kay*, 115 N.H. 696, (1975); *Doe v. State*, 114 N.H. 714, (1974).

RSA 91-A:5 plainly and unambiguously states that it exempts protected confidential matters from Chapter 91-A. Moreover, 91-A:4, obliges us to make publicly available both pre-hearing discovery and the transcripts of our evidentiary hearings, except insofar as they contain information exempted from public disclosure under RSA 91-A:5. When construed with 91-A:4 and 5, the public access obligations contained in 91-A:2 can only be interpreted to mean that the public is not entitled to attend those portions of our evidentiary hearings during which non-public protected information is being addressed. To hold otherwise would produce an absurd result that a member of the public could insist on attending an evidentiary hearing during which confidential information is placed in the record, but under 91-A:4 II would not be entitled to review the portion of the transcript containing the confidential oral testimony. We must presume that the legislature did not intend such an illogical result.

In conclusion, we reject the contention that all record information is *per se* public under the Right to Know Law. We find that our ruling regarding treatment of confidential matters does not contravene the requirements of RSA 91 A:2, II. We conclude that the mere fact that the introduction of information that may be exempt from public disclosure under RSA 91-A:5, IV does not result in a *per se* requirement that the exemption is removed. Instead, in accordance with the decisions of the New Hampshire Supreme Court, we conclude that we must apply a balancing test to the information for the purpose of ascertaining whether the benefits of public disclosure are greater than the harms alleged by the utility. The process established rationally maintains the *status quo* during the time period that is necessary to complete the balancing process. It also allows all parties to have access to the information during the balancing process and thereafter, subject to the parties' agreement to adhere to the protective orders of this commission, unless such orders are amended by this commission or vacated by a reviewing court. If upon viewing the information in accordance with the test we find that the balance favors

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public disclosure, we will permit public access to the information.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the procedure outlined in the foregoing report for treatment of confidential matters shall govern the remainder of this proceeding unless otherwise ordered, and it is

FURTHER ORDERED, that the motions of the Office of Consumer Advocate and the Campaign for Ratepayers Rights are denied.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1990.

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NH.PUC*08/27/90*[51072]*75 NH PUC 586*Continental Telephone Company of New Hampshire

[Go to End of 51072]

75 NH PUC 586

Re Continental Telephone Company of New Hampshire

DR 89-150
Order No. 19,926

New Hampshire Public Utilities Commission

August 27, 1990

ORDER approving a settlement agreement providing for an increase in rates for intrastate telecommunications services.

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1. RATES, § 532 — Intrastate

Page 586

telecommunications services — Rate settlement — Commission approval.

[N.H.] The commission approved a settlement agreement providing for an increase in rates for intrastate telecommunications services. p. 587.

2. RETURN, § 26.4 — Cost of equity capital — Stipulation — Telephone rate proceeding.

[N.H.] A stipulated rate of return on common equity of 12.5% was adopted in a telephone rate proceeding. p. 587.

3. ACCOUNTING, § 54 — Telephone — Conformance with Uniform System of Accounts.

[N.H.] As part of a commission-approved telephone rate settlement, the company agreed to

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review its accounting practices regarding *Job Closing Overview*, and move towards accelerating its procedures transferring Telephone Plant Under Construction to Telephone Plant-in-Service Accounts, to conform with the N.H. PART PUC Uniform System of Accounts. p. 588.

4. RATES, § 260 — Surcharges — Recoupment of revenue deficiency under temporary rates — Telephone rate settlement.

[N.H.] The commission accepted a telephone rate settlement that allows the utility to surcharge over a four-month period the difference in temporary rates made effective by prior order and the permanent rates provided for in the settlement. p. 588.

APPEARANCES: For Continental Telephone Company of New Hampshire, Thomas C. Platt, III, Esquire; Eugene F. Sullivan, III, Esquire, Staff Attorney and ChristiAne G. Mason, PUC Examiner for Commission Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On September 28, 1989 Continental Telephone Company of New Hampshire ("CONTEL-NH"), a public utility engaged in the business of supplying telephone service in the State of New Hampshire, filed a notice of intent to file rate schedules. CONTEL-NH filed revised tariff pages providing for an increase in rates of $344,467 effective October 30, 1990. The proposed rates were suspended by Order No. 19,581 dated October 24, 1989.

CONTEL-NH filed on September 28, 1989 a petition for temporary intrastate rates pursuant to RSA 378:27.

On January 10, 1990 a duly noticed public hearing was held by the commission to consider the proposed temporary rates and establish a procedural schedule. By Order No. 19,685 (75 NH PUC 52) dated January 29, 1990, the commission approved temporary rates in the amount of $108,827 effective January 29, 1990 and approved the procedural schedule.

With respect to the procedural schedule, the parties met on August 3, 1990 to narrow issues and to negotiate a settlement. As a result of the meetings the parties were able to reach agreement on the level of permanent rates and the rate structure.

[1] The commission held a hearing on August 15, 1990 at which time it received the proposed settlement which was marked as Exhibit 5, which is attached hereto as Appendix A and incorporated herein. The proposed settlement provides for an increase in revenues of $196,891, with the same effective date as temporary rates. The major features of the settlement agreement are as follows:

[2] A. *Stipulated Rate of Return*: The allowed return on common equity of 12.50% and the cost of long-term debt of 9.59%, which produce an overall rate of return of 11.03%, are based upon the company's capital structure at December 31, 1989, as reflected on Settlement Exhibit 1.

B. *Stipulated Rate Base*: The overall rate of return to be allowed to the company shall be applied to the intrastate rate base of the company as June 30, 1989, agreed to by the parties,

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namely, $4,994,266 shown in Settlement Exhibit 2.

C. *Stipulated Net Intrastate Utility*

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Operating Income: The adjusted test year net intrastate utility operating income is agreed to be $431,316 as shown in Settlement Exhibit 3, Column D, Line 21.

[3] D. *Job Closing Overview*: As part of this stipulation, the company agrees to review its accounting practices regarding *Job Closing Overview*, and move towards accelerating the company's procedures transferring Telephone Plant Under Construction (TPUC) to Telephone Plant-in-Service (TPIS) Accounts, to conform with the N.H. PART PUC 409 Uniform System of Accounts.

COMMISSION FINDINGS

[4] The parties have agreed and the commission accepts the provision to allow the company to surcharge the difference in temporary rates (which were made effective January 29, 1990) and the permanent rates in this order over a four month period. The company should file a detailed calculation of the recoupment surcharge. Tariffs should be filed in accordance with the settlement agreement. Detailed schedules should also be submitted which show the determination of the annual revenues based upon the revised tariffs.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report which is made a part hereof, it is

ORDERED, that the following revisions to the CONTEL-NH Telephone Company of New Hampshire Tariff No. 11 be, and hereby are, rejected:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Contents:          9th Revised Sheet 1
                   6th Revised Sheet 2
                   6th Revised Sheet 3
                   3rd Revised Sheet 5
Section 3:         4th Revised Contents
                   12th Revised Sheet 1
                   3rd Revised Sheet 8
                   6th Revised Sheet 9
                   3rd Revised Sheet 9.1
                   1st Revised Sheet 15
Section 4:         4th Revised Sheet 1
Section 6:         6th Revised Sheet 3
Section 7:         4th Revised Sheet 2
                   2nd Revised Sheet 4
                   2nd Revised Sheet 5
Section 12:        8th Revised Sheet 2
Section 100:       2nd Revised Contents
Section 100.1:     2nd Revised Sheet 1
Section 100.6:     2nd Revised Contents
Section 100.9:     2nd Revised Contents
Section 100.10:    2nd Revised Contents
Section 100.10.1: 2nd Revised Contents
Section 100.11:    2nd Revised Contents
Section 100.15:    1st Revised Contents
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and it is

FURTHER ORDERED, that CONTEL-NH file revisions to said tariff in lieu of those rejected herein, such revisions to provide an increase in annual intrastate revenues of $196,891; and it is

FURTHER ORDERED, that said revisions incorporate changes in rate structure authorized in the attached report; and it is

FURTHER ORDERED, that such revised pages bear an effective date of August 27, 1990; and it is

FURTHER ORDERED, that CONTEL-NH shall recoup the temporary rate deficiency during a four (4) month period; and it is

FURTHER ORDERED, that at the end of the four month recapment period, touch tone will be eliminated as an unbounded rate element, on a revenue neutral basis, as per the attached stipulation; and it is

FURTHER ORDERED, that the stipulation attached hereto as Appendix A and incorporated herein be, and hereby is, accepted; and it is

FURTHER ORDERED, CONTEL-NH file detailed schedules demonstrating how direct tariff revisions recover the authorized revenues; and it is

FURTHER ORDERED, customers be provided a bill insert with the first bill rendered under this order, such insert summarizing the authorized changes.

By order of the Public Utilities

Commission of New Hampshire this twenty-seventh day of August, 1990.

Appendix A

STIPULATION AGREEMENT

This Agreement is entered into as of the 15th day of August, 1990, by and among Contel of New Hampshire, Inc. (the "Company"), and the Staff ("Staff") of the Public Utilities Commission of The State of New Hampshire ("Commission") with the intent of resolving all of the issues that were raised or could have been raised in the above-captioned proceeding. Further, it is the desire of the parties in executing this Agreement to expedite the Commission's consideration and resolution of the issues which are the subject of this Agreement.

ARTICLE I

INTRODUCTION

1.0 This proceeding originated with a filing by the Company on September 28, 1989 of revised tariff pages: to its Tariff NHPUC NO. 11-Telephone (the "revised tariff pages") setting forth rates (the "proposed intrastate rates") desired to produce additional annual gross revenue

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from intrastate operations of $344,467 or about 18.6% more than the Company's gross revenue from intrastate operations for the test year (a twelve-month period ended June 30, 1989) effective October 30, 1989. By Order No. 19,581 dated October 24, 1989, the Commission suspended the revised tariff pages pending investigation and decision thereon.

1.1 On September 28, 1989, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting temporary intrastate rates for the duration of the proceedings sufficient to produce additional gross intrastate revenue of $344,467 annually. After due notice, a hearing on temporary rates and procedural matters was held on January 10, 1990, at which the Company and Staff were represented and the Consumer Advocate appeared. By Report and Order No. 19,685 (75 NH PUC 52) dated January 29, 1990, the Commission (1) approved temporary intrastate rates for the Company designed to produce additional annual revenues of $108,827 effective January 29, 1990, and (2) adopted a procedural schedule providing, among other things, for a hearing on the merits on August 15, 16, and 17, 1990.

1.2 On or about February 9, 1990 and thereafter, the Staff made data requests to which the Company duly responded.

1.3 On August 3, 1990 representatives of the Company and the Staff (the "parties") met to discuss issues involved in the proceeding, including the extent of the need for permanent intrastate relief, with a view to narrowing and, insofar as possible, resolving such issues between the parties. Following the meeting the Company furnished additional data for consideration by the Staff.

1.4 This Agreement is the result of the extensive discovery process and settlement discussions between the Company and the Staff. The Company and the Staff are prepared to present testimony in support of this Agreement at the hearing presently scheduled for August 15, 1991 for the purpose of hearing and acting upon this Agreement.

ARTICLE II

REVENUE DEFICIENCY

2.0 The Company's original testimony and exhibits supported an increase in annual intrastate revenue of $344,467. Attached hereto as Appendix A are a Revenue Deficiency Statement and supporting Settlement Exhibits 1 through 4 which reflect the agreement of the parties regarding adjustments to the original exhibits made for the purposes of this Agreement.

2.1 Line 7 of the Revenue Deficiency Statement in Appendix A indicates that the increase in intrastate revenue which is required to provide the Company with the agreed upon level of net utility operating income is $196,891. It is stipulated and agreed for the purposes of this Agreement that the Company is entitled to and shall be allowed an opportunity to realize an increase in annual intrastate operating revenue in that amount effective January 29,

1990 (the effective date of the temporary rates).

2.2 For the purposes of this proceeding, the major factors of the stipulated required increase in annual intrastate operating revenue are agreed to be as follows:

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A. *Stipulated Rate of Return*: The allowed return on common equity of 12.50% and the cost of long-term debt of 9.59%, which produce an overall rate of return of 11.03%, are based upon the Company's capital structure at December 31, 1989, all as shown on Settlement Exhibit 1.

B. *Stipulated Rate Base*: The overall rate of return to be allowed to the Company shall be applied to the intrastate rate base of the Company as June 30, 1989, agreed to by the parties, namely, $4,994,266 shown in Settlement Exhibit 2. The agreed rate base has been developed from the Company's total rate base proposed by it (Scheitinger Exhibit, Schedule 15) adjusted as shown in Settlement Exhibit 2.

C. *Stipulated Net Intrastate Utility Operating Income*: The adjusted test year net intrastate utility operating income is agreed to be $431,316 as shown in Settlement Exhibit 3, Column D, Line 21. Supporting details are shown on pages 2 to 6, inclusive, of that exhibit.

D. *Job Closing Overview*: As part of this stipulation, the Company agrees to review its accounting practices regarding *Job Closing Overview*, and move towards accelerating the Companys' procedures transferring Telephone Plant Under Construction (TPUC) to Telephone Plant-in-Service Accounts, to conform with the N.H. PART PUC 409 Uniform System of Accounts.

ARTICLE III

CHANGES IN RATE DESIGN

3.0 The parties have agreed for the purposes of this Agreement that the rate structure changes proposed by the Company, the nature and principle aspects of which are specified in the prepared testimony of J. Robert Ayers filed September 28, 1989 are, with the modifications and dispositions thereof shown in Settlement Exhibit 4, appropriate and shall be made.

ARTICLE IV

RECONCILIATION AND
RECOUPMENT RATE

4.0 The parties agree that the Company is entitled to and shall be allowed to collect and recover by surcharge in accordance with RSA 378:29, the difference (the "temporary rate revenue deficiency") between the revenue actually billed by the Company under the temporary intrastate rates approved by the Commission by said Report and Order No. 19,685 dated January 29, 1990 during the period in which such temporary intrastate rates have been and shall be in effect, and the revenue the Company would have billed had it charged for service during that period at rates reflecting the increase in intrastate revenue allowed in accordance herewith.

4.1 The recoupment rate surcharge shall be designed to recoup the temporary rate deficiency specified in Section 4.0 during a 4-month period commencing with the implementation of permanent rates, by surcharge rates proportional to the permanent intrastate rates established in accordance with this Agreement.

ARTICLE V

NON-WAIVER

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5.0 By entering into this Agreement the Company has not waived its right to seek additional intrastate revenue by means of a full rate proceeding, or otherwise, and the Staff has not waived the right to seek a reduction in the Company's intrastate rates by applying to the Commission to institute a show-cause proceeding or otherwise.

ARTICLE VI

CONDITIONS

6.0 The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding is true or valid.

6.1 This Agreement is expressly

conditioned upon the Commission's acceptance of all of its provisions, without change or condition, and, if the Commission does not accept it in its entirety, without change or condition, the Agreement shall be deemed to be null and void and without effect (unless the parties expressly agree in writing to the contrary), and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

6.2 The Commission's acceptance of this Agreement does not constitute continuing approval of or binding precedent regarding any particular principle or issue in this proceeding, but such acceptance does constitute a determination that (as the parties believe) the adjustments and provisions set forth herein are justified, appropriate and lawful and that intrastate rates designed to yield the revenue con- templated by Appendix A to this Agreement will be just and reasonable.

6.3 The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party, participant or representative making any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding, any future proceeding or otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

CONTEL OF NEW HAMPSHIRE, INC.

By: Its President

August 15, 1990

STAFF OF THE PUBLIC UTILITIES COMMISSION OF NEW HAMPSHIRE

By: Staff Attorney

August 15, 1990

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Settlement
Exhibit 4

CONTEL OF NEW HAMPSHIRE, INC.

Summary of Rate Design Changes
Proposed by the Company
and
The Modification or Disposition
Thereof Agreed to by the Parties

The parties agree to the Company's basic rate design methods, and agree to modify the Company's proposals as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

    Rate Design Proposal        Agreement
1). Increase Touch-Tone rates.       Not Allowed
2). Increase Local public and        Not Allowed
    semipublic coin telephone        at this time.
    service per call rates
    from $.10 to $.25.
3). Eliminate 10 call allowance      Not Allowed
    associated with Directory        at this time.
    Assistance and increase
    per call rate from $.23 to $.40.
4). Revise service connection        Allowed.
    charges based on cost of
    service study.
```

It is further agreed that Touch-Tone will be eliminated as an unbundled rate element at the conclusion of the four month recoupment period as specified in Article IV, Section 4.1 of the Agreement on a revenue neutral basis.

In addition, the proposed percentage increases to local exchange rates will be revised to recover the revenue requirement as set forth in this Order.

The parties further agree to a second phase rate design filing, in which Contel will file tariffs which accomplish the following:

1). Revise Directory Assistance allowances and rates to be consistent with the Final Order in the New England Telephone's (NET's) Case DR. 89-010.

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2). Revise Paystation rates to be consistent with the Final Order in NET's Case DR. 89-010.

3). Revise local exchange rates, or other rates agreed to by staff, so as to make the filing virtually revenue neutral at the time of filing.

Contel will cause such tariff revisions to be filed with the Commission within 60 days of a Final Order in DR. 89-010.

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NH.PUC*08/30/90*[51073]*75 NH PUC 600*Chichester Telephone Company

[Go to End of 51073]

75 NH PUC 600

Re Chichester Telephone Company

DE 90-082
Order No. 19,928

New Hampshire Public Utilities Commission

August 30, 1990

ORDER authorizing an independent telephone public utility to provide Small Business Features, a Centrex-type service.

SERVICE, § 463 — Telecommunications — Centrex-type service — Small business features — Cost support.

[N.H.] An independent telephone public utility was authorized to provide a Centrex-type service known as Small Business Features where the commission determined that the service would more than cover its costs; however, the commission expressed dissatisfaction with the cost analysis provided by the utility and directed it to provide adequate incremental cost support in future filings.

By the COMMISSION:

REPORT

Procedural History

On May 8, 1990, Chichester Telephone Company (the Company or Chichester) filed a petition seeking to provide Small Business Features (SBF) a Centrex type service, for effect on June 7, 1990.

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Following a staff request for additional cost support for the SBF filing, the filing was suspended via commission order no. 19,892 dated July 20, 1990. Additional cost support was provided by the Company on July 20 and August 16, 1990.

Proposed Service Offering

The proposed System Plus Service would offer custom calling-like features individually or in packages of 3, 6 or 12 features. Individual features would be available at $0.75, with packages discounted as features were added. The Company's intention was to offer the service in two group sizes, Multi-Line Variety Package (1-6 lines) and Integrated Business Service, (for more lines) with the target market being primarily business customers and/or those with existing Key and PBX trunks.

Revenue Projections

Based on an annual carrying charge of $1,143.74 for SBF Switch investment, coupled with additional expenses of $5,164.80, associated with displaced services as customers transfer to SBF, the Company estimates an annual revenue requirement of $6,308.54.

Chichester forecasted line penetration by applying a percentage penetration based on actual market penetration results derived from offering the service at an affiliate Telephone Data Systems Company operating in Maine. With resultant annual Systems Plus revenues projected at $6,593.23, the Company anticipates an overrecovery of $284.69 in revenues in the first year.

Cost Support

Staff requested that Chichester provide incremental cost support for this service, better to guide the Company's business decisions and to retain consistency with prior Centrex filings approved by the commission for New England Telephone and Union Telephone Companies.

Actual cost support provided by Chichester represented a blend of average and incremental costs.

Conclusions

The $5,266 SBF software investment provides Chichester with the ability to service 3,000 SBF lines rather than the 1,100 existing access lines. Further, the Company has over-built its loop investment, so that at current growth rates further loop additions are not anticipated for the next 5 years. Staff therefore believes that the incremental cost of the service, assuming a near zero incremental value for loop costs, will be well below the average cost figures supplied by the Company. Thus, on an incremental basis the service will not only cover its costs but make a contribution.

Commission Findings

Based on our analysis that Small Business Features Service will more than cover its costs, we will approve the SBF service. However, we find that the type of cost analysis provided in the New England Telephone Company and Union Telephone Company Centrex filings is more informative when new services are being initiated. Therefore we will require that all subsequent filings submitted by the TDS companies be accompanied by adequate incremental cost support.

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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the following NHPUC No. 3, Chichester Telephone Company Tariff pages,

Section 3, Sheet 26 Original
Section 3, Sheet 27 Original
Section 3, Sheet 28 Original
Section 3, Sheet 29 Original
Section 3, Sheet 30 Original
Section 3, Sheet 31 Original
Section 3, Sheet 32 Original
Section 3, Sheet 33 Original
Section 3, Sheet 34 Original
Section 3, Sheet 35 Original

be and hereby are approved, and it is

FURTHER ORDERED, that all subsequent petitions submitted by the TDS companies be accompanied by appropriate incremental cost support.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1990.

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NH.PUC*08/30/90*[51075]*75 NH PUC 639*Incentives for Conservation and Load Management

[Go to End of 51075]

75 NH PUC 639

Re Incentives for Conservation and Load Management

Petitioner: Granite State Electric Company

DE 89-187
Order No. 19,930

New Hampshire Public Utilities Commission

August 30. 1990

ORDER revising the conservation and load management adjustment factor of a retail electric utility to incorporate a financial incentive.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 34 — Conservation and load management — Financial incentive — Electric utility.

[N.H.] The conservation and load management adjustment factor of a retail electric utility was revised to incorporate a financial incentive. p. 639.

2. CONSERVATION, § 1 — Financial incentive — Adjustment clause treatment — Retail electric utility.

[N.H.] A retail electric utility was authorized to revise its conservation and load management adjustment factor to include a financial incentive approved by prior order. p. 639.

By the COMMISSION:

ORDER

[1, 2] On August 29, 1990, Granite State Electric Company (Granite State) filed a supplemental tariff page with supporting material that revises the currently effective conservation and load management (C&LM) adjustment factor to include the C&LM financial incentive approved for Granite State by the Commission, Order No. 19,905 (75 NH PUC 527), in DE 89-187; and

WHEREAS, Granite State's supporting report provides revised estimated 1990 program savings, including: (1) program by program information on the end of year projections for kilowatt (kW) and kilowatt-hour (kWh) savings; and (2) the value of these savings calculated in compliance with the Commission's Order; and

WHEREAS, Granite State has based the calculation of the maximizing incentive for 1990 C&LM programs on the revised savings and calculated a revised total C&LM adjustment factor based on the conservation factor currently in effect and the new total estimated maximizing incentive to be collected over the remainder of 1990; and

WHEREAS, the revised factor results in an increase of $0.00081 per kilowatt-hour in the C&LM factor for a total effective conservation factor of $0.00324 per kilowatt-hour; it is therefore

ORDERED, the Commission hereby approves Granite State's filing for recovery of the C&LM financial incentive granted by the Commission in Order No. 19,905, issued in Docket DE 89-187 on August 7, 1990; and it is

FURTHER ORDERED, the revised factor is made effective for bills rendered on or after August 30, 1990, since the revised factor is calculated on the remaining four months of 1990; and it is

FURTHER ORDERED, that Granite State submit a compliance filing in accordance with PUC 1601:05 no later than September 7, 1990.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1990.

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75 NH PUC 602

Re Bretton Woods Telephone Company

DR 89-182
Order No. 19,929

New Hampshire Public Utilities Commission

August 31, 1990

ORDER approving a stipulation providing for an increase in rates for intrastate telecommunications services.

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1. RATES, § 532 — Intrastate telecommunications services — Rate settlement — Commission approval.

[N.H.] The commission approved a settlement agreement providing for an increase in rates for intrastate telecommunications services. p. 603.

2. RETURN, § 26.4 — Cost of equity capital — Stipulation — Telephone rate proceeding.

[N.H.] A stipulated rate of return on common equity of 12.75% was adopted in a telephone rate proceeding. p. 603.

3. RATES, § 260 — Surcharges — Recoupment of revenue deficiency under temporary rates — Telephone rate settlement.

[N.H.] The commission accepted a telephone rate settlement that allows the utility to surcharge over a four-month period the difference in temporary rates made effective by prior order and the permanent rates provided for in the settlement. p. 603.

4. RATES, § 124 — Reasonableness — Statutory considerations.

[N.H.] The commission approved a rate settlement providing for a stipulated increase in rates where it was found that the settlement met the statutory requirement that rates must be sufficient to yield not less than a reasonable return on the cost of utility property used and useful in the public service less accrued depreciation. p. 603.

APPEARANCES: For Bretton Woods Telephone Company, Margaret H. Nelson, Esquire; Eugene Sullivan, III, Esquire; ChristiAne G. Mason, PUC Examiner, for Commission Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On November 22, 1989, Bretton Woods Telephone Company (Bretton Woods) a public utility engaged in the business of supplying telephone service in the State of New Hampshire filed revised tariff pages providing for an increase in rates of $61,011 or a 100% increase.

On December 21, 1989, the commission issued Order No. 19,647 establishing a hearing on January 29, 1990 on procedural matters regarding the proposed permanent rate increase. The parties met on January 29, 1990 and stipulated to a procedural schedule. In Report and Order No. 19,708 (75 NH PUC 98) dated February 5, 1990, the commission approved the stipulated procedural schedule of the parties.

Bretton Woods filed on February 1, 1990 testimony supporting temporary rates pursuant to RSA 378:27. The company requested temporary rates at existing rates; the staff

recommended a temporary rate increase of $17,499 or 25.8%.

On February 22, 1990 a duly noticed public hearing was held by the commission to consider the proposed temporary rates. Staff presented testimony in support of it's position. By Order No. 19,749 (75 NH PUC 160) dated March 8, 1990 the commission approved temporary rates in the amount of $17,499, a temporary rate increase of 25.8%, to be applied equally across the board to all rate classes for the duration of this proceeding without prejudice to either party in regard to the permanent rate determination.

Following the procedural schedule, the parties met on June 28, 1990 to narrow issues and to negotiate a settlement. As a result of the meetings the parties were able to reach agreement on the level of permanent rates.

[1] The commission held a hearing on July 13, 1990 at which time it received the proposed settlement which was marked as Exhibit 1, and is incorporated herein (See Appendix A). The proposed settlement provides for an increase in revenues of $47,481 with the same effective date as temporary rates. The major features of the settlement agreement are as follows:

[2] A. *Stipulated Rate of Return*: The allowed return on common equity of 12.75% and an overall rate of return of 9.26%, are based upon the company's capital structure at December 31, 1989.

B. *Stipulated Rate Base*: The overall rate of return to be allowed to the company shall be applied to the rate base of the company as of June 30, 1989, agreed to by the parties, namely, $521,111 shown in Attachment B Settlement.

C. *Stipulated Net Utility Operating Income*: The adjusted test year net operating income is agreed to be $11,142 as shown in Schedule 1, Settlement. Supporting details are shown on Schedules 2, 3 and 4, inclusive of that exhibit.

[3] D. *Reconciliation and Recoupment*: The parties have agreed and the commission accepts the provision to allow the company to surcharge the difference in temporary rates (which were

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made effective March 8, 1990) and the permanent rates in this order over a six month period. The company shall file a detailed calculation of the recoupment surcharge. Tariffs shall be filed in accordance with the settlement agreement. Detailed schedules shall also be submitted which show the determination of the annual revenues based upon the revised tariffs.

E. *Rates and Tariffs*: The parties have agreed and the commission accepts all changes contained in Bretton Woods NHPUC Tariff No. 3 (See Attachment D). A compliance filing reflecting updated rates will follow final commission approval of this agreement.

COMMISSION FINDINGS

[4] The commission finds the stipulation "sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service less accrued depreciation ...", see RSA 378:28, based on the record, the representations of the parties and the investigation by staff.

Our order will issue accordingly.

ORDER

In consideration of the foregoing report which is made a part hereof, it is

ORDERED, that revised tariff No. 3 to reflect the agreement appended hereto be, and hereby is, approved; and it is

FURTHER ORDERED, that such revised pages bear an effective date of August 31, 1990; and it is

FURTHER ORDERED, that Bretton Wood Telephone Company file with this commission its plan for recovery of the difference between temporary rates made effective on March 8, 1990; and it is

FURTHER ORDERED, Bretton Woods Telephone company file detailed schedules demonstrating how direct tariff revisions recover the authorized revenues; and it is

FURTHER ORDERED, customers be provided a bill insert with the first bill rendered under this order, such insert summarizing the authorized changes; and it is

FURTHER ORDERED, that the stipulation entered into between staff and Bretton Woods appended hereto as Exhibit A be, and hereby is, adopted.

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By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1990.

APPENDIX A

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Bretton Woods Telephone Company ("BWTC" or "the Company") and the Staff of the New Hampshire Public Utilities Commission ("the Staff"), with the intent of resolving all the issues which were raised or could have been raised in the above-referenced proceeding. Further, it is the desire of the parties in executing this

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Settlement Agreement to expedite the Commission's consideration and resolution of the issues which are the subject of this Settlement Agreement.

ARTICLE I

INTRODUCTION

1.0. This proceeding originates from the filing by the Company of a revised tariff on November 21, 1989 which would generate an additional $61,011 or a 100% increase in local service rates. The Petition was based on a test year ending June 30, 1989. By Order No. 19,647, the Commission opened the present docket to consider the Company's request and scheduled a procedural hearing for January 29, 1990. At that procedural hearing, the parties made recommendations to the Commission regarding the procedural schedule of the case which the Commission accepted in Order No. 19,708 (75 NH PUC 98).

1.1. On February 1, 1990, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting that its presently effective rates be made temporary rates for the course of the proceeding. The Staff subsequently submitted testimony proposing a temporary rate increase of $17,499 or 25.8% to be applied equally to all rate classes in order to mitigate the "rate shock" effects of any permanent rate increase ultimately authorized by the Commission. The Company did not oppose the Staff's recommendation and the Commission accepted the parties' stipulation on this issue in Order No. 19,749.

1.2. Pursuant to the procedural schedule, the Staff submitted extensive data requests to which the Company responded with the necessary data. The Staff filed testimony by Merwin R. Sands and ChristiAne G. Mason. Mr. Sands' testimony addressed a proposed rate of return for BWTC and Ms. Mason's testimony presented the Staff's recommendation for a permanent rate increase of $43,732.00 or 64.5%. The Company submitted data requests to the Staff to which the Staff responded.

1.3 The Company and the Staff had settlement discussions at the Commission's offices on June 28 and July 9, 1990. This Settlement Agreement is the result of those discussions as well as the extensive discovery process.

ARTICLE II

REVENUE DEFICIENCY

2.0 Attached hereto are new and revised exhibits to the prefiled testimony of ChristiAne G. Mason which reflect the agreement of the parties regarding adjustments to the original exhibits for the purposes of this Settlement Agreement. Specifically, the new and revised exhibits are:

Attachment A
Attachment B
Attachment C
Schedule 1
Schedule 2
Schedule 3
Schedule 4

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Line 7 of Attachment A indicates that the increase in base revenue which is required to provide the Company with the agreed upon level of local service revenue is $47,481 or 77.89%. As the testimony of the parties indicates, the major areas of disagreement between the parties concerned the rate of return and the determination of an appropriate level of rate case expense. Set forth below will be a discussion of the parties' proposed resolution of these

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disputed issues.

ARTICLE III

RATE OF RETURN

3.0 The Company's prefiled direct testimony recommended a return on common equity of 18% based on the unique risks associated with BWTC's operation. The Staff recommended a rate of return on common equity of 12.75% and an overall rate of return of 9.26%. For the purposes of this Settlement Agreement, the parties agreed to utilize the Staff's recommendations as to rate of return.

ARTICLE IV

RATE CASE EXPENSE

4.0 The Company, in its direct testimony, proposed to amortize its rate case expense over four (4) years. The rate case expense for accounting and finance services by the Company's outside accounting consultants was estimated to be $40,000 or $10,000 on an annual basis. See Direct Testimony and Exhibits of Leonard Mass, pp. 15-17. In BWTC's response to Staff Data Request 118, the Company indicated that the total of its incurred and estimated accounting fees was $50,168. The Staff's testimony recommended that the allowable rate case expense for accounting and finance service be $26,954, or $6,739, on an annual basis.

4.1 For the purposes of this Settlement Agreement, the parties agreed that allowable rate case expense for accounting and finance services should be $34,172 which will be amortized over four (4) years. As shown on Schedule 3 to this Settlement Agreement, this adjustment was based on deducting the following amounts from the Company's incurred and estimated rate case expense for accounting and finance services as shown in Data Response 118:

1. $10,995 for preliminary analysis to determine local service revenue deficiency and preparation of a rate filing based on a test year of 01/01 — 12/31/88; and

2. $5,000 for assistance with rebuttal testimony, prehearing conferences and hearings.

The rationale of the parties with respect to these matters was that the initial analysis and work for a 1988 test year was somewhat duplicative of other accounting expenses incurred by the Company and did not serve as the basis of the Company's filing in this case. With respect to the estimated expenditure of $5,000, the parties believed that a settlement of this case would render this expenditure unnecessary.

ARTICLE V

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5.0 The parties agree that the Company is entitled to and shall be allowed to collect and recover by surcharge over a six month period in accordance with RSA 378:29, the difference between the revenue actually billed by the Company pursuant to the temporary rates approved by the Commission by Order No. 19,749 and the revenue which the Company would have billed if it had charged rates which reflect the increase in local revenues agreed to herein.

ARTICLE VI

EFFECTIVE DATE

6.0 The provisions of this Settlement Agreement shall take effect upon Commission approval.

ARTICLE VII

CONDITIONS

7.0. This Settlement Agreement shall not be deemed in any respect to constitute an admission by either party that any allegation or contention in this proceeding is true or valid.

7.1. The Commission's acceptance of this Settlement Agreement will not be used as a precedent regarding any principle or issue in this proceeding or any future proceeding.

7.2. This Settlement Agreement establishes no principles or precedents and shall not

be deemed to foreclose either party from making any contention in any proceeding or investigation.

7.3. This Settlement Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept it in its entirety without change or condition, this Settlement Agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

7.4. The discussions which have produced this Settlement Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting such offer or participating in such discussion, and are not to be used in any manner in connection with this proceeding, any future proceedings or otherwise.

Executed this 13th day of July, 1990 by
the undersigned who represent that they are fully authorized to do so on behalf of their principals.

BRETTON WOODS TELEPHONE COMPANY,
By Its Attorneys,
SULLOWAY HOLLIS & SODEN,

By:

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Margaret H. Nelson
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302
603-224-2341

NEW HAMPSHIRE PUBLIC UTILITY COMMISSION STAFF,

By:
Eugene F. Sullivan, III
8 Old Suncook Road
Concord, New Hampshire 03301
603-271-2341

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Attachment D

August 21, 1990

Wynn E. Arnold
Executive Director and Secretary
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301

Re: *Bretton Woods Telephone Company — DR 89-182*

Dear Mr. Arnold:

Please find enclosed a copy of the proposed tariff containing all changes agreed by the parties during the settlement conference on June 28, 1990.

Further page changes reflecting updated rates will be sent by the company upon final approval by the commission of the settlement agreement.

Sincerely,

Leszek Stachow
Telecommunications Analyst

August 10, 1990

Mr. Les Stachow, Analyst
Public Utilities Commission
8 Old Suncook Road, Building 1
Concord, N.H. 03301

Re: *Bretton Woods Telephone Company*
Docket DR 89-182

Dear Les:

Enclosed please find copy of proposed tariff with all changes as per our agreement with Staff during settlement conference on June 28, 1990.

Further page substitutions, those requiring updated rates, will be done upon final approval by

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the commission.

If you need anything further, please call.

Sincerely,

Nancy Hubert
Office Manager

N.H. P.U.C. NO. —3— TELEPHONE
BRETTON WOODS TELEPHONE COMPANY
TARIFF
FOR
Telephone Service
IN
The State of New Hampshire

Issued: November 22, 1989
Effective:

Issued by: Leonard Mass
Title: General Manager

[Graphic(s) below may extend beyond size of screen or contain distortions.]

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

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DEFINITIONS OF TERMS

Listed below are definitions of various terms used in the tariff, or in common use in the telephone business.

Accessories — Devices, other than customer-provided terminal equipment or communication systems, which are mechanically attached to, or used with, the facilities furnished by the Telephone Company and which are independent of, and not electronically, acoustically or inductively connected to, the conductors in the communications path of the telephone system.

Additional Listing — A listing which is in addition to the initial or joint user listing provided with the customer's service. The listing provided with auxiliary line service.

Authorized User — The term "Authorized User", as used in connection with exchange service, denotes those individuals authorized by the Telephone Company to use a customer's telephone service. It includes the members of his household, employees or agents of the customer, residential tenants of hotels, club etc., and joint users as arranged for.

The term "Authorized User", as used in connection with private line service, denotes a

person, firm or corporation designated by the customer and authorized by the Telephone Company to use the customer's service.

Baud — The term "Baud" denotes a unit of signaling speed. It is the reciprocal of the time duration in seconds of the shortest signal element (mark or space) within a code signal. The speed in bauds is the number of signal elements per second.

Bridging Connection — The term "Bridging Connection" as used in connection with series 6000 channels indicates amplifying equipment and services required to connect a station or an interexchange channel serving a station, at an intermediate point on an interexchange network or to connect an additional station as a terminal point.

Building — A structure under one roof; also two or more such structures where (a) such structures directly adjoin each other, being separated only by a building wall; or (b) such structures are connected by a completely enclosed passageway designed for and used primarily

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as the regular route for foot travel between the structures, and which passageway is also suitable for the installation and maintenance therein of interior telephone facilities; and (c) the major portion of the structures are occupied by the same customer.

Carrying Plant or Supporting Plant — Poles or conduit (including trenching) required for cable or wire facilities. In some instances tree hitches are considered to be carrying plant.

Central Office — A switching unit in a telephone system, providing service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting lines. More than one central office may be located in the same building.

Central Office Building — A building containing one or more central offices. There may be more than one central office building in an exchange and one central office building may serve more than one exchange.

Central Office Line — A main telephone exchange service or trunk line.

Channel — An electrical path furnished by the Telephone Company between two or more points, suitable for the purpose furnished and derived in such manner as the Telephone Company may elect. A single pair or wires may be used to provide more than one channel. A channel may be provided, in whole or in part, by cable, wire or radio.

Circuit — As generally used herein, a circuit is a channel.

Class of Service — The method of charging for local messages, namely unlimited, measured or semi-public.

Coin Telephone Service — A telephone exchange service equipped with a telephone having a device for collecting money in payment of telephone messages and used in connection with either public or semi-public service.

Communications Systems — The term "Communications Systems", as used in connection with exchange service, denotes channels and other facilities which are capable, when not connected to exchange, message toll telephone or WATS service, of communication between customer-provided terminal equipment or between Telephone Company stations.

The term "Communications Systems", as used in connection with private line service, denotes channels and other facilities which are capable, when not connected to private line services, of communication between customer-provided terminal equipment or Telephone Company stations.

Connecting Arrangement — The term "Connecting Arrangement" denotes the equipment provided by the Telephone Company to accomplish the direct electrical connection of customer-provided facilities with the facilities of the Telephone Company or the direct electrical connections of Telephone Company facilities.

Connections —

Acoustic Connection — A connection made by sound.

Direct Electrical Connection — A physical connection of the conductors in the communications path of the telephone system.

Inductive Connection — A connection made by using the electro-magnetic field generated

by a telephone.

Customer — An individual, partnership, association, or corporation that arranges for service and is responsible for the payment of

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charges and compliance with the rules and regulations of the Telephone Company.

Customer-Provided Terminal Equipment — Devices, Apparatus and their associated wiring, provided by a customer which do not constitute a communications system and which, when connected to the communications path of the telephone system, are so connected either electrically, acoustically or inductively.

Data-Access Arrangement — A protective connecting arrangement for use with the network control signaling unit, or, in lieu of the connecting arrangement, an arrangement to identify a central office line and protective facilities and procedures to determine compliance with appropriate network protection criteria.

Duplex Service — Service which provides for simultaneous transmission in both directions. It is generally referred to in connection with private line channels.

Enhanced Digital Service (Centrex) —

1. A service arrangement of dial switching equipment and facilities which permits completion of inward and outward local and long distance calls from telephone stations of the system without intermediate handling by the Centrex Service attendant.

2. Classification of Telephones

a. Unrestricted main telephones
b. Partially restricted main telephones
c. Restricted main telephones
d. Extension telephones

3. Principal premises

4. Satellite Centrex Service

5. Centrex key number lines

Exchange — A geographical unit established for the administration of communication service in a specified area. It generally consists of one or more central offices together with the associated plant used in furnishing communication service within that area.

Exchange Area — The territory serviced by an exchange.

Exchange Service — The furnishing of central office line facilities to provide for telephone communications within the local service calling area on a measured, unlimited or semi-public service basis in accordance with the rates and regulations of the Tariff.

Extension Line — A private line channel to provide extension telephone service, in connection with main telephone exchange and private branch exchange telephone service, to locations not in the same building as the main telephone exchange service or PBX attendant's

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switchboard position.

Extension Telephone — An additional telephone connected to the same channel as the main telephone and having the same telephone or PBX branch number as the main telephone.

Foreign Exchange Service — Exchange service furnished from an exchange other than that normally serving the area in which the customer is located.

General Cable Distributing Plant — The cable provided primarily to distribute local exchange service to the general public.

General Distributing Plant — The carrying plant and associated wire or cable which provides service to the general public within an exchange.

Grade of Service — The grade of service (as distinguished from class of service) is determined by the number of parties which a main telephone line is intended to serve.

Half-Duplex Service — Service which provides for transmission alternately in either direction, or for transmission in one direction only.

Highway Construction — Construction generally located along a public way or construction on a private way to service more than one customer.

Initial Charge — See "Installation Charge".

Installation Charge — A non-recurring charge applying to the provision of certain items of service, equipment or facilities as distinguished from the service connection charge applicable for the establishment of telephone service. The installation charge is sometimes called an "initial charge".

Intercommunication — Communication (1) over interior lines of a key telephone system or (2) communication between PBX or Centrex system telephones.

Interexchange Channel — A communications path which interconnects exchanges.

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Intraexchange Channel — A communications path which interconnects points within an exchange.

Joint User — The term "Joint User", as used in connection with exchange service, denotes a corporation, association, partnership or individual whose telephone needs are not sufficient to warrant the provision of separate service, and who is permitted to use the service of another. The joint user must be located in the same room or suite of rooms as the customer.

The term, "Joint User", as used in connection with private line service, denotes a person, firm or corporation not on the same premises as the customer and designated by the customer as a user of a private line service of the customer and to whom a portion of the charge for the service will be billed under a joint user arrangement.

Key Pulsing — A method of dialing by depressing button type keys on a line arranged for normal rotary dialing.

Local Channel — A communication path within an exchange connecting a customer's

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premises with an interexchange channel.

Main Telephone — A telephone directly connected to the central office switching equipment by an individual or party line circuit or, in the case of PBX and Centrex service, a PBX or Centrex telephone directly connected to the PBX and Centrex switching equipment by an individual line circuit. Additional telephones beyond the main telephone are considered extension telephones

Maximum Termination Liability — A liability assumed by a customer for certain equipment or service for which a minimum service period in excess of one month applies.

Message — A completed communication between two telephone numbers. Messages may be classified as follows:

Local Message — A message between telephones where the called telephone is within the unlimited or message unit calling area of the calling telephone.

Toll Message (Long Distance Message) — A message between telephones in different local calling areas for which a message toll service charge applies.

Minimum Service Period — A stated length of time which a customer is expected to retain service a a specified location.

Move — The relocation, on the same premises, of equipment and wiring associated with a customer's service.

Network Access Line — The exchange line from the serving central office terminating directly a the customer-provided communications system.

Network Control Signaling — The transmission of signals used in the exchange and message toll telephone system, which perform functions such as supervision (control, status, and charging signals) address signaling (e.g., dialing), calling and called number identification, and other audible tone signals to control the operation of transmission and switching systems within the telephone network.

Network Control Signaling Unit — The terminal equipment furnished, installed and maintained by the Telephone Company for the provision of network control signaling. It may be a specialized unit, or have its functions performable in a non-key or key telephone, or in a private branch exchange switchboard.

Normal Types of Construction — The term used to refer to aerial or underground construction.

Premises — All space in the same building in which one customer has the right of occupancy to the exclusion of others or shares the right of occupancy with others and all space in different buildings on the same continuous property provided such buildings are occupied solely by one customer.

Private Branch Exchange (PBX) System — An arrangement of switching equipment consisting of a manually operated attendant's position or console, or dial switching apparatus, or both, with connecting central office and PBX telephones and lines.

Private Line Service — The channels or the channels and equipment furnished to a customer

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for communication between specified locations.

Private Property Construction — Construction on private property to serve one customer.

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Rate Center — A specified geographical location within an exchange area from which mileage measurements are determined for the application of message toll rates and private line interexchange mileage rates.

Restoral of Service — The return to active service following a period of temporary interruption for non-payment of bills, provided this return occurs prior to discontinuance of the service.

Same Continuous Property — A continuous plot of ground occupied by one customer, or continuous plot of ground which are occupied by the one customer, the plot or plots being within the same exchange. When a customer owns (or leases) and is the sole occupant of properties on both sides of a street, alley or railroad right-of-way, which properties otherwise would constitute a continuous plot, such properties shall be considered as constituting the same continuous property if such supporting structures as are required for the wire facilities between the properties are customer-owned, either built the customer or built by the Company at the customer's expense.

Secretarial Service — An arrangement of telephone service to be furnished at Secretarial Answering Bureau locations where the termination of a customer's line with not be in a Secretarial Service Board.

Secretarial Service Equipment — An arrangement of terminal equipment permitting the answering at one location of calls to main telephone lines of different customers at such times as these lines are unattended.

Service Connection Charge (SCC) — The charges made with the initial establishment of a class of telephone service and in connection with the subsequent addition of certain services.

Station — The terms "station", as used in connection with private line services, denotes the transmitting or receiving equipment, or combination transmitting and receiving equipment, at any location connected for private line service, or where the service involves only channels, it denotes a point on a premise in which a channel is terminated.

Telephone Company (Company) — The term "Telephone Company" denotes the Company unless otherwise stated.

Temporary Suspension of Service — An arrangement whereby service is made inoperative for a temporary period at the request of the customer.

Termination Charge — The charge made when service for which a maximum termination liability applies, is terminated by the customer prior to the expiration of the minimum service period.

Tie Line — A channel connecting two private branch exchange systems, two Centrex systems or a private branch exchange system and a Centrex system.

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Trunk Line — A central office line for terminating in a private branch exchange system.

Unauthorized Attachment or Connection — Any customer-provided terminal equipment, communications systems or accessory which is attached to the facilities of the Telephone Company contrary to the provision of the Tariff.

PART I

GENERAL REGULATIONS

I. GENERAL

A. The regulations specified herein are in addition to the regulations contained in other sections of this Schedule of Rates and Charges and govern the furnishing of telephone service to customers generally.

II. APPLICATION OF TARIFF

A. Regulations and rates in this tariff apply to all telephone service provided by the Company.

III. LIMITATIONS AND USE OF SERVICE

A. Equipment, and lines furnished by the Telephone Company on the premises of a customer, authorized user or agent of the Telephone Company are the property of the Telephone Company except as otherwise specifically provided in its tariffs and are provided upon the condition that such equipment and lines must be installed, relocated and maintained by the Telephone Company and that the

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Company's employees or designees enter said premises at a reasonable hour to install, inspect or maintain the equipment and lines and to make collections from coin boxes and upon termination or cancellation of the service, to remove the equipment, instruments and lines.

B. Where coin telephone service is furnished, the subscriber is required to reimburse the Telephone Company for any loss, through theft of money from the coin collecting equipment.

C. Service shall not be used in competition with the business of the Telephone Company.

D. Customer-provided terminal equipment, premises wire and communication systems may be connected with facilities furnish by the Telephone Company in accordance with the provisions contained in this tariff. In case any such unauthorized attachment or connection is made, the Telephone Company shall have the right to remove or disconnect the same; or to suspend the service during the continuance of said attachment or connection; or to terminate the service. The Telephone Company shall charge the appropriate rate for service rendered by an unauthorized attachment for the period during which it was in use, and the appropriate installation and removal charges.

E. The right is reserved to restrict the amount of other services furnished in connection with any particular class of service in order to prevent any impairment in the quality of service furnished.

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F. The use of unlimited business exchange service is restricted to the customer, his agents and employees when engaged in his business. The use of unlimited residence exchange service is restricted to the customer and members of his household.

G. The Company reserves the right to discontinue or refuse service because of abuse or fraudulent use of service. Abuse or fraudulent use of service includes:

1. The use of service or facilities of the Telephone Company to transmit a message or to locate a person or otherwise to give or obtain information, without payment of the charge applicable thereto.

2. The obtaining, or attempting to obtain, or assisting another to obtain or to attempt to obtain, telephone service, by rearranging, tampering with, or making connection with any facilities of the Telephone Company, or by any scheme, false representations, or false credit device, or by or through any other fraudulent means or device whatsoever with the intent to avoid the payment, in whole or in part, of the regular charge for such service.

3. The use of service or facilities of the Telephone Company for a call or calls, anonymous or otherwise, if in a manner reasonable to be expected to frighten, abuse, torment or harass another.

4. The use of profane or obscene language.

5. The use of the service in such a manner as to interfere unreasonably with the use of the service by one or more other customers.

H. Neither this Company nor any concurring, connecting or other participating carrier shall be liable for any act or omission of any other company or companies furnishing a portion of such service.

I. Exchange line or Announcement lines associated with Telephone Company or customer-provided equipment, the primary purpose of which is to transmit a pre-recorded message, are not provide on a non-published basis.

For purposes of identification, customers with telephone service who transmit recorded public announcements over facilities provided by the Company must include in the recorded message the name of the organization or individual responsible for the service and the address at which the service is provided.

Customers transmitting factual public announcements such as time, weather, stock market quotations, airline schedules and similar information are excluded from the preceding condition.

Failure to comply with the provisions of this tariff shall be cause for termination of the service.

J. The Telephone Company's obligation to furnish service or to continue to furnish service is dependent on its ability to obtain, retain and

maintain suitable rights and facilities, and to provide for the installation of those facilities

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required for the furnishing and maintenance of that service.

IV. CLASSIFICATION OF EXCHANGE SERVICE

A. Service is provided on a monthly basis and is available at either residence or business rates.

1. Residence service rates apply if all the following conditions are met:
a. Service is provided at a residence location.
b. Use of service is primarily social or domestic.
c. Primary use is restricted to the residential customer and members of the household.

2. Business service rates apply if the service does not qualify for residence service rates as specified in A.1 preceding.

V. TERMINATION OF SERVICE AND MINIMUM CHARGES

A. The right is reserved to require notice of not less than ten days of the customer's desire to terminate the service.

B. The minimum charge for service at any premises, except as otherwise stated elsewhere in this schedule, is one month's service charge. The right is reserved to require minimum charge in excess of one month's service charge in connection with special equipment, and excessive line construction.

VI. CANCELLATION OR CHANGE OF APPLICATION PRIOR TO ESTABLISHMENT OF SERVICE

A. When an application for facilities and service is cancelled in whole or in part prior to completion of the construction and installation, the customer is required to pay to the Telephone Company, upon demand, the total cost and expense in connection with providing and removing such facilities, less the estimate recoverable value, if any, of the facilities involved; such payment shall not exceed that specified under Paragraph C. following.

B. When a customer requests a change in the location of all or a part of the facilities covered by the customer's application of the construction and installation thereof, the customer is required to pay to the Telephone Company, upon demand, the difference between the total costs and expenses incurred by the Telephone Company in completing the construction and installation and that which would have been incurred had the final location of facilities been specified initially in the application; such payment shall not exceed that specified under Paragraph C. following.

C. When an application is cancelled or changed by the applicant in whole or in part after completion of the construction and installation but prior to the establishment of service, the customer is required to pay to the Telephone Company, upon demand, the applicable minimum and termination charges specific in this tariff and the applicable service, and non-recurring construction charges.

D. When a deferment of the date for placing facilities and equipment in service is requested by the applicant after the start of construction (usually at the time the required equipment has been purchased by the Telephone Company), charges based on cost apply, upon demand by the Telephone Company, for any deferment in excess of one month. The costs will include the

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monthly carrying charges on the Telephone Company's investment in equipment and facilities at the time of the deferment plus any other specific costs applicable to the deferment. In no case will the placing in service of equipment and facilities be deferred for more than 18 months. After 18 months the installation will be considered as canceled, and the applicant will be responsible for the payment of costs as specified in A. or C. above.

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VII. CHANGES IN TELEPHONE NUMBERS

A. A telephone number is subject to change at any time.

VIII. FAILURE OF SERVICE

A. For any complete failure of local exchange service continued more than twenty-four hours and brought to the notice of the Telephone Company within ten days, the Telephone Company will make a pro-rata adjustment of the charge, or guarantee.

IX. PAYMENT FOR SERVICE

A. Bills are due when rendered and are payable at an office of the Telephone Company. Delayed payment of bills may result in the interruption or discontinuance of the customer's service.

B. The customer is required to pay, in accordance with the Telephone Company's established collection and billing practice, all charges for exchange, end user access and Private Line Services for all toll messages, including charges for messenger service; and for all services billed by the Company for other carriers. The customer is held responsible for all charges for telephone service rendered at his telephone, both exchange and toll, including charges for toll messages on which the charges have been made collect.

C. When a coin box becomes inaccessible for regular collections, the right is reserved to terminate the service.

D. In order to safeguard it against loss of charges or tolls due at the time service may be terminated, the Telephone Company may require a customer or applicant for telephone service to make a cash deposit equal to the estimated amount of charges for service provided for any period of two months. The rate of interest for customer deposits is set by the Public Utilities Commission in accordance with Rule 403.04(b)(2) of the Public Utilities Commission's Code of Administrative Rules Simple interest is credited to the customer annually or upon termination of the service or the return of the deposit by the Telephone Company. The receipt of such a deposit by the Telephone Company shall in no way relieve the customer or applicant from compliance with the Telephone Company's regulations as to advance payments (if any) and the prompt payment of bills, nor constitute a waiver or modification of the practices of the Telephone Company for the discontinuance of service for non-payment of the sums due for service rendered.

E. The Telephone Company reserves the right to refuse an application for service made by, or for the benefit of, a former customer who is indebted to the Telephone Company for telephone

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service previously furnished him.

X. LIABILITY DUE TO DIRECTORY ERRORS AND OMISSIONS

A. The Telephone Company's liability arising from errors or omissions in directory listings (other than charged listings) shall be limited to the amount of actual impairment to the customer's service and in no event shall exceed one half the amount of the exchange service charges for main telephone and private branch exchange trunks involved during the period covered by the directory in which the error or omission occurs

B. In the cases of charged directory listings, the liability of the Telephone Company shall be limited to an amount not exceeding the amount of charges for the charged listing or listings involved during the period covered by the Directory in which the error or omission occurs.

XI. USE OF SERVICE FOR UNLAWFUL PURPOSES

A. The service is furnished to the condition that it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such service is being used or will be used in violation of law. If the Telephone Company receives other evidence that such service is being or will be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

XII. POWER SUPPLY

A. The customer is responsible for providing suitable electric power at a convenient outlet when and where required, unless otherwise provided in this tariff. In the event of a power failure no allowance is made for the interruption of service.

XIII. SPECIAL SERVICE REQUESTS

A. Various special services may be made available to customers of this company by advance arrangement. Some of these services include: Wide Area Telephone Service, Foreign Exchange Service Enterprise Service, Remote Metering, Supervisory Control and Signaling Service, Alarm Circuits, Multi Point Data Circuits, Tie Lines, Station Extension Lines, Private Line Telephone Service, etc.

B. The Telephone Company will attempt, but cannot guarantee, to secure the facilities of other companies, where required, in order to furnish a service or channel to a customer.

C. Private line services are provided when suitable facilities are and continue to be available. The establishment of exchange and toll telephone service shall take precedence over all other services and uses.

D. Charges and provisions for special services through facilities of New England Telephone & Telegraph Co. will be those quoted from the Rates and Regulations approved in their current tariffs.

PART II

MAIN TELEPHONE EXCHANGE SERVICE

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I. The base rate area is the area designated on the map filed with this tariff.

II. One party service is furnished at base rates.

III. MONTHLY BASE RATES

Unlimited Service:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Residence	*Business*	*Semi-Public*
1 party	$ 13.87	$ 27.72	$ 28.27

IV. Trunk Lines

A. General — Trunk lines are furnished on an unlimited service basis in accordance with the service offering for main telephone exchange service.

B. Monthly Rates — All trunk lines, each $55.46

EXCHANGE AND BASE RATE AREA

The Bretton Woods Telephone Company has attached hereto a map, size 8 inches by 11 inches showing base rate areas, exchange boundaries, and central office location. A larger version of this map is maintained in the Business Office of the Company in Bretton Woods, New Hampshire. This map is presently on file with the Public Utilities Commission.

The Base Rate Area for the Bretton Woods Telephone Company extends from the central office, adjacent to the Mount Washington Hotel in a circle with a radius of approximately 1.5 miles to the Exchange Boundary.

The exchange boundary on the Northwest is defined by the Carroll town line and the Low and Burbank Purchase. Due North the boundary runs for approximately 1.5 miles along the western boundary of Chandler's Purchase. From Jefferson's Brook, the Exchange Boundary runs approximately 6 miles Southwest to the summit of Mt. Tom. The Boundary then leads West for approximately 2.5 miles to the summit of Mt. Rosebrook, North to the Coos/Grafton County line. West for 1 mile along the County line, 1/2 mile along Crawford's Purchase, drops back to Fabyans Station and runs along the Maine Central Railroad line for 1/2 mile.

MUNICIPAL CALLING SERVICE

V. General

A. Municipal Calling Service is a service arrangement provided on non-optional basis to municipalities serviced by more than one exchange or locality where toll charges would normally apply to calls between exchanges or localities serving the same municipality.

B. The term "Municipality" applies to a

city, town or unincorporated place, but is not to be applied to any entity larger than a city; for example, a county.

C. All dial station-to-station service within a municipality is not chargeable as toll except for

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calls originating from coin (public and semipublic) telephones, terminating at public telephones or calls made to or from foreign exchange lines unless dial tone for the foreign exchange line is provided from a central office serving some portion of the municipality in which the foreign exchange line service address is located.

D. Calls made from extension service lines or telephones within a exchange but located in a different municipality than the main telephone service will be considered as calls made from the main telephone address.

E. The combination of Main Telephone Exchange Services will be permitted only within the same municipality.

F. The exchanges of Bretton Woods and Twin Mountain service location are parts of the same municipality. This municipality is listed to show the serving exchanges where Municipal Calling Service applies. Exchanges of other companies are followed by numeric symbols that are explained below.

[Graphic(s) below may extend beyond size of screen or contain distortions.]

MUNICIPALITY	*SERVING EXCHANGES OR PORTION THEREOF*
Carroll	Bretton Woods
	Twin Mountain (12)

Explanation of Numeric Symbols:
(12) New England Telephone Company

PART III

EXTENSION, TIE AND PRIVATE LINES

I. GENERAL

A. Extension lines, tie lines, and private lines are provided only when warranted by special circumstances and when suitable facilities are and continue to be available.

B. 1. Extension lines are furnished when the extension telephone or private branch exchange telephone is outside the building in which the associated main telephone or private branch exchange is located (usually referred to as the "Main Building"). For the purpose of this tariff the term "Building" will be interpreted as including two or more structures where (a) such structures directly adjoin each other, being separated only by a building wall or such structures are connected by an enclosed common passageway (i.e., a completely enclosed way connecting the structures habitually used for foot passage between them), which is suitable for the installation and maintenance therein of interior telephone facilities, and (b) the major portion of the structures are occupied by the same customer.

B. 2. The lines are furnished to interconnect private branch exchanges of the same or different customers in the same or separate buildings.

B. 3. Private lines are channels furnished to a customer for communication between specified locations in the same or separate buildings.

C. Extension lines and tie lines in connection with private branch exchange service are normally furnished to be suitable only for calls with other telephones directly connected to and

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on the same premises with the associated private branch exchange.

D. A special equipment charge will be applied for such equipment as may be furnished at any time for transmission and signaling where a customer requires an extension or tie line connection with private branch exchange service for communication with telephones other than as stated in C. above, where a customer requests that a tie line be arranged for connection to central office trunk lines or where a customer requires an interexchange extension line in connection with main telephone service. Tie line connections to central office trunk lines may be established at only one point at a time.

E. A special equipment charge will be

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applied for such additional equipment as may be required on a multi-point line to provide for communication between more than two telephones at the same time.

F. The type of circuit construction and its routing are at all time determined by the Telephone Company and ownership of such circuit shall remain vested in the Company.

II. MONTHLY RATES

A. Between points in the same exchange which uses general distribution plant:

1. Two point lines: Main Telephone Extension Lines, Private Branch Exchange Extension Lines, Tie Lines or Private Lines, each $19.81

III. EXTENSION LINES ON CONTINUOUS PROPERTY OF ONE CUSTOMER

A. When no highway construction is required and no part of the Telephone Company's general distributing plant is used, extension lines between the main building and another building on the same continuous property of a customer, are furnished subject to the following provisions:

1. The arrangements for the facilities to be furnished will be determined by the Telephone Company in consultation with the customer.

2. Where there are two or more buildings in which extension telephones or private branch exchange telephones are located, the extension line facilities to each building will be treated as a separate installation subject, however to possible combination of installations when economical construction and the requirements of the customer will permit.

3. Extension line facilities do not include interior telephone facilities within a building used solely for extension telephones or private branch exchange telephones located in the same building.

4. Carrying plant required for extension or tie lines, such as poles and conduit, including trenching, shall be customer owned, either built by the customer or the Company at the customer's expense.

B. Application of Charges

1. The Customer will be charged for the total installed cost the facilities furnished, as

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measured between the point of exit from the main building (in which the associated main telephone or private branch exchange is located) to the point of entrance into the other building (in which the extension telephone or telephones is or are located).

2. The type of facility furnished will be Aerial Wire, Aerial Cable, Underground or Buried Cable, or multi-pair Distribution Wire. Drop Wire may be used when in accordance with the Company's standard construction practice.

3. Where facilities are replaced or where changes in the type of quality of facilities are made to meet the customer's requirements, an installation charge equal to the total installed cost of the new facilities furnished will be made.

4. When the facilities are no longer required by the customer the Telephone Company will make an adjustment for the amount of salvage (if any) recovered after deducting the cost of removal of the facilities.

5. Extension lines on the same continuous property using carrying plant of the Telephone Company on the same continuous property provided for other purposes may be furnished at charges shown in paragraph IIB, preceding.

IV. SPECIAL CIRCUITS

A. General — Included in this classification are all circuits requiring more than normal engineering such as; radio, data circuits and tele-metering circuits.

B. Charges —

1. For monthly rates see II, A, preceding.

2. The Company reserves the right to add a charge for special transmission and/or balancing equipment.

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C. Service Connection Charges — Since no estimate can be made of the labor involved in setting up special circuits stipulated above, a charge will be negotiate with the customer until equitable to both the Company and the customer.

DIRECTORY LISTINGS

I. GENERAL

A. The rates and regulations for directory listings apply only to the listings in the alphabetical directory.

B. Directory listings are intended solely as an aid to the use of the telephone system, and therefore listings are limited to such information as is essential to the identification of the listed party. The listing of a service. commodity or trade name as such, will in no case be permitted unless the name of the service or of the commodity or the trade name is the name of an integral part of the name under which the customer is doing business.

C. A listing will be limited to one line in the directory except where, in the judgment of the Telephone Company more than one line is required properly to identify the customer. In such cases, the additional lines required will be provided at no extra charge.

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D. Directory listings must conform to the Telephone Company's specifications with respect to its directories.

E. Listing services are available with all classes of main telephone exchange services.

F. Dual name listings are available for residence service customer as an initial or additional listing.

II. INITIAL LISTINGS

A. One listing, termed the initial listing is included with each customer's service, with the initial line of a line hunting group, and with each joint user service.

B. Dual Name initial listings consist of:

1. The first name, or first name and middle initial, or first initial and middle name, or initials only of two individual who have the same surname and reside at the same address.

2. The first name, or first name and middle initial, or first initial and middle name, or initials only, and the married name of a woman.

3. Two names for one person, who may be referred to by either, with the same surname.

Initial dual names will be alphabetical by the surname and first given name or initials.

III. ADDITIONAL LISTING SERVICE

A. Additional listings are confined to the names of those who are entitled to use the customer's service as defined in Section 1, Page 2.

B. Additional listings are included in the alphabetical directory and on directory assistance records or appear on directory assistance records only.

C. Additional dual name listings, provided in conjunction with the initial list, list the second name (or initials) first and the listing is alphabetized accordingly in the Directory; in this case billing always commences with the directory delivery date of the issue of the directory in which the listing first appears.

D. The rate for an additional listing or dual name additional listing provided for names that are not part of the initial listing, dates from the day after the directory assistance records are posted. Directory assistance records are posted either as of the delivery date of the issue of the directory in which the listing first appears or at any earlier practicable date selected by the customer.

E. If the additional listing is ordered discontinued after the closing date of the directory, the charge continues through that issue of the directory and up to the date for charges to effective for the next directory. If the additional listing is ordered discontinued before the closing date of the directory in which it would first appear, the charge continues only to be date of cancellation by the customer with a minimum service period of one month.

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IV. NON-PUBLISHED SERVICE

A. Non-published service is not listed in the Telephone Company's directories or on assistance records.

B. Listing information (name, address and number) on non-published service is not available to the general public notwithstanding any claim of emergency the calling party may present.

C. No liability for damages arising from publishing the telephone number of non-published service in the directory or by the disclosing of said number to any person shall be attached to the Telephone Company, and where such a number is published in the directory, the Company's liability shall be limited to an amount not to exceed the amount of charges made for such non-published service, as indicated in VII. following.

D. The customer indemnifies and saves the Telephone Company harmless against any claims for damages caused by the publication of the number of a non-published service or by the disclosing of said number to any person.

V. NON-DIRECTORY LISTED SERVICE

A. Telephone numbers of non-directory listed service are omitted or deleted from the Telephone Company's alphabetical directory.

B. Telephone numbers of non-directory listed service will be carried in the Telephone Company's directory assistance and other records and will be given to any calling party.

VI. NON-LISTED SERVICE

A. Non-listed service is available with all classes of main telephone exchange service provided the customer has other exchange service which is listed or on directory assistance records in the same name and at the same address.

B. Non-listed service is not listed in the Telephone Company's

C. There are no restrictions against furnishing name, address or number information for non-listed service.

VII. RATES AND CHARGES

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	*Non-recurring Charges**	*Monthly Rate*	
Initial Listing	No charge		
Additional Listing each:			
Business Service	—		$2.02
Residence Service	—		1.62
Non-Published Service, per line	$12.00		2.02
Non-Directory Listed Service, per listing	12.00		1.01
Non-listed Service	No charge		

*The nonrecurring charge does not apply when service is requested a the time main telephone service is ordered or connected into service. The nonrecurring charge does apply when the customer requests a change in number of non-published or non-directory

list service or a change in type of listing.

TEMPORARY SUSPENSION OF SERVICE

I. GENERAL

A. Exchange service may be temporarily suspended and the customer's listing retained in the directory.

B. More than one period of temporary suspension may be permitted in any one calendar year provided at least one month's full rental shall be paid for service furnished between periods of temporary suspension. The reduction of rate on account of the temporary suspension of service applies during a total of not more than

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six months in each year.

C. The reduction of rate on account of the temporary suspension of service will not apply during the first three month's period of service.

II. MONTHLY RATE

A. The monthly rate during the temporary suspension of service of each main telephone, together with all associated mileage, service and equipment is 50% of the regular monthly rate — minimum charge 50% of the regular rate for one month.

SEASON SERVICE

I. GENERAL

A. Season service regulations apply to the telephone service of any customer requesting service for periods of less than six months.

II. REGULATIONS

A. When the service period includes any portion of the months of July or August, the minimum charge for all items of exchange service is equal to the charge for six months at the established monthly rate.

B. If a seasonal customer requests a change of service, the minimum charge is determined from the highest established monthly rates for the services furnished at any one time during July or August.

C. When service is retained for a period longer than six months, the charge for each additional month is at the established rates.

D. These season service regulations do not supersede the regulation for any service or equipment requiring a minimum service period of more than six months.

RESTORAL OF SERVICE

Service that has been temporarily interrupted for non-payment of bills will be restored upon payment of all service charges due as if there has been no interruption. An additional charge of $5.00 is made for restoring service for each amount. An account may consist of a main telephone including any other associated equipment, a main trunk with all additional trunks and associated

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equipment of a private branch exchange a private line channel or service with any associated equipment.

PUBLIC PAYSTATION SERVICE

I. GENERAL

A. A public telephone is an exchange telephone installed at the Telephone Company's initiative or at its option, at a location chosen or accepted by the Company as suitable and necessary for furnishing service to the general public.

B. Public telephones are installed for the use of the general public and any use by occupants of the premises in which they are locate is incidental to this principal purpose.

C. All public telephones are equipped with coin collecting devices, except where attended service is provided. Standard type booths are furnished without charge where the character of the location is such as to make a booth necessary. In all cases, the Telephone Company furnishes and installs such of its standard signs as are necessary properly to advertise the public telephones.

D. Extension service is not furnished in connection with public telephones.

E. Public telephones are not listed in the directory.

F. Toll calls from public telephones are at the established rates.

G. Calls within the local service area are at the rate of 10 cents each on an unlimited basis.

SEMI-PUBLIC TELEPHONE SERVICE

I. GENERAL

A. Semi-public telephone service is furnished on a 1-party line basis for the use of the customer and the general public. The charge consists of a guarantee of revenue per month, from message units are $.10 per call as shown in Part II, Section 1, Page 1.

B. All semi-public main telephones are equipped with coin collecting devices

permanently connected to the line.

C. Booths are not furnished by the Telephone Company for use with semi-public telephone stations.

D. The Telephone Company will furnish and install appropriate standard signs for display at semi-public telephone locations.

E. Directory listings are furnished with semi-public telephone service and are always made available to the public.

F. The subscriber may be required to reimburse the Telephone Company for any loss through theft, except by reason of fire or unavoidable accident. The subscriber is required to redeem upon demand slugs and spurious, mutilated or foreign coins deposited in the collecting device, at the value for which they were deposited therein. Should the subscriber fail to make such redemption, the service is subject to termination.

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G. Any coin telephone furnished for use by the customer and others indicated A. above must be installed in a location that is accessible and convenient for use by others during the customer's business hours. When a coin telephone becomes inaccessible for regular collections the right is reserved to terminate the service

H. In all cases the Company reserves the right to:

1. Specify the particular place on the customer's premises at which each semipublic telephone be installed.

2. Refuse to install semipublic service if the customer does not meet the requirements for installation as specified above.

3. Discontinue semipublic service if the customer does not meet the conditions for continued provision of semipublic service as specified above.

I. The subscriber must provide a suitable ground for the electrical power supply.

CONNECTION WITH CUSTOMER PROVIDED COMMUNICATIONS SYSTEM OR EQUIPMENT

I. GENERAL REGULATIONS

A. Customer-provided communications systems and equipment may be used with the facilities furnished by the Telephone Company for telecommunications services as provided in this Tariff. In all such cases the customer-provided communications equipment will be constructed, maintained and operated as to work satisfactorily with the facilities of the Telephone Company.

B. Customer provided equipment or devices can be connected to single party service lines excepting semi-public service.

C. No equipment, apparatus, circuit or device not furnished by the Telephone Company shall be attached to or connected with the facilities furnished by the Telephone Company, except as provided in this Tariff. In case unauthorized attachments or connections are made, the Telephone Company shall have the right to remove or disconnect the same; or to suspend the service during the continuance of said attachments or connection; or to terminate the service.

D. Customers may not disconnect or remove or permit others to disconnect or remove any apparatus installed by the Telephone Company, except upon the written consent of the Company.

E. Satisfactory performance of the telecommunications network requires continuing functional compatibility of the network control signals and the switching equipment involved. To assure such continuing compatibility, network control signaling in the furnishing of telecommunications service shall be performed by equipment furnished, installed and maintained by the Telephone Company.

F. The Telephone Company will not be responsible for any loss or damage, nor for any impairment or failure of the service, arising from or in connection with the use of facilities of customers and not caused solely by the negligence of the Telephone Company.

G. The customer will be held responsible for all equipment at his premises. The consent of the customer must be obtained by an authorized user or joint user prior to the connection of

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additional equipment to facilities provided to the customer.

H. Where any customer-provided

equipment or system is used with telecommunications service in violation of any of the provisions in this Tariff, the Telephone Company will take such immediate action as necessary for the protection of this service, and will promptly notify the customer of the violation. The customer shall discontinue such use of the equipment or system or correct the violation and shall confirm in writing to the Company within 10 days, following the receipt of written notice from the Company, that such has ceased or that the violation has been corrected. Failure of the customer to discontinue such use or to correct the violation and to give the required written confirmation to the Telephone Company within the time stated above shall result in termination of the customer's service until such time as the customer complies with the provisions of this Tariff.

I. The Company shall not be responsible for the installation, operation or maintenance of any customer-provided communications systems. Telecommunications service is not represented as adapted to the use of customer-provided equipment or systems and where such are connected to the Company's facilities, the responsibility for telecommunications service and to the maintenance and operation of such facilities in a manner proper for such telecommunications service subject to this responsibility, the Company shall not be responsible for (1) the through transmission of signals generated by the customer-provided equipment or systems or for the quality of, or defects in, such transmission, or (2) the reception of signals by customer-provided equipment or systems.

J. Except as otherwise provided in this Tariff, nothing herein shall be construed to permit the use of a recording device, or of a device to interconnect any line or channel of the Telephone Company with any other communication line or channel of the Company or of any other person.

II. NETWORK PROTECTION CRITERIA

A. To protect the telecommunications network and services furnished to the general public by the Telephone Company from harmful effects, the signal from the customer-provided communications system, equipment or devices, to the long distance message telecommunications network, must comply fully with the current minimum network protection criteria specified by New England Telephone & Telegraph Company over whose toll circuits the message telecommunication service may be connected. This includes equipment or devices for all transmitting or receiving network by acoustic, inductive connections, or by direct electrical connections.

III. CUSTOMER-PROVIDED COMMUNICATIONS SYSTEMS

A. Customer-provided systems may be connected, at a service point of the customer, on voice grade basis with telecommunications service furnished by the Company, either through a network control signaling unit and connecting arrangement or as otherwise specified in this Tariff furnished, installed and maintained by the Company or through customer-provided equipment which affects such connection externally to a Company network control signaling

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unit by means of a physical connection for transmitting and/or receiving. The customer-provided system shall comply with the minimum network protection criteria contained in Par. II., A. above.

IV. ENTRANCE FACILITIES

A. All connections of entrance facilities to customer-provided communications systems shall be made through connecting arrangements provided by the Telephone Company.

B. Customers, by use of their own equipment, but only within the normal transmission characteristics of the grade of channel ordered, may not create additional channels from the channels provided for entrance facilities.

C. The charges for entrance facilities and the connecting arrangements will be based on cost as specified in the Tariffs of the Company.

EMERGENCY CALL RECEIVING SERVICE

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This service is provided by New England Telephone to Bretton Woods exchange customers. For example, New England Telephone operators will interrupt a conversation when an emergency condition exists and give the concerned party the information.

CONNECTION WITH CUSTOMER PREMISES WIRING

I. GENERAL

A. Customer Premises Wiring includes all premises wire previously installed by the Telephone Company and associated with both simple and complex services; Customer Provided Premise Wiring (CPPW), associated with complex systems; and Customer Owned or Provided Inside Wiring (CPIW), installed by customers for non-complex residence and business services.

B. All customers or third parties hired by customers, may provide and install premises wiring as set forth in this tariff, associated with both complex and non-complex (simple) telecommunications services provided by the Telephone Company.

C. Connection of Customer Premises Wiring to the telecommunications network, shall in all cases, be accomplished through a Network Interface Device or equivalent FCC registered jack, that is located on the customer's premises on the customer side of the Telephone Company protector.

D. The Network Interface Device shall be, in all instances, the property of the Telephone Company and shall be installed as part of the Network Access Line. The Network Interface Device or equivalent FCC registered jack shall serve as the "Point of Demarcation", so-called, between the facilities of the Telephone Company and the facilities of the customer.

In the absence of a FCC approved Network Interface Device or jack in lieu of a standard network interface, premises wire is construed to be that wire which is located on the customer's side or the Telephone Company. In all instances, access to the protector is limited to Telephone

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Company personnel.

E. A customer who provides, maintains, or attempts to maintain customer premises wire assumes the risk of loss of service, damage to property, or death to or injury of the customer or the customer's agent. The customer saves the Telephone Company harmless from any and all liability, claims or damage suits arising out of the customer's wire provision or maintenance activity.

II. REGULATIONS

A. Customer premises wire may be connected to exchange, private line, and WATS services furnished by or through the Telephone Company.

B. The network interface for the connection of customer premises wire is provided as part of the Network Access Line. The Network Interface Device is normally installed outside the customer's premises at a location designated by the company as normal, charges as set forth in Part V apply. To relocate the Network Interface Device elsewhere is subject to a charge for actual work performed.

C. As part of its program to comply with the FCC rules on deregulation of inside wire, the Telephone Company will install Network Interface Devices in locations where they are not currently installed as follows:

1. As part of installation of Network Access Lines

2. As part of the re-installation of Network Access Lines

3. As part of any Premises Maintenance Visit, other than those made as part of troubles arising from natural disasters or emergencies, where the priority concern is to restore service to large numbers of customers.

D. When the company installs a Network Interface Device as part of Premise Maintenance Visit, where the problem is found to have been caused by faulty equipment or wiring for which the customer is responsible, there will be no charge for the installation. When a customer requests a Premises Maintenance Visit by company personnel at a location where an approved Network Interface Device is in place, and the

problem is found to have been caused by faulty equipment or wiring for which the customer is responsible, appropriate Part V Service Charges will apply.

E. When the company is requested by the customer to install a Network Interface Device at a time other than those outlined above, appropriate Part V Service Charges will apply.

ENHANCED DIGITAL SERVICE (CENTREX)

I. GENERAL

A. The regulations specified herein apply to ENHANCED DIGITAL SERVICE (Centrex).

II. GENERAL DESCRIPTION

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Enhanced Digital Service is a business telecommunications system in which the controlling dial switching equipment is located at a Telephone Company digital central office that normally serves the principal premises of a customer.

III. STANDARD FEATURES

— CALL PICK UP — Allows the user to answer any ringing telephone within the customer group.

— CALL TRANSFER — Allows the customer to transfer an established call to another line within or outside the customer group.

— CALL HOLD — Allows the customer to place an established call on hold and answer another call, place another call or pick up another call previously put on hold.

— THREE-WAY CONFERENCING/ TRANSFER — Allows customer to place an existing call on hold, originate another call, exclude first call from conversation until customer desires to make call three-way.

— CALL FORWARD — Enables the customer to forward all calls to a station within or outside the customer group.

— STATION-TO-STATION DIALING — Allows customer four-digit dialing.

— DIRECT INWARD DIALING — Each station can be directly accessed from the outside by dialing to entire telephone number — without operator assistance.

— DIRECT OUTWARD DIALING — Allows user to place external calls to exchange network without operator assistance.

— EMERGENCY SERVICE 911 — Each station has access to the 911 Emergency Service facility in the area.

— DIRECTORY NUMBER HUNT — This feature permits automatic line hunt until an idle one is reached — customer assigns numbers in groups.

IV. OPTIONAL FEATURES

— CALL FORWARD-BUSY — Automatically transfers terminating calls from outside the customer group encountering a busy condition on the customer line to an alternate line within the customer group.

— CALL FORWARD-NO ANSWER — Automatically transfers terminating calls encountering no answer to a predetermined line within the group.

— CALL WAITING — Alerts a user who is busy on an existing call that another call is waiting.

— CANCEL CALL WAITING — Allows customer to "turn off" call waiting as necessary.

— DISTINCTIVE CALL WAITING TONE — Tone indicates whether call is from within or outside customer group.

— GROUP SPEED CALL — Allows customer to establish a 30-number Speed Call list.

— INDIVIDUAL LONG LIST — Allows user to establish a 30-number list on a single line.

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— INDIVIDUAL SHORT LIST — Allows user to establish an 8-number list on a single line.

— DISTINCTIVE RINGING — Gives a call from outside customer group a distinctive ringing pattern.

— SPECIAL SERVICES FACILITIES ACCESS Provides access to Foreign Exchange lines, tie trunks, and WATS by dialing an access code.

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V. RATES AND CHARGES

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Service and Establishment Charges

Monthly Rate Per Line-1 to 50 lines	$28.92
— each additional line over 50 lines	$10.00
Installation (one-time charge per line)	
1 to 50 lines	30.00
each additional line over 50 lines	20.00
Feature Changes (per change)	20.00

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Optional Features	One-Time Charge	Monthly Rate
Call-Forward-Busy		
Per Main Line Equipped.....	5.00	.50
Call-Forward-No Answer		
Per Main Line Equipped.....	5.00	.50
Call Waiting		
Per Main Line Equipped.....	5.00	.50
Cancel Call Waiting		
Per Main Line Equipped.....	5.00	.50
Distinctive Call Waiting Tone		
Per Main Line Equipped.....	5.00	.50
Group Speed Call		
Per Main Line Equipped.....	10.00	1.00
Individual Long List		
Per Main Line Equipped.....	10.00	1.00
Individual Short List		
Per Main Line Equipped.....	10.00	1.00
Distinctive Ringing		
Per Main Line Equipped.....	5.00	.50
Special Service Facilities Access		
Per Main Line Equipped.....	10.00	1.00

VI. REGULATIONS

A. Enhanced Digital Service is available to hotels, motels, or similar establishments for the use of management, residential guests, and tenants.

B. When Enhanced Digital Service is furnished to a hotel, motel, or similar establishments, the management is responsible for all charges for telephone messages, telegrams, cablegrams and radiograms sent-paid from or received-collect at telephones equipped with digital centrex

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service, whether sent or received by the management or by others.

C. Highway construction, private property construction to one building and special conditions regulations are as set forth in Part V.

D. The appropriate electric current and outlets necessary at the customer's premises, if required, are provided at the customer's expense.

E. One directory listing without charge is furnished for each customer of digital centrex service. Additional directory listings may be provided as specified in Part III, Section 2 for business service.

F. Intercept of calls to disconnected or vacant telephone numbers is provided by means of an announcement of a general nature for in-service systems and a temporary reference of

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incoming calls to a single working telephone number that is specified by the customer for completely disconnected systems.

VII. MINIMUM SERVICE PERIODS

A. The minimum service period is three years at the same location for all Centrex Systems.

B. For purposes of clarification, a Centrex System will consist of 50 or more lines installed at one time as a single group.

C. During the minimum service period, Central Office common equipment and station line charges are not subject to Company-initiated change. However, such charges are under the jurisdiction of the Public Utilities Commission and subject to change upon order of the Commission.

D. Additional Main Stations, up to 10% of initial system may be added at any time during the minimum service period at the currently effective installation charge. Additions over 10% of initial system will constitute a new system and subsequently a new minimum service period.

E. Deletions of over 10% of initial system will incur termination charges on a per line basis.

G. With Written Permission of the Company, Centrex Service may be relocated at any time to a different premises served by the same Central Office at cost.

H. With Written Permission of the Company, the minimum service period may be assigned to another customer at the same location, at no charge.

VIII. APPLICATION AND DETERMINATION OF TERMINATION CHARGES

A. General

A termination charge is a charge made when service is discontinued or changes as specified in B. following, prior to the expiration of the minimum service period.

B. Application of Termination Charges

1. Discontinuance of service when service subject to a minimum service period of more than one month is discontinued at an existing location before the expiration of the minimum service period, a termination charge is applicable for the unexpired portion of the minimum service

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period.

C. Method of Determining Termination Charges

First, determine the maximum termination liability. The maximum termination liability is the amount for service over the minimum service period less any payments. The termination charge is then determined by reducing the maximum termination liability by one third for each month of billing accrued to date. Any termination charges, however, shall not exceed the monthly charges that would apply for services discontinued, over a period equal to the unexpired portion of the minimum service period.

IX. TEMPORARY SUSPENSION OF SERVICE

A. Centrex Service Main Station Lines are subject to the provisions of temporary suspension on service.

PART IV

TOLL SERVICE

I. GENERAL

A. For all calls originating in this Company and interchanged with the New England Telephone and Telegraph Company, rates and regulations of the New England Telephone and Telegraph Company will apply.

PART V

SERVICE CONNECTION CHARGES

I. GENERAL

A. Service Connection Charges apply to services ordered or connected into service and

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are in addition to all other applicable rates and charges for services and equipment furnished.

B. Residence Service

1. When one or more Main Telephone Lines are ordered or connected into service at the same time on the same premises of a customer, or when service is transferred from one customer to another, only one charge applies.

C. Business Service

1. Service Connection Charges apply as shown in Paragraph 11. following, except as noted in C. 2. below.

2. Where service is transferred from one customer to another and services are in-place, the charge to connect all service involved is determined in accordance with C.1. preceding, except that, the aggregate charge to connect all service involved shall not exceed $100.00 provided there are no changes in the type or location of the service.

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D. Business and Residence Services:

If residence service is ordered or connected into service at the same time as business service on the same premises of a customer, the method of determining the charges for the residence service is as specified in B. above. The method for determining the charges for business service is as specified in C. 1. above.

II. CHARGES

Main Lines, Trunk Lines, or Centrex Lines, Semi-Public Telephone, Extension Lines, Tie Lines, and Private Lines each:

Business or Residence Service $30.00

III. LINK-UP NEW HAMPSHIRE PROGRAM

1. Link-up New Hampshire is a connection assistance plan that provides reduced Service Charges for low-income households for one residential network access line per household at the principal place of residence.

2. The applicant must satisfy certain income tests established by assistance program(s) approved by the New Hampshire Public Utility Commission and must present to the Company, at the time of application, appropriate documentation that confirms the customers eligibility to participate in the program.

3. Eligible customers are those that meet the following criteria:

a. Must not be a dependent for federal income tax purposes, unless he or she is more than 60 years old.

b. Must be accepted by or be receiving aid from an assistance program approved by the New Hampshire Public Utilities Commission.

4. The reduction in service charges provided by this program is applicable only to service and equipment charges for the initial installation of a residential network access line. The reduction is equal to 50% or one-half of such amount, not to exceed $30.00.

PREMISES WORK CHARGE

I. GENERAL

The Premises Work Charge applies to moving or changing facilities as required for the provision of Private Line, Extension Line, or Tie Line services where the provision of such service requires work by Telephone Company personnel to be done at the customer's premises or between locations on the same premises.

This charge will also apply for work done at the customer's request:

a. To locate the Network Interface Device at a point other than that considered normal by the Telephone Company and

b. for the installation of a Network Interface Device not requested in conjunction with the installation or re-installation of a network access line.

II. CHARGES

For a move or change in private line,
extension line or tie line services $30.00

MISCELLANEOUS SERVICES AND CHARGES COMBINED SERVICE

I. GENERAL

A. Two or more main telephone services, when located within the same Central Office Area, may be combined on the same line in such a way that the ringing signal for each of the main telephones may be recognized and answered at any of the telephones on the line.

B. Combination of main telephone services is provided only when warranted by special circumstances and when suitable facilities are and continue to be available. A special construction charge will be applied for such equipment as may be required at any time.

II. MONTHLY RATES

A. For each main telephone on a combined line, the appropriate one-party line rate plus a monthly rate of $1.00 will apply.

JOINT USER SERVICE

I. GENERAL

A. Joint user service provides for use of the customer's service by individuals, firms or corporations not associated with the customer in business. and includes one listing in the alphabetical section of the directory.

B. Joint user service is furnished only when the joint user is located in the same room or suite of rooms as the customer.

C. Joint user service is not furnished in those cases where a customer is primarily engaged in furnishing service of a secretarial nature or is primarily in the business of renting office space to transient or permanent tenants and desires to furnish telephone service to his lessees.

D. Applications for joint user service, and for additional service or equipment in connection therewith, must be executed by the customer who will be held responsible for payment of all charges incurred.

E. Joint user service is provided only in connection with business 1-party line.

F. Not more than two joint users are permitted in connection with each customer's service.

II. MONTHLY RATES

A. Each Joint User

UNLIMITED SERVICE.....33-1/3% of the base rate for one 1-Party line.

CONSTRUCTION CHARGES

I. GENERAL

A. The regulations specified in II, III, IV and V, following apply for main telephone exchange and private branch exchange services and for private line, extension line and tie line

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services between points which use general distribution plant.

B. The Telephone Company places either aerial or underground construction and determines in each case the normal type of construction to be used to furnish service. If another type of construction is required, such as submarine cable or radio, or if service is desired at remote locations, the provision in this section governing Special Conditions, the regulations in this Tariff pertaining to Hazardous or Inaccessible Locations, or other established Telephone Company practices and procedures apply.

C. When a service specified in A. above is extended to another building on the same continuous property of a customer, or when a private line, extension line, or tie line service is furnished exclusively between points on the same premises, the construction is furnished in accordance with regulations specified in Section 3.

D. If the furnishing of facilities and service involves a special assembly, a special installation, or disproportionately large construction, maintenance or replacement costs, or expenses on the part of the Telephone Company, charges for the construction are determined in accordance with the Special Conditions provisions in this Section.

E. If within one year of the time when a special construction charge for highway or private property construction has been incurred,

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conditions change so that the whole or a part of the charge should be assumed either by a new customer or by the Telephone Company, an equitable refund will be made.

F. Pole line costs, referenced in this tariff, are based on the current charges on file with the Public Utilities Commission.

G. Highway construction furnished under the conditions specified in I and II is the property of the Telephone Company and will be maintained and replaced by the Company at its expense. The Telephone Company at its expense will furnish, own, and maintain the associated circuit construction.

II. HIGHWAY CONSTRUCTION

A. Where no general distribution plant exists, the Company will provide, without a special construction charge, 3/10 of a mile (route measurement) of normal type construction for each customer to be served. Construction in excess of this allowance for joint ownership will be provided at the full pole line cost. Where attachment to facilities of another wire-using company will be provided, the attachment charge incurred by the Company will be assumed by the customer(s). These charges will be prorated among all customers to be served by the proposed construction.

B. Where general distribution plant exists, the Telephone Company will furnish all required construction of normal type on general distributing plant already occupied by lines of the Telephone Company unless other customers along such facilities are entitled to refund of highway special construction charges, incurred during the previous year. Where refunds are involved, such construction is treated as new construction in accordance with Paragraphs A.

above and I. E. preceding.

C. The minimum service period is one year for service involving an extension of highway construction or the use of an extension of highway construction built during the preceding year. If service is being transferred, an unexpired minimum service period may be assumed by a second customer.

D. When a customer is so located that it is necessary to use a private right-of-way to furnish service and the Company is unable to obtain the required right-of-way without cost, the customer is required to pay the entire costs involved in securing such right-of-way.

III. PRIVATE PROPERTY CONSTRUCTION

A. GENERAL

1. Aerial or underground telephone construction located on private property is considered private property construction. the cost of which will be assumed by the customer or prorated among all customers to be served by the proposed construction and occupying the same such private property, and is subject to the regulations in B. and C. following.

2. That portion of construction on private property which within one year from the date of installation of telephone service, has been accepted as a municipally-owned and maintained road is furnished under the regulations applicable to Highway Construction as shown in II. preceding.

3. The principal location for residence service customers is considered to be the customer's dwelling.

4. The principal location for business service customers is considered to be the main office on the premises of the customer, except that where private branch exchange service is furnished, the principal location is considered to be the building in which the private branch exchange switching equipment is located.

B. POLE CONSTRUCTION

Poles on private property to service the customer(s) principal location are subject to the regulations below.

1. If a pole line suitable either for telephone occupancy or joint occupancy with another wire-using company is built by the Telephone Company, the Telephone Company furnishes the first pole for each customer without charge and the customer(s) assumes the cost of any additional pole line costs. Such construction shall be the property of the Telephone Company and shall be maintained and replaced

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by the Company at its expense. The Telephone Company at its expense will furnish, own and maintain the associated circuit construction.

2. If the Telephone Company is required to furnish telephone service through joint ownership in a pole line of another wire-using company, the pole line cost, beyond the first pole for each customer, will be charged to the customer or prorated among all customers to be served. Where attachment charges are incurred by the Company, these charges, beyond the first pole for each

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customer, will be assumed by the customer or prorated among all customers. The Telephone Company at its expense will furnish, own and maintain the associated circuit construction.

3. If a pole line suitable for telephone occupancy is built by the customer(s) requesting service the entire line cost of construction, future maintenance and replacement will be assumed by the customer(s). The pole line shall be constructed in a manner acceptable to the Telephone Company, and will be the property of the customer(s). The Telephone Company at its expense will furnish, own and maintain the associated circuit construction.

4. The customer(s) shall assume the expense of maintenance and replacements made necessary by any act of the customer(s) or representatives of the customer(s) or by circumstances over which they have control.

5. The minimum service period is one year for service which involves pole line construction on private property.

C. UNDERGROUND CONSTRUCTION

Underground construction on private property to serve the customer(s) principal location is subject to the following regulations:

1. When the Company determines that the normal type of construction is underground:

a. For underground wire or cable construction of a type not requiring conduit, the Telephone Company furnishes without charge all trench work for a maximum route distance of 400 ft. on private property. Trench work in excess of the maximum allowance is furnished at the expense of the customer(s). Excess construction may be built either by the Telephone Company or by the customer(s) under Telephone Company supervision and in conformity with Company engineering specifications. The customer(s) assumes the cost of providing a suitable entrance into the building.

b. For underground conduit construction, the Telephone Company furnishes trench work in accordance with a. preceding. The customer(s) assumes the cost of conduit material to be placed by the Telephone Company at its expense. The customer(s) assumes the cost of providing a suitable entrance into the building.

2. When the company determines that the normal type of construction is aerial but underground construction is built at the request of the customer:

a. For underground wire or cable construction of a type not requiring conduit:

(1) First 200 feet route measurement — the customer assumes full cost of trench work.

(2) Beyond 200 feet route measurement — the customer assumes full cost of trench work, less a credit of one pole based on the current pole line cost.

(3) The customer assumes the cost of providing a suitable entrance into the building.

b. For underground conduit construction:

(1) First 200 feet route measurement — the customer assumes full cost of all trench work and conduit material.

(2) Beyond 200 feet route measurement — the customer assumes the full cost of all

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trench work and conduit material, less a credit of one pole based on the current pole line cost.

(3) The customer assumes the cost of providing a suitable entrance into the building.

c. The construction work in 2.a. and 2.b. preceding may be built either by the Telephone

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Company or by the customer(s) under Telephone Company supervision and in conformity with Company engineering specifications.

3. The minimum service period is one year for service provided in accordance with the preceding where the circuit distance is in excess of 200 feet route measurement and the Telephone Company has assumed all or part of, or has given the customer(s) credits against, the cost of underground construction in excess of 200 feet.

IV. MAINTENANCE AND REPLACEMENT OF CIRCUIT AND CONDUIT CONSTRUCTION

A. Circuit construction furnished under III, C. preceding is furnished, owned and maintained by the Telephone Company. Any necessary trench or conduit work in connection with maintenance and replacement is done at Telephone Company expense.

B. If the rendering of access to the conduits, provided under III, C. preceding, is unusually expensive, the customer(s) is required to bear the unusual expense incurred in opening and closing the trench in connection with maintenance and replacement or to provide service over a new route.

V. SPECIAL CONDITIONS

A. If customer(s) within the exchange area desires or requires a form of highway or private property construction that is of higher cost than that which normally would be placed, or if because of the obviously temporary nature of the service the construction cost is disproportionately large in comparison with the estimated revenue, special construction charges apply to cover the excess costs.

B. If a special installation involving special construction is made on behalf of the customer(s), or if the cost involved is disproportionately large in comparison with the estimated revenue, charges based on costs apply, in addition to Service Charges specified in Section 3. If there is considerable cost involved for design and installation, service is furnished subject to a minimum revenue guarantee for at least twelve months service. If a special installation request is cancelled, a processing fee may apply for the expense incurred in engineering the service arrangement.

C. For a change in construction not provided for in this schedule, charges based on cost apply.

D. If conditions change so that the whole or a part of a special construction charge previously paid by a customer(s), as provided in Paragraphs B. and C. preceding, is assumed either by a new customer(s) or by the Telephone Company, an equitable refund will be made.

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E. If a customer(s) within the exchange area requests a form of private property construction that requires the installation of associated circuit construction of excess capacity and/or requiring extraordinary distance across private property, in order to service a customer's location and additionally, to service future contiguous property owned by the customer(s), the Company shall require the customer(s) to advance the cost for such construction and shall enter into an agreement to reimburse the customer(s) advancing such costs a pro-rata share of the cost based on a formula of the percentage of new customer(s) connections within the property during a period not to exceed 2 years from the date of the connection of the first new customer(s) to service. In the event, service is provided to multiple locations, parcels of land or subdivisions along the circuit construction, the reimbursement period shall commence at the time the first new customer is connected to service and shall terminate 2 years thereafter.

PART VI

SWITCHED ACCESS FOR USE WITH
FTS 2000 FOR THE FEDERAL GOVERNMENT
AND CUSTOM NETWORK SERVICES

I. General

A. Bretton Woods Telephone Company concurs with N.H.P.U.C. No. 78, a tariff filed by New England Telephone and Telegraph Company. This tariff contains regulations, rates and charges applicable to the provision of service

for the completion of intralata communications over Interexchange Carrier provided FTS 2000 for the Federal Government and Custom Network Services.

There are two exceptions to our concurrence. First, any reference in NHPUC — No. 78 to NET F.C.C. No. 40 should be replaced by a reference to NECA F.C.C. No. 5. Secondly, Section 6, Operating Territory, would be limited to the territory of Bretton Woods Telephone Company, as referenced elsewhere in this tariff.

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NH.PUC*09/10/90*[51076]*75 NH PUC 640*Southern New Hampshire Water Company, Inc.

[Go to End of 51076]

75 NH PUC 640

Re Southern New Hampshire Water Company, Inc.

DR 89-224
Order No. 19,933
New Hampshire Public Utilities Commission
September 10, 1990

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ORDER denying rehearing of an order that granted a temporary rate increase for water utility service.

RATES, § 648 — Burden of proof — Temporary rate increase — Water utility.

[N.H.] In denying rehearing of an order that granted a temporary rate increase for water utility service, the commission reaffirmed its conclusion that the utility had met the standard of proof for temporary rates pursuant to RSA 378:27, a standard less stringent than that applied in a request for permanent rates.

By the COMMISSION:

ORDER

On September 4, 1990 the Office of Consumer Advocate (OCA) filed a motion for rehearing of Report and Order No. 19,915 (75 NH PUC 549) pursuant to RSA 541:3; and

WHEREAS in said motion the OCA takes the position that the above referenced order is "not supported by a preponderance of the evidence"; and that the "commission ...[was]... without jurisdiction to issue an order in that it violates RSA 378:7, 8, 9 and 27 and the state federal constitution's ... and the manner in which the commission decided the order ...[was]... is unfair and violated RSA 541 A:16 ..."; and

WHEREAS, in support of the above referenced motion the OCA states that "the order granting Southern New Hampshire Water Company a temporary rate increase of $750,000 was not supported by the evidence"; and

WHEREAS, the OCA's motion questions whether Southern New Hampshire Water Company, Inc., has met its burden of proof pursuant to RSA 378:27; and

WHEREAS, the OCA has raised no issues which the commission did not thoroughly analyze and review in Report and Order No. 19,915; and

WHEREAS, as the commission noted in Report and Order No. 19,915, it is the commission's role to assess the credibility of the evidence in the context of the whole record for the purpose of resolving issues of fact. *See Appeal of McKenney*, 120 N.H. 77, 81 (1980); *LUCC v. Public Service Company of New Hampshire*, 119 N.H. 332, 340 (1979); and

WHEREAS, the commission has found that Southern New Hampshire Water Company, Inc. has met the standard of proof for temporary rates pursuant to RSA 378:27, a standard less stringent than that to be applied in a request for permanent rates; and

WHEREAS, such finding is supported by the record; it is hereby

ORDERED, that the OCA's motion for rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1990.

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NH.PUC*09/10/90*[51077]*75 NH PUC 640*Pennichuck Water Works, Inc.

[Go to End of 51077]

75 NH PUC 640

Re Pennichuck Water Works, Inc.

DR 89-120
Order No. 19,934

New Hampshire Public Utilities Commission

September 10, 1990

ORDER establishing temporary rates for water utility service.

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1. RATES, § 85 — Commission powers —

Page 640

Temporary rates.

[N.H.] The commission's power to set temporary rates is discretionary and should be exercised only when such rates are in the public interest. p. 641.

2. RATES, § 630 — Temporary rates — Water service — Refund or recoupment.

[N.H.] A water utility was granted temporary rates at current levels pending the outcome of its permanent rate proceeding where it was found that the utility was earning a rate of return less than that allowed in its last rate case; any overrecovery or underrecovery resulting from the temporary rates would be subject to refund or recoupment, respectively. p. 641.

APPEARANCES: John Pendelton, Esq. on behalf of Pennichuck Water Works, Inc.; Mr. Petch and Mr. Jarrell on their own behalf; Eugene F. Sullivan, III, Esq. for the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On June 27, 1989, Pennichuck Water Works, Inc. (Pennichuck) requested an extension of existing interim rates for all franchised East Derry Water Systems and for permission to file for consolidated rates for these systems on or before November 1, 1989.

On December 31, 1987, Pennichuck was granted interim rates for several community water systems located in East Derry including Cousins Farms, order no. 18,954 (72 NH PUC 589);

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High and Low Estates, order no. 18,952 (72 NH PUC 589) and Drew/Bliss, order no. 18,955 (72 NH PUC 589). Pennichuck was ordered to file for permanent rates fifteen months after the date operations began for these systems.

In addition to the above referenced systems Pennichuck was granted interim rates on July 25, 1988 for Hubbard/Bellbrook, order no. 19,135 (73 NH PUC 279) and on March 20, 1989, for Birchfield Communities, order no. 19,350 (74 NH PUC 102). Pennichuck was ordered to file rates twelve months after the date operation began for these systems.

On July 19, 1989, by order no. 19,474 (74 NH PUC 246) the commission granted Pennichuck a continuance until November 1, 1989 to commence a rate case. Pennichuck requested further continuances in the above referenced cases which were subsequently granted. By order no. 19,681 (75 NH PUC 47) issued on January 25, 1990, the commission granted a request of the company to continue interim rates for all systems until June 1, 1990. On June 22, 1990, the commission received the testimony and exhibits of the company pertaining to the issue of rates. An agreement between staff counsel and counsel for the company led to the two-week extension between June 1 and the June 22 filing.

II. *Position of the Parties*

Staff and the company entered into an agreement that temporary rates were required and that they should be set at current levels. Mr. Jamel and Mr. Page took no position.

III. *Commission Analysis*

[1, 2] Pursuant to RSA 378:27 the commission has the power to set temporary rates. The commission's power to set such rates is discretionary and shall be exercised only when such rates are in the public interest. *See* RSA 378:27. The commission's duty to investigate temporary rate requests are less than is required in setting permanent rates. *Public Service Company of New Hampshire v. State*, 102 N.H. 66, 70 (1959). Any overrecovery or underrecovery resulting from temporary rates will be addressed by allowing the customers or company recoupment of any overrecovery or underrecovery respectively.*See* RSA 378:29; RSA 378:30.

The commission finds, based on the testimony of Bonlyn Hartley, that Pennichuck is

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entitled to temporary rates due to the fact that it is apparently experiencing a rate of return less than that allowed by the commission (10.92 overall rate of return in Pennichuck's last rate cases cited above). This position is further supported by the undisputed representation by staff based on the annual reports filed by the company with this commission which indicated Pennichuck is earning less than its authorized rate of return for its East Derry Community Systems and its Plaistow System.

The commission will approve the agreement of staff and Pennichuck and grant temporary rates at current levels effective upon the date of this order.

The parties and staff also agreed to the following procedural schedule. Although the transcript indicates different dates for the settlement conference and hearing date, the parties indicated to the commission after the hearing that those dates were required to be changed due to

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a conflict with the commission calendar. The stipulated procedural schedule is set forth below:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Staff and Intervenor Data Request to the Company.	October 10, 1990
Company Responses to Staff and Intervenor Data Requests.	October 24, 1990
Staff and Intervenor Testimony is due.	December 14, 1990
Company Data Requests to Staff and Intervenors.	January 4, 1991
Response to the Company's Data Request of Staff and Intervenors.	January 18, 1991
Settlement Conference	January 30, 1991
Hearing on the Merits	February 19, 1991 through February 22, 1991

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Pennichuck Water Works, Inc. be granted temporary rates in this docket at current levels for the balance of this proceeding; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is in the public interest and is adopted.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1990.

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NH.PUC*09/10/90*[51078]*75 NH PUC 642*New England Telephone and Telegraph Company

[Go to End of 51078]

75 NH PUC 642

Re New England Telephone and Telegraph Company

Additional petitioner: Public Service Company of New Hampshire

DE 90-138
Order No. 19,935

New Hampshire Public Utilities Commission

September 10, 1990

ORDER granting a license to place and maintain aerial cable across state-owned land.

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1. CERTIFICATES, § 123 — Telephone — Aerial crossing — State-owned land — Local

exchange carrier.

[N.H.] The commission authorized a telephone local exchange carrier to place and maintain aerial telephone cable across state-owned land for the purpose of providing telephone service to a recycling center. p. 643.

2. ELECTRICITY, § 12 — Electric — Aerial crossing — State-owned land.

[N.H.] The commission authorized a retail electric utility to place and maintain aerial electric cable across state-owned land for the purpose of providing electric service to a recycling center. p. 643.

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By the COMMISSION:

ORDER

[1, 2] On August 8, 1990, New England Telephone and Telegraph Company (NET) and Public Service Company of New Hampshire (PSNH) filed with this commission their petition seeking license under RSA 371:17 to construct and maintain facilities to the Town of Northfield recycling center across state property.

WHEREAS, the plant consists of wires, aerial cables and the necessary supporting structures to serve the public's needs; and

WHEREAS, the pole line will extend off Sargent Street across state owned land to the town of Northfield recycling center, a total distance of approximately 1100 feet; and

WHEREAS, NET has assured the commission that its construction has been coordinated with the New Hampshire Department of Transportation by including a letter of concurrence signed by the District Engineer from the Department of Transportation with its petition, on file with the commission; and

WHEREAS, the sole purpose of constructing said pole line consisting of 6 poles, 4 of which cross state property, numbered 38/9 1/2-1, 38/9 1/2-2, 38/9 1/2-3 and 38/9 1/2-4, as depicted on NET Work Order Number 930886, on file with the commission, is to provide telephone and electric service to the town of Northfield Recycling Center; and

WHEREAS, the petitioners have assured the commission said facilities will be constructed and maintained with due regard for established minimum safety standards; and

WHEREAS, the petitioners have stated that the granting of such license will not adversely affect the public rights on said property and is therefore. in the public interest; it is hereby

ORDERED, persons desiring to respond to this petition file written comments or a written request for public hearing before this commission no later than 7 days from the date of publication; and it is

FURTHER ORDERED, that notice be given by one-time publication of this order in a newspaper having general circulation in the Northfield area no later than September 17, 1990,

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and documented by affidavit to be filed with this commission; and it is

FURTHER ORDERED, *NISI*, that NET and PSNH be, and hereby are granted license under RSA 371:17 *et seq*, to construct, maintain and operate the necessary facilities to supply the town of Northfield Recycling Center telephone and electric service on state owned property off Sargent Street in Northfield, New Hampshire, such construction identified by NET Work Order Number 930886 on file with the commission; and it is

FURTHER ORDERED, that all construction shall meet requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective 10 days from the date of publication unless a hearing is requested as provided herein or the commission otherwise directs prior to that date.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1990.

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NH.PUC*09/17/90*[51079]*75 NH PUC 643*Victoria L. Turner v. Public Service Company of New Hampshire

[Go to End of 51079]

75 NH PUC 643

Victoria L. Turner
v.
Public Service Company of New Hampshire

DR 90-106
Order No. 19,936

New Hampshire Public Utilities Commission

September 17, 1990

ORDER dismissing a complaint requesting relief from payment of electric bills and denying reconsideration of an order approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire.

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1. ATOMIC ENERGY — Jurisdiction and

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powers — State commissions — Safety — Waste disposal.

[N.H.] The commission does not have jurisdiction to rule on questions regarding the safety of nuclear power and the disposal of radioactive wastes. p. 644.

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2. CONSOLIDATION, MERGER, AND SALE, § 67 — Procedure — Findings and orders — Reconsideration — Grounds for denial.

[N.H.] The commission dismissed a complaint alleging concerns in connection with the proposed merger of Northeast Utilities and Public Service Company of New Hampshire where the merger plan was fully addressed in a recent proceeding in which the complainant chose not to intervene and the allegations in the complaint did not state any basis for reconsideration of the commission's order in that proceeding. p. 6344.

3. PAYMENT, § 9 — Liability for payment — Complaint for relief — Safety concerns — Dismissal.

[N.H.] The commission dismissed a complaint for relief from payment of electric bills where the complainant failed to allege any reasonable basis for the grant of the requested relief; the complainant had based her claim for relief on safety concerns in connection with the operation of the Seabrook nuclear plant and other concerns in connection with the proposed merger of Northeast Utilities and Public Service Company of New Hampshire. p. 644.

By the COMMISSION:

ORDER

[1-3] WHEREAS, on or about August 15, 1990 petitioner Victoria L. Turner filed a complaint with the commission alleging certain safety concerns in connection with Public Service Company of New Hampshire's (PSNH) operation of the Seabrook Nuclear Plant and other concerns in connection with Northeast Utilities' (NU) plan for merger with PSNH to resolve the PSNH bankruptcy; and

WHEREAS, Victoria L. Turner further claims that because of her concerns she will not compensate PSNH for electric service provided to her; and

WHEREAS, on July 11, 1990, PSNH filed a motion to dismiss Ms. Turner's complaint; and

WHEREAS, this commission does not have jurisdiction to rule on questions regarding the safety of nuclear power and the disposal of radioactive waste; and

WHEREAS, the subject of NU's plan for merger with PSNH was fully addressed in this commission's recent proceeding on the NU petition, Docket Number DR 89-244 and petitioner chose not to intervene in that proceeding; and

WHEREAS, this commission finds that the allegations contained in Ms. Turner's complaints do not state any basis for reconsideration of the commission's order in that proceeding; and

WHEREAS, this commission finds that the petitioner has not alleged any reasonable basis upon which she should be granted relief from payment of her electric bills; it is hereby

ORDERED, that Petitioner's complaint shall be dismissed.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1990.

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NH.PUC*09/18/90*[51080]*75 NH PUC 644*Great Bay Water Company

[Go to End of 51080]

75 NH PUC 644

Re Great Bay Water Company

DF 90-110
Order No. 19,937

New Hampshire Public Utilities Commission

September 18, 1990

ORDER directing a water utility to appear and show cause why it should not be fined for failure to file required annual reports with the commission.

Page 644

1. REPORTS, § 2 — Power to require — Effect of failure to file — Show cause order — Water utility.

[N.H.] A water utility was directed to appear and show cause why it should not be fined for failure to file required annual reports with the commission. p. 645.

2. FINES AND PENALTIES, § 5 — Grounds for imposition — Failure to file reports.

[N.H.] State statute provides that any public utility which does not file reports required by the commission at the time specified by the commission shall forfeit the sum of $100 per day, unless excused by the commission. p. 645.

3. FINES AND PENALTIES, § 6 — Grounds for imposition — Violation of commission order.

[N.H.] State statute provides that every officer or agent of a public utility which wilfully violates any order of the commission may be subject to criminal and civil sanctions up to $10,000 for each violation. p. 645.

By the COMMISSION:

ORDER

Pursuant to RSA 374:5 requires every public utility shall file with the Commission reports containing facts and statistics as required by the Commission; and

[1-3] WHEREAS, the New Hampshire Code of Administrative Rules, Puc 607.06 and Puc 609.05 require *inter alia* the filing with the Commission of annual reports which contain specified facts and statistics; and

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WHEREAS, RSA 374:17 provides *inter alia* that any public utility which does not file reports required by the Commission at the time specified by the Commission shall forfeit the sum of $100 per day unless excused by the Commission; and

WHEREAS, Great Bay Water Company and its President, Robert Hanna, has not filed the F-16 Annual Report the years ended December 31, 1988 and 1989; and

WHEREAS, RSA 305:42 provides that every officer or agent of a public utility which wilfully violates any order of the commission may be subject to criminal and civil sanctions up to $10,000 for each violation; it is therefore

ORDERED, that Docket No. DF 90-110 be established for the purpose of determining whether Great Bay Water Company should be fined an amount not to exceed $100 per day or its agent and officer Robert Hanna should be fined $20,000 for failure to provide the above cited annual reports; and it is

FURTHER ORDERED, that Great Bay Water Company appear before the Commission in a hearing at the offices of the Commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at 10:00 A.M. on October 30, 1990 for the purpose of showing cause why it or its agent and president should not be fined for failure to file the required annual report.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1990.

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NH.PUC*09/18/90*[51081]*75 NH PUC 645*The Berlin City Bank v. New Hampshire Electric Cooperative, Inc.

[Go to End of 51081]

75 NH PUC 645

The Berlin City Bank
v.
New Hampshire Electric Cooperative, Inc.

DC 90-133
Order No. 19,938

New Hampshire Public Utilities Commission

September 18, 1990

ORDER denying a motion to dismiss a complaint arising from a disputed electric bill and establishing a schedule for a hearing on the merits.

Page 645

PROCEDURE, § 29 — Disposal of issues — Involuntary dismissal — Grounds for denial —

Factual disputes — Electric billing dispute.

[N.H.] The commission denied a motion to dismiss a complaint arising from a disputed electric bill and established a schedule for a hearing on the merits where the pleadings revealed factual disputes requiring resolution.

By the COMMISSION:

ORDER

New Hampshire Electric Cooperative, Inc. (COOP), having filed a Motion to Dismiss in reference to the aforementioned complaint on August 13, 1990; and

WHEREAS, the complaint was filed by The Berlin City Bank on July 12, 1990 requesting a hearing concerning a billing dispute with the COOP pertaining to an electric bill of $3,221.62 owed by Brian J. and Rita C. Robinson, d/b/a Liftline, Inc.; and

WHEREAS, by secretarial letter dated October 6, 1990, the commission scheduled a hearing on the complaint for September 28, 1990 at 10:00 a.m.; and

WHEREAS, on August 30, 1990, The Berlin City Bank filed an objection to the COOP's Motion to Dismiss ascertaining various factual disputes with the COOP; it is hereby

ORDERED, that on review of the pleadings the commission has determined that the factual disputes between the parties must be resolved on the merits before final determination of the complaint can be made; it is

FURTHER ORDERED, that the COOP's Motion to Dismiss is hereby denied and the Hearing on the Merits scheduled for September 28, 1990 will proceed as scheduled.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1990.

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NH.PUC*09/24/90*[51082]*75 NH PUC 646*Connecticut Valley Electric Company, Inc.

[Go to End of 51082]

75 NH PUC 646

Re Connecticut Valley Electric Company, Inc.

DR 89-240
Order No. 19,940

New Hampshire Public Utilities Commission

September 24, 1990

ORDER extending a temporary electric rate credit surcharge.

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RATES, § 321 — Electric rate design — Temporary credit surcharge — Extension.

[N.H.] A temporary electric rate credit surcharge was extended where the full amount of a previously-required pass back of revenues had not been returned to ratepayers as of the scheduled expiration date.

By the COMMISSION:

ORDER

On September 6, 1990, the Connecticut Valley Electric Company, Inc. (Company or ConValley), an electric utility servicing parts of western New Hampshire, filed a motion and proposed tariff pages for an extension of the Temporary Credit Surcharge (TCS) granted by the Commission, December 14, 1989. Order No. 19,640 (74 NH PUC 479). The present TCS tariff pages allow the TCS to be returned to ratepayers serviced under Rates GV, T and O until October 1, 1990 billings; and

WHEREAS, the Company estimates that $203,761 will not have been passed back by October 1, 1990; and

WHEREAS, it was the intent of the Commission in Order No. 19,640 to increase the TCS so that the Company could comply with the stipulation in DR 88-121; and

WHEREAS, there was no public comment

or intervention in DR 89-240; and

WHEREAS, the Commission found it in the public interest that the TCS be applied to the large industrial rate classes GV and T, and the water heating rate class O; and

WHEREAS, after review and consideration the Commission finds the proposed extension to the Temporary Credit Surcharge does not deviate from the Temporary Credit Surcharge approved in Order No. 19,640, and is in the public interest; it is hereby

ORDERED, that the proposed Temporary Credit Surcharge be extended until the full amount has been passed back; and it is

FURTHER ORDERED, that the Company submit appropriate compliance tariff pages effective October 1, 1990.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1990.

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75 NH PUC 647

Re Wormser Engineering, Inc.

Movant: Public Service Company of New Hampshire

DR 86-001
Order No. 19,941

New Hampshire Public Utilities Commission

September 24, 1990

ORDER denying a motion for a continuance.

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1. PROCEDURE, § 39 — Time limitations — Extensions — Grounds.

[N.H.] The fact that the schedule for a commission proceeding would inconvenience particular attorneys was an insufficient reason to prolong the proceeding. p. 647.

2. PROCEDURE, § 39 — Time limitations — Filing deadlines — Testimony and exhibits — Service on other parties.

[N.H.] Unless the commission provides otherwise, all prepared testimony and exhibits must be filed with the commission and served on all parties at least 7 days in advance of the session of the hearing at which such testimony or exhibits are to be offered. p. 647.

By the COMMISSION:

ORDER

WHEREAS, on September 17, 1990, Public Service Company of New Hampshire requested that the October 3, 1990 hearing for Wormser Engineering, Inc. (Wormser) be continued inasmuch as the attorneys who would normally handle such cases will be either out of town or participating in other hearings that week and a deadline had not been established for the filing of testimony by Wormser; and

WHEREAS, on July 12, 1990 after several prior continuances, the commission by letter established the October 3, 1990 hearing date and stated that there would be no further continuances; and

[1] WHEREAS, the convenience of the schedules of particular attorneys is insufficient reason to prolong the proceeding further; and

[2] WHEREAS, N.H. Rule Puc 202.08 states that "unless the commission ... provides otherwise, all prepared testimony and exhibits must be filed with the commission and served on all other parties at least seven (7) days in advance of the session of the hearing at which such testimony or exhibits are to be offered", and in the absence of such other provision, all parties should assume that testimony and exhibit are due on September 26, 1990; it is hereby

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ORDERED, the PSNH's Motion For Continuance is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1990.

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NH.PUC*10/01/90*[51085]*75 NH PUC 649*New Hampshire Electric Cooperative, Inc.

[Go to End of 51085]

75 NH PUC 649

Re New Hampshire Electric Cooperative, Inc.

DR 90-118
Order No. 19,945

New Hampshire Public Utilities Commission

October 1, 1990

ORDER making the short-term avoided costs rates approved for an electric utility applicable to an electric cooperative.

COGENERATION, § 25 — Avoided cost rates — Electric cooperative.

[N.H.] The short-term avoided cost rates approved for an electric utility by prior order were made applicable to an electric cooperative under the same terms and conditions holding for the utility.

By the COMMISSION:

ORDER

WHEREAS, on June 6, 1990 the New Hampshire Electric Cooperative Inc. (NHEC) filed a letter with the commission adopting the short-term avoided cost rates filed by Public Service Company of New Hampshire (PSNH) in docket no. DR 90-059; and

WHEREAS, the PSNH short-term avoided cost rates were revised and approved by the commission in order no. 19,868 (75 NH PUC 343); it is hereby

ORDERED, that the short-term avoided cost rates approved for PSNH in order no. 19,868 be applicable to NHEC under the same terms and conditions holding for PSNH; and it is

FURTHER ORDERED, that docket no. DR 90-118 be closed.

By order of the Public Utilities Commission of New Hampshire this first day of October, 1990.

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NH.PUC*10/01/90*[51086]*75 NH PUC 649*New Hampshire Electric Cooperative, Inc.

[Go to End of 51086]

75 NH PUC 649

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 19,946

New Hampshire Public Utilities Commission

October 1, 1990

ORDER asserting jurisdiction to review and approve the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between an electric cooperative and an investor-owned electric utility.

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1. RATES, § 70 — Commission powers — Statutes — Rate plan — Electric cooperative.

[N.H.] State statute, RSA 362-C:7, authorizes the commission to approve a rate plan for the New Hampshire Electric Cooperative, Inc., provided that the commission finds that such a rate plan is consistent with the public good and that it results in no greater costs or risks to cooperative members than those resulting for the ratepayers of Public Service Company of New Hampshire under its own rate plan. p. 651.

2. RATES, § 44.2 — Jurisdiction and powers — State commissions — Limitations — Constitutional issues — Capacity sellback agreement — Electric cooperative.

[N.H.] The commission is not constitutionally precluded from the regulation of wholesale electric sales contemplated in a capacity sellback agreement between an electric cooperative and an investor-owned electric utility. p. 652.

3. INJUNCTION, § 2 — From pursuit of judicial remedies — Grounds for refusal —

Insufficient support.

[N.H.] The commission denied, without prejudice, a motion for a commission order enjoining an electric cooperative from pursuing judicial remedies with respect to its Seabrook capacity sellback agreement with an investor-owned electric utility; it was found that the motion contained insufficient support for the findings necessary to take such action; moreover, the commission expressed confidence that the courts would rule appropriately on any attempt by the cooperative to limit commission jurisdiction over the agreement. p. 652.

4. ELECTRICITY, § 2 — Jurisdiction and powers — State commissions — Capacity sellback agreement — Electric cooperative.

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[N.H.] The commission has jurisdiction to review and approve the terms and conditions of a capacity sellback agreement between an electric cooperative and an investor-owned electric utility pursuant to the authority conferred upon the commission by state statute, RSA 362-C:7, which authorizes the commission to approve a rate plan for the New Hampshire Electric Cooperative, Inc.; it was found that the sellback agreement was an essential element of the rate plan. p. 652.

5. RATES, § 49 — Jurisdiction and powers — State commissions — Contract rates — Capacity sellback agreement — Electric cooperative.

[N.H.] State statute, RSA 378:20, which requires utilities to seek commission review of power contracts with other utilities, provided a basis for commission jurisdiction to review and approve the terms of a capacity sellback agreement between an electric cooperative and an investor-owned electric utility. p. 652.

6. RATES, § 217 — Contracts rates — Modification — Seabrook capacity sellback agreement — Commission powers.

[N.H.] In asserting jurisdiction to review and approve the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between an electric cooperative and an investor-owned electric utility, the commission rejected the contention that its review and approval would constitute retrospective modification of an existing contract; such a contention was deemed unwarranted in view of the fact that the contract was not enforceable or subject to commission review until after the commercial operation date of the Seabrook plant. p. 652.

7. RATES, § 212 — Contracts rates — Validity — Seabrook capacity sellback agreement — Effect of Seabrook financing order — Electric cooperative.

[N.H.] A prior order authorizing an electric cooperative to borrow funds for the purpose of financing its share of the Seabrook nuclear power plant did not preclude a subsequent commission adjudication of the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between the cooperative and an investor-owned electric utility. p. 655.

8. RATES, § 217 — Contracts rates — Modification — Seabrook capacity sellback agreement — Commission powers.

[N.H.] Regulated utilities may not use contractual agreements as a mechanism for avoiding their regulatory obligations; such contracts are subject to the police powers of the state and may be modified as necessary to accomplish the state's sovereign interests. p. 656.

9. RATES, § 49 — Jurisdiction and powers — State commissions — Contract rates — Capacity sellback agreement — Electric cooperative.

[N.H.] The commission has both the constitutional and statutory authority and responsibility to review and approve the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between the cooperative and an investor-owned electric utility. p. 658.

10. RATES, § 70 — Jurisdiction and powers — Statutes — Electric rate plan — Seabrook capacity sell back agreement — Electric

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cooperative.

[N.H.] Because the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between the cooperative and an investor-owned electric utility materially affect the cooperative's electric rate plan, it was essential that the commission interpret the agreement as part of the rate plan analysis required by the state statute authorizing the commission to determine whether the implementation of the rate plan would be in the public good. p. 658.

APPEARANCES: Merrill and Broderick by Stephen E. Merrill, Esquire for the New Hampshire Electric Cooperative, Inc.; Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Rath, Young, Pignatelli and Oyer, P.A. by Thomas D. Rath, Esquire for Northeast Utilities Service Company; John P. Arnold, Attorney General and Harold T. Judd, Assistant Attorney General for the State of New Hampshire; Michael W. Holmes, Consumer Advocate; United States Department of Justice by James A. Gresser, Esquire for the United States Rural Electrification Administration; Audrey Zibelman, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

[1] This docket was opened pursuant to RSA 362-C:7 which authorizes the New Hampshire Public Utilities Commission (commission) to approve a rate plan for the New Hampshire Electric Cooperative, Inc. (NHEC), provided that the commission finds that such a rate plan is consistent with the public good and that it results in no greater costs or risks to the members of the NHEC than those resulting for the ratepayers of Public Service Company of New Hampshire (PSNH) under its own rate plan as referenced by the legislation.[1(59)]

After due notice, the commission conferred intervenor status on PSNH, Northeast Utilities Service Company (NUSCO), the State of New Hampshire (State) and the United States Rural Electrification Administration (REA). A procedural schedule was adopted by the commission which, as amended, currently provides *inter alia* for hearings to commence on January 7, 1991.

On September 10, 1990, PSNH and NUSCO jointly filed a Motion for Order Declaring Scope of Proceeding and Status of Sellback Agreement (Motion). The Motion seeks commission action with respect to a sellback agreement between the NHEC and PSNH. That sellback agreement governs certain transactions between the NHEC (as seller of its share of the output of Seabrook and, possibly, as buyer of wholesale energy and capacity) and PSNH (as buyer of the NHEC's share of the output of Seabrook and, possibly, as seller of wholesale energy and capacity). *See, e.g.*, Kaminski pre-filed direct testimony at Exhibits SEK-1 and SEK-2. The Motion requests that the commission *inter alia*: (1) rule that the sellback agreement is within the scope of the instant docket; (2) construe and enforce its terms and conditions; and (3) require that the NHEC cease and desist from any judicial action to enforce the sellback agreement pending commission action.

On September 20, 1990, the NHEC filed an Objection to the Motion. On that same date, the

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State filed a response in support of the Motion.

II. *POSITIONS OF THE PARTIES*

In support of the Motion, PSNH and NUSCO claim that the commission has jurisdiction to construe, approve and enforce the sellback agreement under RSA 362-C:3, RSA 378:20, RSA 378:7, and RSA 378:1. Additionally, PSNH and NUSCO argue that there exists no federal law which preempts the commission exercise of its jurisdiction over the sellback agreement, citing *Arkansas Electric Cooperative Corporation v. Arkansas Public Service Commission*, 461 U.S. 375, 52 PUR4th 514 (1983) and *Wabash Valley Power Association,*

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Inc. v. Rural Electrification Administration, 903 F.2d 445 (7th Cir. 1990). PSNH and NUSCO assert that the commission has heretofore not construed or approved the sellback agreement and that such action now is necessary as an essential element in the instant proceeding.

The State's support of the Motion is based on its contentions that: (1) the commission has jurisdiction to review and approve the terms of the sellback agreement; and (2) the determination of the terms and conditions of the sellback agreement must be determined if the commission is to adjudicate properly the issues presented in this proceeding.

The NHEC's objection asserts that the commission lacks jurisdiction to establish wholesale rates. The NHEC bases its argument on *Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co.*, 273 U.S. 83, PUR1927B 348 (1927) which, according to the NHEC, established the general principle of a "bright line" distinction between wholesale electricity transactions, which are federal, and retail electricity transactions, which are subject to state regulation. The NHEC acknowledges that an exception for cooperative wholesale transactions was recognized by the Court in *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission, supra*, but it argues that the commission has not been given the enabling authority to exercise jurisdiction to the extent that is constitutionally permitted. In this context, the NHEC disagrees with PSNH/NUSCO and the State that RSA 362-C:3, RSA 378:20, RSA 378:7, and RSA 378:1 contain the appropriate enabling authority. The NHEC also claims that prior decisions of the commission, as reviewed by the Court, preclude an examination of the sellback agreement under the doctrines of *res judicata* and laches. The NHEC additionally asserts that the granting of the relief requested would violate the Contract Clause of the United States Constitution and that the commission lacks the authority to enjoin the NHEC from pursuing its judicial remedies.

III. *COMMISSION ANALYSIS*

A. *Introduction*

[2-3] After a careful review of the pleadings, we have determined that we have the authority and the responsibility to review and approve the sellback agreement either in the context of the instant docket or at any time that the NHEC seeks to enforce the sellback agreement by engaging in wholesale sales of Seabrook output to another utility. Thus, we will grant the PSNH/NUSCO Motion to the extent that it requests the commission to assert jurisdiction. However, our order

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herein will deny without prejudice the request that we order the NHEC to cease and desist from pursuing its judicial remedies. Because the PSNH/NUSCO Motion contains insufficient support for the findings necessary to take such action and because we are confident that a court will rule appropriately on the limits of its jurisdiction, it is not necessary for us to reach the issue of whether we have the authority to require the NHEC to cease and desist from pursuing judicial remedies.

The pleadings appropriately frame the analysis. It is undisputed that *Attleboro* established a "bright line" between interstate electricity transactions (which could not be regulated by a state) and intrastate electricity transactions (which could be subject to state regulation) by finding that wholesale transactions are interstate and retail transactions are intrastate. This distinction represented a practical accommodation between the engineering reality of being unable to trace electrons from source to consumption throughout an interconnected transmission/ distribution grid and the legal necessity of drawing a line between interstate and intrastate transactions. It is also undisputed that *Arkansas Electric Cooperative Corp.* applied modern commerce clause analysis to overrule the *Attleboro* "bright line" test.[2(60)] Because we are not constitutionally precluded from the regulation of the wholesale sales contemplated in the sellback agreement, the issue here is whether the commission has the statutory authority to exercise such jurisdiction.

B. *Statutory Analysis*

[4-6] The authority conferred upon the commission by the statute governing the instant

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proceeding is dispositive. RSA 362-C:7 provides *inter alia*:

> Rate Plan for the New Hampshire Electric Cooperative, Inc. *Notwithstanding any other provision of law*, the commission shall establish a 5.5 percent temporary rate surcharge to be made effective on January 1, 1990, for the retail electric rates of the New Hampshire Electric Cooperative, Inc., to be held in escrow in the manner provided in RSA 362-C:4. The commission is *further* authorized to approve a rate plan proposed by the New Hampshire Electric Cooperative, Inc., provided that it finds such a rate plan to be consistent with the public good and that it results in no greater costs and risks to members of the cooperative than those resulting for ratepayers of Public Service Company of New Hampshire under the agreement ... .

(Emphasis supplied).[3(61)]

Reduced to its essentials, this proceeding primarily involves the cost allocation issues inherent in any rate case where a utility seeks to add significant investment to rate base. The commission in its statutory role of arbiter, RSA 363:17-a, must fairly allocate the costs associated with the NHEC's Seabrook investment between the members of the NHEC and those who have invested in the NHEC (primarily the REA).[4(62)] RSA 362-C represents *inter alia* the unusual legislative measure of defining the limits of costs and risks to be allocated to the NHEC's members. Within those limits, the commission's task is to analyze the NHEC's reasonably probable costs and revenues to an appropriate point of time in the future. As the State and PSNH/NUSCO correctly assert, this task cannot be accomplished without an examination of

the sellback agreement. It is undisputed that the rate plan filed by the NHEC depends upon the operation of the sellback agreement in the manner postulated by the NHEC. The NHEC claims that any changes[5(63)] in the sellback agreement will affect the rate plan. The NHEC claim is rational given that the Seabrook revenues derived as a result of the sellback agreement and the cost of wholesale power define, to a substantial extent, the remaining NHEC obligations — the cost of which must be allocated between members and creditors. Thus, the sellback agreement is an essential element of the rate plan. The "notwithstanding any other provision of law" language, applied by the terms of RSA 362-C:7 to both the temporary rate surcharge and the permanent rate proceeding to follow, has the clear effect of granting the commission plenary authority, consistent with constitutional limitations, to regulate with respect to the rate plan.[6(64)]

Although the unambiguous meaning of the statute renders unnecessary an examination of legislative intent, *Appeal of PSNH*, 125 N.H. 46 (1984), we note that an examination of such intent supports our conclusion. RSA Chapter 362-C was the outcome of a special legislative session called to address an extraordinary problem — the bankruptcy of the state's largest electric utility and the concommitant economic risk presented to the state as a result of that bankruptcy. *See, e.g.*, RSA 362-C:1 (Declaration of Purpose and Findings). The legislation also recognized that the NHEC's financial situation exposed the state to similar risks presented by the PSNH bankruptcy and, accordingly, included the NHEC within the scope of legislation. RSA 362-C:l,V and RSA 362-C:7. Extraordinary problems require extraordinary remedies, including the enactment of legislation in a special one-day December session and the inclusion of specific language ("[n]otwithstanding any other provision of law...") evidencing the intent to override any and all existing statutory provisions inconsistent with the path selected by the legislature. *See, also*, RSA 362-C:3. This history and a reading of 1989 Special Session Ch. 1 as a whole leads to no credible conclusion other than that adopted herein. *Appeal of Coastal Materials Corp.*, 130 N.H. 98 (1987) (in construing a statute to determine its legislative intent, courts look to apparent statutory purpose as disclosed by language in light of its legislative history, and construe the statute in light of the evil or mischief which it was designed to correct or remedy); *O'Brien v. City of Manchester*, 84 N.H. 492 (1931) (all statutes on the same subject must be considered in interpreting any one of them).

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Although RSA Chapter 362-C is dispositive, a reading of the additional statutory authority cited by PSNH/NUSCO and the State provide independent support for our authority to review and approve the sellback agreement.[7(65)]

RSA 378:20 requires utilities to seek commission review of power contracts with other utilities. The statute provides as follows:

> *Contracts with Municipalities and Other Utilities.* Any public utility shall make, renew, or extend any contract for the delivery of electrical energy to a municipality or political subdivision thereof, or to another utility upon such terms and conditions consistent with the public good as the commission shall order.

The NHEC concedes that the statute authorizes the commission to review contracts for the sale of power by the NHEC to other utilities. The NHEC claims, however, that the statute only

provides the commission with prospective authority and argues that we therefore may not review the sellback agreement under this statute because the parties are not "making, renewing or extending" a contract.

We do not agree with NHEC's contention that our authority under the statute is limited to reviewing new contracts or amendments to existing contracts. We cannot accept that the legislature intended to prevent the commission from modifying such contracts, to the same extent any rate may be modified, if we conclude that modification is necessary to protect the public good.

We also do not agree with the NHEC's claim that the commission would be retrospectively modifying an existing contract in this instance. RSA 378:30-a, the so-called anti-CWIP[8(66)]

statute, prohibits utilities from including charges based upon uncompleted construction work in their rates. The intent of the statute is to ensure that customers are not forced to pay for utility investment until a project under construction is complete and providing service to ratepayers. *Petition of Public Service Company of New Hampshire*, 130 N.H. 265 (1988). It is undisputed that Seabrook did not begin commercial operation until June 30, 1990. Under RSA 378:30-a (and excluding the overriding provisions of RSA Chapter 362-C), the NHEC could not attempt to recover the cost of Seabrook in its rates until after that date. Further, because the sellback agreement is based upon Seabrook's costs and Seabrook's commercial operation, it was not enforceable until after that date. This docket represents the commission's first opportunity to interpret and enforce the agreement. To hold otherwise would mean that the commission permitted to occur indirectly what it could not do directly; *i.e.*, the establishment of NHEC's Seabrook costs before Seabrook became commercially operable. Thus, pursuant to RSA 378:20, the NHEC cannot enforce its agreement with PSNH until the commission concludes that its terms and conditions are consistent with the public good.

The State and PSNH/NUSCO also claim that RSA 378:1 and 378:7 authorize the commission to review the agreement. RSA 378:1 sets forth the utilities' rate filing obligations and provides *inter alia*.

> *Schedules*. Every public utility shall file with the public utilities commission, and shall print and keep public inspection, schedule showing the rates, fares, charges and prices for *any* service rendered or to be rendered in accordance with the rules adopted by the commission pursuant to RSA 541-A ... .

(Emphasis supplied). RSA 378:7 contains the commission's ratemaking authority and provides *inter alia*:

> *RSA 378:7 Fixing of Rates by Commission*. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any

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> such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed ... .

Because the sellback agreement is at least partially intended to substitute for a filed rate for power from NHEC to PSNH, it arguably falls within the parameters of these statutes.

We are less confident, however, than the State and PSNH/NUSCO as to the applicability of these provisions. Despite the broad statutory language, we must construe the above provisions in a manner consistent with our jurisdictional limitations under the Supremacy Clause of the United States Constitution. Thus, we have historically applied these statutes only to retail rates because most wholesale jurisdiction is preempted by the FPA. *But cf., Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822 (1985) (commission's responsibility of approving only those rates which are just and reasonable requires review of utility management decisions to enter into particular power purchase arrangements). Prior to the instant proceeding, the commission has never had to set a wholesale rate because this is the first occasion we have had to review a wholesale sale by an entity not subject to the preempting provisions of the FPA.[9(67)] The presence of RSA 378:20 (and possibly RSA 374:57), however, suggests that neither RSA 378:1 nor RSA 378:7 are strictly applicable. While we cannot disregard the broad grant of plenary ratemaking authority under RSA 378:1 and RSA 378:7, *State v. New England Telephone & Telegraph Co.*, 103 N.H. 394 (1961), we are mindful of the principle that more specific statutes govern general ones. *In re Gamble*, 118 N.H. 771 (1978). Thus, we conclude that RSA 378:20 is the primary source in Chapter 378 of our authority to review the sellback agreement.[10(68)]

C. *Previous Adjudication*

[7] The NHEC claims that even if the commission has the statutory authority to review and approve the sellback agreement, it is precluded from exercising such authority in the instant proceeding because, according to the NHEC, we have previously approved the sellback agreement in *Re NHEC*, 70 NH PUC 422 (1985), *aff'd sub nom. Appeal of McCool*, 128 N.H. 124 (1986).[11(69)] *Re NHEC* was an order issued pursuant to RSA Chapter 369 which authorized the NHEC to borrow $46,898,000 for the purpose of financing its share of the construction to completion of Seabrook Unit 1.

We do not accept the assertion that *Re NHEC* precludes current adjudication of the terms and conditions of the sellback agreement. As noted, *Re NHEC* was a financing proceeding held pursuant to RSA Chapter 369. *See, also, Appeal of Easton*, 125 N.H. 205 (1984) (setting forth the scope of the RSA Chapter 369 review to be undertaken in *Re NHEC*). In our order of notice in that proceeding, we complied with the RSA 541-A:16, III (c) requirement that we include "[a] reference to the particular sections of the statutes and rules involved ... ." Reference was made therein to RSA Chapter 369; no reference to RSA Chapter 378 was contained. *See, e.g., Re NHEC*, 70 NH PUC 319, 321 (1985) ("Initially it must be stated that the scope of this proceeding will be as directed by the legislature in RSA Chapter 369 as construed by the Court in *Easton*."). Thus, we could not have approved the sellback agreement under our RSA Chapter 378 authority.

DeWees v. N.H. Bd. of Pharmacy, 130 N.H. 396 (1988); *Appeal of PSNH*, 122 N.H. 1062 (1982). It is true that the existence of the sellback agreement was a factor in our determination to grant the NHEC's petition for RSA 369 financing authority; however, we were very careful in that proceeding to warn that financing approvals cannot bind the commission in subsequent rate proceedings noticed under RSA Chapter 378. Indeed, when the New Hampshire Supreme Court issued a November 15, 1985 remand order requiring more specific rate projections, we cautioned as follows:

> In this Report, we have, on the basis of the present record, made findings of a range of reasonably probable rates. It must be

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> emphasized that, of necessity, we have confined our analysis to the present record which contains evidence of the rates necessary to support the NHEC's Seabrook investment under various assumptions, including the estimated cost of purchased power from Public Service Company of New Hampshire (PSNH), the NHEC's primary wholesale supplier. We will assume, without pre-judging, that it is not probable that rates will be established below an amount consistent with the financial survival of PSNH. The reasonably probable lower limit of rate or "floor" cannot be established on this record either for the NHEC or PSNH without appropriate determinations of prudent investment, which will be considered in subsequent rate investigations by this Commission to determine just and reasonable rates for PSNH and the NHEC, and will further be considered by the Federal Energy Regulatory Commission (FERC) to determine PSNH's wholesale rates. We believe this assumption is proper in view of the Court's language recognizing that "rates may not be determined specifically an [sic] finally until the Commission has made a comprehensive prudence determination ..." even though they must be sufficient "... to assure the company a lawful return on investment."
>
> We note further that projections of a reasonably probable range of customer rates for 20-30 years into the future based on a present record is an extraordinary regulatory exercise. Rates established by this Commission are only effective until a subsequent rate proceeding. RSA 365:25. We expect that there will be multiple rate investigations by this Commission and the FERC during the ten year life of the sell back agreement between PSNH and the NHEC (Exh. R-8) and over the 35 year life of Seabrook found in *Re Public Service Co. of New Hampshire*, 70 NH PUC 164, 66 PUR4th 349, 406, 407 (1985) and applied in this docket after appropriate notice. Report and Fourteenth Supplemental Order No. 17,568 (70 NH PUC 319). Findings and conclusions in those rate investigations to determine just and reasonable rates will be made on the basis of a record developed at that time. We cannot predict now with certainty what circumstances pertinent to availability of all plants, costs of fuel and purchased power, inflation, cost of capital, demand growth, other costs and energy markets will be developed in evidence in those multiple future records involving state and federal jurisdiction.

Re NHEC, 70 NH PUC 956, 960 (1985).

The Court has held on several occasions that rights granted by the commission to engage in

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construction or financing do not provide utilities with vested rights to recover their costs in rates. *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708, 723 (1985); *Appeal of PSNH*, 122 N.H. 1062, 1076 (1982). It cannot be credibly disputed that the contract between NHEC and PSNH is a substitute for a wholesale rate.

Our discussion of the NHEC financing proceedings is also dispositive of NHEC's claim of *res judicata*. Moreover, even assuming *arguendo* our financing decisions could have some *res judicata* effect, they could not bind PSNH which, to the best of our knowledge, was not a party to the previous proceedings. *Sanderson v. Town of Greenland*, 122 N.H. 1002, 1004-05 (1982); *see, also, Re NHEC*, 70 NH PUC 422, 424 (1985) and *Re NHEC*, 69 NH PUC 24, 25 (1984) (granting motions to intervene in the financing case to a list of parties which does not include PSNH). PSNH cannot be penalized for having failed to intervene or adjudicate the sellback agreement in the previous proceeding because, as noted above, notice was limited to RSA Chapter 369 issues.

D. *Constitutional Limitations*

[8] The NHEC claims that even if it is assumed that the commission has the statutory authority to review and approve the sellback agreement and even if it is assumed that the sellback agreement has not been previously approved, the exercise of such authority in this proceeding is prohibited by the Contract Clause of the United States Constitution. U.S. CONST. art. I, sec. 10.[12(70)] The NHEC argues that because

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the commission's rate authority is prospective, the Contract Clause prohibits the commission from modifying existing contractual rights and obligations.

We disagree. Our conclusion that the sellback agreement is subject to commission review is dispositive of this issue. As we stated in our discussion of RSA 378:20, we disagree with the NHEC's claim that the commission will be engaging in retroactive modification of an enforceable contract. The NHEC's ability to enforce the sellback agreement is predicated upon receipt of our approval of its terms and conditions under RSA 362-C and RSA 378:20. Under RSA 378:30-a, the agreement was not enforceable and, consequently, did not require commission review and approval until Seabrook became commercially operable. This proceeding provides the NHEC with its first opportunity to demonstrate that the terms and conditions of the sellback agreement as it construes them results in a just and reasonable wholesale power rate. In the absence of such a proceeding, the NHEC cannot claim its settled rights will be affected because it cannot insist upon particular terms and conditions until the commission supplies its approval.

Our analysis of this issue accords with the Supreme Court's decision of retrospective laws in *Petition of PSNH*, 130 N.H. 265, 279-281 (1988). The subject matter of that decision was the constitutionality of RSA 378:30-a as it related to PSNH's request to reflect Seabrook CWIP in its retail rates. The Supreme Court explained that RSA 378:30-a did not unconstitutionally deprive the utility of a vested interest in its Seabrook investment because at the time it invested in Seabrook the company's only vested interest was in receiving "just and reasonable rates" under the standard articulated by the United States Supreme Court in *Federal Power Commission v.*

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Hope Natural Gas Co., 320 U.S. 592, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944).

Similarly, the NHEC cannot claim a vested interest with respect to the rates it may charge PSNH under the sellback agreement. The sellback agreement is part of the NHEC's initial decision to invest in Seabrook. The NHEC's right to recover its costs, either through a contract with PSNH or in its retail rates, did not vest at the time it decided to purchase a portion of Seabrook or enter into the sellback agreement. At that time and to the present the NHEC can claim only a vested right to receive just and reasonable rates as determined by this commission.

Moreover, even if the NHEC can claim a vested contract right, it cannot exercise that right if the commission concludes the terms and conditions of the contract are contrary to the public good. It is well established that regulated utilities may not use contractual agreements as a mechanism for avoiding their regulatory obligations. Such contracts are subject to the police power of the state and may be modified as necessary to accomplish the state's sovereign interests. In *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), the Court reiterated the settled law with respect to a state's right to impair private contracts:

> ...[I]t is to be accepted as a commonplace that the Contract Clause does not operate to obliterate the police power of the States. "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals." *Manigault v. Springs*, 199 U.S. 473, 480, 26 S.Ct. 127, 130, 50 L.Ed. 274 [(1905)]. As Mr. Justice Holmes succinctly put the matter in his opinion for the Court in *Hudson Water Co. v. McCarter*, 209 U.S. 349, 357, 28 S.Ct. 529, 531, 52 L.Ed. 828 [(1908)], "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the

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> infirmity of the subject-matter."

438 U.S. at 241. Thus, under *Allied* the commission could affect the NHEC's settled contractual rights if necessary to promote the state's interest as articulated in RSA Chapter 362-C and RSA Chapter 378.

Richter v. Mountain Springs Water Co., 122 N.H. 850 (1982) supports this conclusion. Contrary to the NHEC's argument, the *Richter* Court expressly acknowledged that the commission's authority to set rates for public utilities carries with it the power to amend contracts between utilities and their customers. Citing with approval *Midland Co. v. K.C. Power Co.*, 300 U.S. 109 (1937), the Court acknowledged that such action by the commission does not violate the Contract Clause. Thus, it is established United States and New Hampshire Supreme Court law that the commission may amend utility rate contracts in accordance with its authority to establish just and reasonable rates.

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IV. *CONCLUSION*

[9-10] We conclude that we have both the constitutional and statutory authority and responsibility to review and approve the sellback agreement. Moreover, because the terms of the agreement materially affect the NHEC rate plan, we find it essential that we consider and interpret the agreement as part of our analysis of the NHEC rate plan in compliance with RSA 362-C.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Motion of Public Service Company of New Hampshire and Northeast Utilities Service Company for Order Declaring Scope of Proceeding and Status of Sellback Agreement be and hereby is denied without prejudice insofar as it requests a commission order that the New Hampshire Electric Cooperative, Inc. cease and desist from pursuing judicial remedies; and it is

FURTHER ORDERED, that the above Motion be and hereby is granted in all other respects.

By order of the Public Utilities Commission of New Hampshire this first day of October, 1990.

FOOTNOTES

[1]The legislation also required the commission to adjudicate whether the PSNH rate plan is consistent with the public good. RSA 362-C:3. Pursuant to that requirement, the PSNH rate plan approved in *Re PSNH*, 75 NH PUC 396 (1990).

[2]While the constitutional mandate for a "bright line" was overruled in *Arkansas*, the statutory "bright line" established by the Federal Power Act (FPA) continues to exist. This statutory standard does not apply to wholesale sales of electricity by a cooperative. *Salt River Agricultural Improv. & Power Dist. v. Federal Power Commission*, 391 F.2d 470, 73 PUR3d 321 (D.C. Cir 1968); *Re Dairyland Power Co-op*, 37 F.P.C. 12, 67 PUR3d 340 (D.C. Cir 1967).

[3]*See, also*, RSA 362-C:2,I which defines the term "agreement". We recognize that PSNH/NUSCO and the State cite RSA 362-C:3 as the appropriate enabling authority. We differ with PSNH/NUSCO and the State to the extent that we conclude that RSA 362-C:7 provides the primary authority for commission adjudication in this docket. However, we also construe the RSA 362-C:7 limitation of risks and costs as referring back to RSA 362-C:3.

[4]This function of fairly allocating costs must be accomplished by the commission at any time the NHEC seeks to reflect Seabrook investment in rates, whether or not we proceed under RSA 362-C. This function cannot be circumvented by the filing of a petition under Chapter 11 of the bankruptcy code, 11 U.S.C. Sec. 1129(a)(6), or by other actions that may be taken by the parties, *see e.g., Wabash Valley Power Association Inc. v. Rural Electrification Administration, supra*.

[5]We construe changes to include either an incorrect interpretation of the sellback agreement by the NHEC or a modification of the terms of that agreement by the commission or other

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appropriate regulatory authority.

[6]*See, also,* 1989 Special Session Ch. 1:2 which amends RSA 374 to insert RSA 374:57. That provision requires electric utilities to file certain agreements for the purchase of wholesale capacity or energy with the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission (FERC) or, if no such federal

filing is required, at the time the agreement is executed. The commission is authorized to disallow the amounts paid under such agreements under specified circumstances. We express no opinion as to the applicability of RSA 374:57 to the possible bilateral obligations of PSNH to purchase NHEC Seabrook output and of the NHEC to purchase requirements power from PSNH as those obligations may exist under the sellback agreement.

[7]In this context, it is important to recognize that the terms and conditions of the sellback agreement *inter alia* govern rates. As discussed more fully *infra*, utilities cannot by contract circumvent the ratemaking jurisdiction of the commission.

[8]CWIP is an acronym for Construction Work In Progress.

[9]The lack of opportunity to set wholesale rates is perhaps the best explanation of why we have not heretofore promulgated rules specifying filing requirements for such rates. We disagree with the NHEC's argument that the absence of such rules alters either the commission's or the NHEC's obligations under the statute. It is settled law that administrative agencies cannot by rule add to, detract from, or in any way modify statutory law. *Kimball v. New Hampshire Board of Accountancy*, 118 N.H. 567 (1978).

[10]Of course, if we accepted the NHEC's assertion that the terms of the more specific RSA 378:20 do not apply to the instant situation, we would then be left to exercise the more general grant of plenary ratemaking authority set forth at RSA 378:1 and RSA 378:7.

[11]The NHEC did not and could not argue that our original order approving the transfer of a portion of PSNH's ownership interest to the NHEC constituted an approval of the sellback agreement. *Re PSNH*, 64 NH PUC 485 (1979). It would have been inappropriate to undertake any RSA Chapter 378 review in that proceeding. Moreover, the exchange of letters which constitute the sellback agreement was not completed until well after the date of that order.

[12]The NHEC's argument on the Contract Clause assumes that the commission will interpret the sellback agreement in a manner different than the NHEC's interpretation and, hence, goes to the merits of the matter. For the purpose of determining whether we have jurisdiction over the sellback agreement, it is not necessary for us to reach this issue. However, we believe it appropriate here to address all matters raised in the NHEC's Objection.

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75 NH PUC 648

Re Public Service Company of New Hampshire

Movants: Susan Spear, Mary Chambers, Amanda Merrill, and Deborah Arnesen

DR 90-059
Order No. 19,942

New Hampshire Public Utilities Commission

October 2, 1990; revised, October 9, 1990

ORDER denying, without prejudice, a request for an immediate hearing on the need for a reconciliation of the energy cost recovery mechanism charges of an electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 68 — Procedure — Reconciliation — ECRM — Electric utility.

[N.H.] The commission denied, without prejudice, a request for an immediate hearing on the need for a reconciliation of the energy cost recovery mechanism (ECRM) charges of an electric utility where staff analysis indicated that the movants' concern — that a reconciliation would be required to avoid the inclusion of undercollected fuel costs in the next ECRM rate proceeding — was unwarranted; the commission noted that it would reconsider the issue when it holds its hearings on the "grand reconciliation" to examine the prudency of the utility's energy costs.

By the COMMISSION:

ORDER

WHEREAS, a request for hearing having been filed by Representatives Susan Spear, Mary Chambers, Amanda Merrill and Deborah Arnesen (Movants) on July 11, 1990; and

WHEREAS, in said request, the Movants assert that there has not been a reconciliation of Energy Cost Recovery Mechanism (ECRM) charges since July, 1989, that it is likely that there will be a significant increase in ECRM charges to consumers beginning January 1, 1990, that such a rate increase beginning January 1, 1991, would be a hardship on ratepayers, and that it is inappropriate intentionally to under-recover costs from ratepayers than raise the rate in winter months to recover those costs with interest; and

WHEREAS, various parties to the ECRM proceedings have objected to the Movants' request for a hearing asserting, *inter alia*, that all of the concerns expressed by the Movants have been addressed in prior ECRM proceedings and there have been no changes in circumstances that would justify further proceedings at this time; and

WHEREAS, the commission staff on August 24, 1990, stated that, while staff shares the Movants' concerns that a rate increase beginning on January 1, 1991 to all Public Service Company of New Hampshire (PSNH) customers to recover previously undercollected fuel costs would be contrary to ratepayers, interests, staff analysis concludes that the present ECRM rate of

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3.664¢/kwh is higher than necessary to recover PSNH's current fuel costs for the period of June through December, 1990; and

WHEREAS, staff further asserted that the commercial operation of Seabrook, the delay in the first effective date of PSNH's emergence from bankruptcy and PSNH's current low cost oil inventories make it appear likely that it will not be under-recovering at the end of 1990; it is hereby

ORDERED, the commission accepts the staff's analysis and accordingly denies the Representatives, request for an immediate hearing without prejudice; and it is

FURTHER ORDERED, that the commission shall reconsider this issue when it holds its hearings in the fourth quarter of this year on the "grand reconciliation" to examine the prudency of PSNH's energy costs for the period of July 1, 1990 through December 30, 1990.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1990.

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NH.PUC*10/02/90*[51087]*75 NH PUC 659*New England Power Company

[Go to End of 51087]

75 NH PUC 659

Re New England Power Company

DF 90-128
Order No. 19,947

New Hampshire Public Utilities Commission

October 2, 1990

ORDER authorizing an electric utility to issue and sell general and refunding mortgage bonds and to execute loan agreements in connection with expenditures related to pollution control equipment.

SECURITY ISSUES, § 44 — Authorization — Public good — Mortgage bonds — Loan agreements — Pollution control expenditures — Electric utility.

[N.H.] An electric utility was authorized to issue and sell general and refunding mortgage bonds and to execute loan agreements with the Industrial Development Authority of the State of New Hampshire in connection with expenditures related to pollution control equipment; it was found that such authorization would be consistent with the public good.

By the COMMISSION:

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REPORT

New England Power Company (Company), is a utility subject to our jurisdiction. On July 26, 1990, the Company filed a petition requesting authorization and approval from the commission for the issue and sale of not exceeding $150,000,000 aggregate principal amount of the Company's General and Refunding Mortgage Bonds (New G&R Bonds). The $150,000,000 authorization request for New G&R Bonds consists of two parts: $70,000,000 would be used to refinance existing G&R

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Bonds and $80,000,000 would be used to reimburse the Company for expenditures related to pollution control or solid waste disposal equipment that has not previously been financed with pollution control revenue bonds. The Company's petition also requests authority to issue and pledge First Mortgage Bonds (New Pledged Bonds) in aggregate principal amount equal to the aggregate principal amount of the New G&R Bonds issued. The Company also requested authorization and approval of the commission for the execution of one or more loan agreements or supplemental loan agreements with the Industrial Development Authority of the State of New Hampshire (NHIDA), a public agency empowered to issue pollution control revenue bonds (PCRBs) on behalf of enterprises such as the Company.

The Company also filed several exhibits: NEP-1, the prefiled testimony of Michael E. Jesanis; and NEP-2, the Company's prefiled financial statements; NEP-3, the Company's amended application; and NEP-4, the supplemental direct testimony of Michael E. Jesanis.

The Commission will bifurcate consideration of the Company's petition and is only at this time considering authorization and approval for the issue and sale of not exceeding $70,000,000 aggregate principal amount outstanding at any one time of the New G&R Bonds, and the execution of one or more loan agreements with the NHIDA. At a later date, the commission will consider the other requests contained in the Company's petition.

The Company's financial statements indicate that as of March 31, 1990, the Company's outstanding common stock totaled $128,997,920, represented by 6,449,896 shares outstanding having a par value of $20 per share. Premiums on capital stock amounted to $86,891,450. Other paid-in capital was $288,000,000. Retained earnings were $199,569,482 and unappropriated undistributed subsidiary earnings were $12,293,676. The Company had 860,280 shares of preferred stock outstanding which were composed of two classes: 1) 6 percent cumulative preferred stock having a par value of $100, of which one series is outstanding; and 2) dividend series preferred stock, also having a par value of $100, of which seven series are outstanding with dividend rates ranging from 4.56 percent to 8.68 percent. The combined aggregate par value of the Company's preferred stock was $86,028,000. Long-term debt outstanding, net of unamortized premiums and discounts, amounted to $761,054,493, consisting of eleven issues of First Mortgage Bonds and thirteen issues of General and Refunding Mortgage Bonds (G&R Bonds) with interest rates ranging from 4-3/8 percent to 10-5/8 percent and with maturity dates ranging from 1991 to 2019. Not shown in the capitalization is $540,350,000 of pledged First Mortgage Bonds held by the Trustee for the G&R Bonds.

The Company reported that as of March 31, 1990 its utility plant was $2,044,467,406

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(including capital leases). Construction work in progress was shown to be $337,928,023, for a total utility plant of $2,382,395,429. The accumulated depreciation reserve against such property amounted to $734,107,574. In addition, the Company reported its investment in nuclear fuel as $9,900,572 for a net utility plant of $1,658,188,427. Other property and investments, of which a majority was authorized investments in securities of nuclear generating companies, was shown as $53,273,121.

Under the Company's proposal, New G&R Bonds would be issued in one or more series, with each series having one or more classes, under and pursuant to the terms of the Company's General and Refunding Mortgage Indenture and Deed of Trust dated January 1, 1977, as amended and supplemented (G&R Indenture). The new G&R Bonds will have a lien subordinate to the Company's First Mortgage Bonds and will mature in not more than 30 years from the date of initial issue. The exact maturity date will be fixed before each issue. Only fully registered bonds will be issued. All of the New G&R Bonds will be issued in connection with the issue of PCRBs.

The prefiled testimony of Mr. Jesanis states that $70,000,000 of the New G&R Bonds would be issued to refund $70,000,000 of PCRBs previously issued on the Company's behalf by the NHIDA. He also states that approximately $275,000 per year could be saved by completing the proposed refunding

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due to lower interest rates and lower remarketing fees. Any PCRBs issued on the Company's behalf would be issued by the NHIDA. The PCRBs would be sold to the public pursuant to negotiated underwriting agreements between the NHIDA and one or more underwriters. While the Company would not be a party to any underwriting agreements, any such agreements will provide that their terms will be satisfactory to the Company. Additionally, the Company may provide certain written assurances to the underwriter or underwriters.

The Company is requesting the NHIDA to issue PCRBs to be sold to the public which contain provisions whereby the interest rate is either (i) periodically adjusted by a remarketing agent on the basis of prevailing market conditions, or (ii) at a fixed rate for the entire term or the bonds. In the case of variable rate bonds, the Company would determine the length of the interest period. Pursuant to one or more loan agreements or supplemental loan agreements between the Company and the NHIDA, the NHIDA would lend the proceeds from the sale of the PCRBs to the Company in exchange for the Company's promise to make payments to the NHIDA corresponding to the payments of the principal of and premium, if any, and interest on the PCRBs sold to the public. To secure its obligations, the Company would periodically issue a new class of G&R Bonds to the NHIDA.

The New G&R Bonds may contain sinking fund, mandatory redemption, and optional redemption provisions that differ from those of typical G&R Bonds.

The Company suggests that the maximum interest rate of New G&R Bonds issued to support PCRBs with a variable interest rate should not exceed 14 percent per annum, and the maximum interest rate on New G&R Bonds issued to support PCRBs with a fixed rate should not exceed 10 percent per annum. According to the Company, if a higher rate were subsequently required in

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either instance, the Company would come before the commission to request approval to increase the rate.

The New Pledged Bonds would be issued and pledged, from time to time, to the Trustee for the G&R Bonds as additional security, representing a First Mortgage claim for the holders of all G&R Bonds. When issued, the New Pledged Bonds will contain the same interest payment provisions and have the same maturity date as the series of G&R Bonds with respect to which they are issued. The New Pledged Bonds will not pay interest as long as interest payments are made on the G&R Bonds. The Company will receive no proceeds from the issue and pledge of the New Pledged Bonds.

The commission has made such investigation as it deems proper. Upon such investigation and consideration of the evidence submitted, the commission is of the opinion that granting the petition will be consistent with the public good. In the event that bonds are issued with an adjustable interest rate the maximum rate shall not be in excess of 12 percent per annum. New England Power shall have the option of petitioning to have the ceiling rate changed if conditions warrant.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is

ORDERED, that the issue by New England Power Company of one or more series, with each series having one or more classes, of General and Refunding Mortgage Bonds, in an aggregate principal amount not to exceed $70,000,000 outstanding at any one time, and one or more series, with each series having one or more classes, of First Mortgage Bonds, in an aggregate principal amount not to exceed $70,000,000 outstanding at any one time, are reasonably necessary for the purposes for which such issues have been authorized; and it is

FURTHER ORDERED, that the execution and delivery by New England Power Company of one or more loan agreements or supplemental loan agreements with The Industrial Development Authority of the State of New Hampshire is reasonably necessary for the purposes for which such loan agreements or supplemental loan agreements have been authorized; and it is

FURTHER ORDERED, that the

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Commission hereby grants to New England Power-Company its authorization and approval, in conformity with all the provisions of law relating thereto, of the issue and sale of one or more series, with each series having one or more classes, in an aggregate principal amount not exceeding $70,000,000 outstanding at any one time, of General and Refunding Mortgage Bonds, to mature in not more than 30 years from the date on which the Bonds are issued; and it is

FURTHER ORDERED, that the General and Refunding Mortgage Bonds authorized and approved by the Commission herein if issued with an adjustable interest rate shall bear interest at a maximum rate not in excess of 12 percent per annum, and if issued with a permanently fixed interest rate shall bear interest at a rate not in excess of 10 percent per annum (in either case

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unless a subsequent order of the commission approves a higher rate), and are to be sold with such interest rate and at a price closely matching the interest rate and price of pollution control revenue bonds to be issued by the Industrial Development Authority of the State of New Hampshire; and it is

FURTHER ORDERED, that, in connection with the financing of expenditures relating to pollution control and solid waste disposal facilities, the commission hereby grants to New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, of execution and delivery of one or more loan agreements or supplemental loan-agreements between New England Power Company and The Industrial Development Authority of the State of New Hampshire, under which loan agreements or supplemental loan agreements New England Power Company will agree to make payments to such agency at such times and in such manner as will correspond to the payments for principal, premium, if any, and interest on pollution control revenue bonds issued on the Company's behalf; provided, however, the terms of any such loan agreements or supplemental loan agreements will provide that the maximum variable interest rate payable by the Company is not to exceed 12 percent per annum and the maximum fixed interest rate payable by the Company is not to exceed 10 percent per annum, unless otherwise ordered by the commission; and it is

FURTHER ORDERED, that the commission hereby grants to New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, from time to time to issue and pledge First Mortgage Bonds, in one or more series, with each series having one or more classes, in aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized and approved by the commission herein, said additional First Mortgage Bonds to bear the same interest rate and to have the same maturity as the General and Refunding Mortgage Bonds with respect to which they are issued; and it is

FURTHER ORDERED, that the authorization to issue securities contained herein, except with regard to First Mortgage Bonds, shall be expire at such time as the above-described pollution control revenue bonds are no longer outstanding, but in no event later then thirty years from the date of the initial issue of General and Refunding Mortgage Bonds authorized hereby, and it is

FURTHER ORDERED, that the authorization to issue and pledge First Mortgage Bonds contained herein shall expire at such time as there are no longer any publicly held First Mortgage Bonds outstanding; and it is

FURTHER ORDERED, that on or about January first and July first in each year, said New England Power Company shall file with this commission detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1990.

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75 NH PUC 663

Lamarre
v.
New England Telephone Company

DC 88-131
Order No. 19,948

New Hampshire Public Utilities Commission

October 9, 1990

ORDER closing the docket in a proceeding to investigate a customer complaint alleging unnecessary delay in the installation of telephone service.

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1. PROCEDURE, § 29 — Disposal of issues — Customer complaint — Telephone service quality.

[N.H.] The commission closed the docket in a proceeding to investigate a customer complaint alleging unnecessary delay in the installation of telephone service where the respondent telephone public utility admitted to the unnecessary delay, apologized, waived installation charges, and committed to a review of its service policies to prevent future similar occurrences. p. 663.

2. SERVICE, § 123 — Adequacy of service — Investigation — Telephone public utility.

[N.H.] Although the commission closed the docket in a proceeding to investigate a customer complaint alleging unnecessary delay in the installation of telephone service, the issues raised by the complaint were merged into an ongoing investigation of the quality of the service provided by the utility. p. 663.

By the COMMISSION:

ORDER

WHEREAS, on August 30, 1988, this commission received a letter of complaint against the New England Telephone Company (NET) from Mr. Bruce L. Lamarre of Piermont, New Hampshire; and

WHEREAS, the complainant requested:

1. That the commission investigate the installation case and determine why it took so long;

2. That a hearing be called so that he, or the commission, can ask the President of NET about the case; and

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3. That the results of the above two actions be used as the basis for revising the organization and policies of NET so that authority follows with responsibility and so that customer service is not just an advertising slogan; and

[1, 2] WHEREAS, on September 9, 1988 the company, by letter of its Vice President to Mr. Lamarre, admitted to the unnecessary delay in service, apologized for the delay, waived the installation charges, and committed to a review of its service policies to prevent future similar occurrences; and

WHEREAS, on December 12, 1988 the commission advised Mr. Lamarre by letter that the instant docket was being merged into the company's ongoing rate case and, by letter of April 13, 1989 advised him of the staff's investigation into NET's quality of service in DR 89-010 and requested his sworn testimony in that docket; and

WHEREAS, on September 28, 1989 Mr. Lamarre advised staff by letter to consider his original complaint to be his testimony; and

WHEREAS, the issues raised by Mr. Lamarre have been included in consideration of DR 89-010; it is hereby

ORDERED, that DC 88-131 be closed.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1990.

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NH.PUC*10/09/90*[51090]*75 NH PUC 665*Holiday Ridge Supply Company, Inc.

[Go to End of 51090]

75 NH PUC 665

Re Holiday Ridge Supply Company, Inc.

DR 89-068
Order No. 19,951

New Hampshire Public Utilities Commission

October 9, 1990

ORDER approving a stipulation providing for an increase in rates for water utility service.

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1. RATES, § 595 — Water utility service — Rate settlement — Commission approval.

[N.H.] The commission approved a settlement agreement providing for an increase in rates for water utility service. p. 666.

2. RETURN, § 26.4 — Cost of equity capital — Stipulation — Water rate proceeding.

[N.H.] A stipulated rate of return on common equity of 11.9% was adopted in a water rate

proceeding. p. 666.

3. RATES, § 260 — Surcharges — Recoupment of revenue deficiency under temporary rates — Water rate settlement.

[N.H.] The commission accepted a water rate settlement that allows the utility to surcharge over a one-year period the difference in temporary rates made effective by prior order and the permanent rates provided for in the settlement; the settlement further provides that in the case of a customer taking service after the effective date of the temporary rates, the surcharge would be prorated for such customer's actual usage during the recoupment period. p. 666.

4. RATES, § 597 — Water rate settlement — Special factors — Step adjustment.

[N.H.] The commission accepted a water rate settlement that allows the utility, on or after the anniversary date of the order approving the settlement, to file for an adjustment to its rate base to reflect additions to fixed plant. p. 666.

5. SERVICE, § 288 — Duty to install — Meters — Water utility.

[N.H.] A water utility was required by the provisions of its rate settlement agreement to install meters to all of its customers within five years. p. 666.

6. EXPENSES, § 92 — Rate case expense — Amortization period — Water utility.

[N.H.] A water utility was authorized to recoup its rate case expense over a three-year period; expenses related to prior financing cases, general accounting services, and in-house labor were eliminated from the amount eligible for recovery. p. 666.

7. RATES, § 124 — Reasonableness — Statutory considerations.

[N.H.] The commission approved a rate settlement providing for a stipulated increase in rates where it was found that the settlement met the statutory requirement that rates must be sufficient to yield not less than a reasonable return on the cost of utility property used and useful in the public service less accrued depreciation. p. 667.

By the COMMISSION:

REPORT

I. *Procedural History*

On March 6, 1989, Holiday Ridge Supply Company, Inc. (Company) filed a notice of intent to file rate schedules and a request for a waiver of certain filing requirements. On April 27, 1989 the Company filed a petition and accompanying rate schedules which, if approved, would have resulted in an annual

increase in water revenues of $13,325. The petitioner also requested temporary rate relief pursuant to RSA 378:27. On August 22, 1989, the commission issued report and order no. 19,512 (74 NH PUC 283) approving a procedural schedule in this case and granting a 60%

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increase in rates as temporary rate relief. Throughout the proceeding parties engaged in discovery and met in further consultation several times for the purposes of narrowing issues and reaching a stipulation. On March 22, 1990, the commission held a hearing on these matters in which the parties presented the proposed stipulation.

II. *Stipulation of the Parties*

[1, 2] The parties stipulated to the following items:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Rate Base         $33,247
Rate of Return on Equity 11.9%
Revenue Requirement$18,500
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Rate Structure

Staff and the Company agreed that it would be allowed to charge its customers an annual flat rate of $308 per year to be billed quarterly at $77.

Temporary Rate Recoupment

[3] It was agreed that the Company shall be allowed to recover the difference between the revenue level finally approved and the revenue level provided for in the Company's temporary rates as authorized by Order No. 19,512 by a surcharge over a one-year period in accordance with RSA 378:29. It was further agreed that in the case of customers taking service after the effective date of the temporary rates, the surcharge will be prorated for such customer's actual usage during the recoupment period.

Step Adjustment

[4, 5] The parties agreed that on or after the anniversary date of the commission order approving this settlement agreement, the Company would be entitled to file for an adjustment to its rate base to reflect additions to its fixed plant, said adjustments to be completed and in service by the one-year anniversary date of this order. It was further agreed that the Company would be entitled to adjust its rates after analysis by staff and review of the additions to fixed capital and customer base, to reflect the additions to fixed plant which have been, at the time of the adjustment, completed and in service to customers. Finally it was agreed that the Company would install meters to all of its customers during the course of the next five years. See attached Stipulation Agreement for complete details.

III. *Commission Analysis*

[6] The commission finds the stipulation of the parties to be just and reasonable pursuant to RSA 378:27 and RSA 378:29.

Further, the commission finds, from the testimony of James Nicholson, that the rate case expense shall be surcharged over a three-year period (See Tr. of March 22, 1990, page 5) and further that the rate case expenses of the Company must be reviewed as no stipulation was reached on the matter. (See Tr. page 6)

The commission has reviewed the rate case expenses of $21,076.069 filed by the Company. We are eliminating those expenses that relate to prior financing cases and to general accounting

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services, i.e., preparation of annual reports and income tax returns. We are also eliminating in-house labor from the rate case expenses as these are already being recouped through normal operation and maintenance expenses. The commission finds that $4,435.94 should be recouped over a three-year period.

The $4,435.94 consists of the following expenses related to this rate case.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Attorney fees, Melendy & McCarron for period 7/17/89 — 2/27/90	$1,804.00
Accounting services, D.D. Lanning & Associates for period 2/89 — 1/90	$2,166.44
Publication fees, The Reporter for 6/29/89	$ 33.00
Court Reporter, Robert E. Patenaude & Associates for August, December 1989, April 1990	$ 404.00
Cost of copies	$ 28.50

Our order will issue accordingly.

ORDER

[7] Upon consideration of the forgoing report, which is made a part hereof; it is hereby

ORDERED, that the stipulation set forth in the foregoing report and attached hereto is approved as it results in just and reasonable rates on the used and useful property of the utility; and it is

FURTHER ORDERED, that the rate case expenses set forth in the forgoing report shall be surcharged over a 3 year period.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1990.

AGREEMENT

1.0 This agreement is entered into this ——— day of ———, 1990, between Holiday Ridge Supply Company, Inc. (the Company) and the staff (staff) of the public utilities commission (commission) for the purposes and subject to the terms and conditions hereinafter stated.

2.0 *Introduction.* On March 6, 1989, the company filed a notice of intent to file schedules and request for waiver of certain filing requirements.

On April 27, 1989, the Company filed a petition and accompanying rate schedules which approved, would result in a annual increase in water revenues of $13,325. Petitioner also requested temporary rate relief pursuant to RSA 378:27.

On August 22, 1989, the commission issued report and order no. 19,512 approving a

procedural schedule in this case and granting a 60% increase in rates as temporary rate relief.

Throughout the proceedings the parties engaged in discovery and met in further consultation several times for the purposes of narrowing issues and reaching the proposed stipulation which is set forth herein. There are attached hereto certain revisions of the Company's exhibits and schedules all marked "Stipulation" which reflect the agreement reached between the Company and commission staff on issues of rate base, rate or return, operating revenues, expenses and rate structure.

3.0 *Rate Base.* It is agreed that the Company shall be allowed an opportunity to earn, at the conclusion of this proceeding, a return on a rate base of *$33,247.*

4.0 *Rate of Return.* It is agreed that the Company shall be allowed an opportunity to earn a rate of return on equity of 11.9%, i.e., the rate base set forth in paragraph 3.0.

5.0 *Revenue Requirements.* It is agreed that the Company shall be authorized to charge rates designed to collect annual revenues in the amount of *$18,500.*

6.0 *Rate Structure.* It is agreed that the Company shall be allowed to charge its customers an annual flat rate charge of *$308.00* per year to be billed quarterly at *$77.00.*

7.0 *Temporary Rate Recoupment.* It is agreed that the company shall be allowed to recover the difference between the revenue level finally approved and the revenue level provided for in the Company's temporary rates as authorized by order no. 19,512 by a surcharge over a one year period in accordance with RSA 378:29.

The methodology and supporting data for recoupment of the difference between temporary and permanent rates will be submitted with the revised tariff pages reflecting the permanent rate increase.

It is further agreed that in the case of customer's taking service after the effective date of the temporary rates the surcharge will be prorated for such customers' actual usage

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during the recoupment period.

8.0 *Step Adjustment.* The parties agree that on or after the anniversary date of the commission order approving the settlement agreement, the company is entitled to file for an adjustment in its rate case to reflect additions to its fixed plant, said adjustments to be completed and in service by the one year anniversary of this order. It is further agreed that the Company is entitled to adjust its rates after analysis by the staff and review of the additions to fixed capital and customer base to reflect the additions to fixed plant which are, at the time of the adjustment, completed and in service to customers.

It is further agreed that the Company shall install meters to all of its customers during the course of the next five years.

9.0 *General Conditions.* This agreement is subject to the following further conditions:

9.1 The agreement shall be promptly presented to the commission for approval and approval shall be issued without reasonable delay.

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9.2 The making of this agreement shall not be deemed in any respect to constitute admission by any party that any allegation in these proceedings other than those specifically agreed to herein is true and valid.

9.3 The making of this agreement establishes no principles or precedents in any other proceeding or investigation.

9.4 A commission approval of this agreement does not establish any principles or precedents.

9.5 A commission approval of this agreement shall not any in any respect constitute a determination as to merits of any allegations made in this rate proceeding.

9.6 This agreement is expressly conditioned on the commission's acceptance of all its provisions without change or conditions, and if the commission does not so approve, the agreement may be withdrawn by either party and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

9.7 This agreement constitutes an integrated writing in each of the provisions as in consideration and support of every other provision and it is an essential condition of every other provision.

9.8 The discussions which have produced this agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto shall remain confidential and privileged, and without prejudiced to the position of any participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise.

IN WITNESS WHEREOF, the parties' fully authorized agents have executed this agreement.

Holiday Ridge Supply Company, Inc.
By its Attorney:
Fay E. Melendy, Esq.
Melendy & McCarron

3-21-90
Date

Staff of New Hampshire Public
Utilities Commission
By its attorney:
Eugene F. Sullivan, III, Esq.

3-22-90
Date

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NH.PUC*10/10/90*[51091]*75 NH PUC 668*Southern New Hampshire Water Company, Inc.

[Go to End of 51091]

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Re Southern New Hampshire Water Company, Inc.

DF 90-132
Order No. 19,953

New Hampshire Public Utilities Commission

October 10, 1990

ORDER extending to June 30, 1991, an authorized temporary increase in the short-term debt limit of a water utility.

SECURITY ISSUES, § 44 — Authorization — Short-term debt — Extension of temporary increase — Water utility.

Page 668

[N.H.] The commission extended to June 30, 1991, an authorized temporary increase in the short-term debt limit of a water utility; it was found that extension was consistent with the public good.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. pursuant to R.S.A. 369:7 filed with this commission on August 6, 1990 a Petition to Increase Short Term Debt Limit; and

WHEREAS, Southern New Hampshire Water Company, Inc. states that additional long term debt cannot be issued until a permanent rate increase is granted in Docket DR 89-224; and

WHEREAS, Southern New Hampshire Water Company, Inc. was granted a short term debt limit of $5,850,000 until June 30, 1990 in Docket DF 90-024, Order No. 19,777 (75 NH PUC 207); and

WHEREAS, Southern New Hampshire Water Company, Inc. is seeking to extend the short term debt borrowing limit of $5,850,000 until June 30, 1991; it is hereby

ORDERED, that the New Hampshire Public Utilities Commission, pursuant to R.S.A. 369.7, finds that the extension of time for the short term debt limit of $5,850,000 as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall, on January first and July first of each year, file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of such notes; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1990.

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NH.PUC*10/10/90*[51092]*75 NH PUC 669*Thurston Enterprises, Inc.

[Go to End of 51092]

75 NH PUC 669

Re Thurston Enterprises, Inc.

DE 90-149
Order No. 19,954

New Hampshire Public Utilities Commission

October 10, 1990

ORDER authorizing the construction and maintenance of an overhead electrical wire crossing above state-owned railroad property.

ELECTRICITY, § 6 — Overhead wire — Authorization — License to cross state-owned property.

[N.H.] The commission authorized the construction and maintenance of an overhead electrical wire crossing above state-owned railroad property for the purpose of providing power to an outdoor security light at the site of a new boat storage building; it was found that the construction was necessary to meet the reasonable requirements of the petitioner without substantially affecting public rights in the property.

By the COMMISSION:

ORDER

WHEREAS, on September 6, 1990, Thurston Enterprises, Inc., filed with this commission a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct an overhead wire crossing above state-owned railroad property in the City of Laconia; and

WHEREAS, the wire crossing is for the sole purpose of providing power to an outdoor security light at the site of a new boat storage building located in the petitioner's marina near "the Weirs" in Laconia, as shown on a plan filed with the commission; and

WHEREAS, the crossing location is at approximate Valuation Station 1751 + 24, Map

V21/69, of the Concord-to-Lincoln Railroad; and

WHEREAS, the commission finds the above construction is necessary to meet the reasonable

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requirements of the petitioner without substantially affecting the public rights in said state property; and

WHEREAS, the only private property affected by this petition is that of the petitioner; and

WHEREAS, the petitioner avers that the Bureau of Railroads (DOT) is in agreement with this petition; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the commission no later than November 2, 1990; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the Laconia region, such publication to be no later than October 19, 1990 and to be documented by affidavit filed with this office on or before November 9, 1990; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:22, the petitioner serve a copy of this Order of Notice by first-class mail to the clerk of the City of Laconia postmarked no later than October 19, 1990; and it is

FURTHER ORDERED, *NISI* that license be, and hereby is granted, pursuant to RSA 371:17 *et seq*. to Thurston Enterprises, Inc., P.O. Box 5400, Weirs Beach, NH 03246 for the construction, use, maintenance, repair and reconstruction of the aforementioned overhead wire crossing above public railroad property in Laconia, New Hampshire identified at approximate Valuation Station 1751 + 24, Map V21/69; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), the National Electrical Safety Code and others as mandated by the City of Laconia; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1990.

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NH.PUC*10/11/90*[51089]*75 NH PUC 664*Contel Corporation

[Go to End of 51089]

75 NH PUC 664

Re Contel Corporation

Additional petitioner: GTE Corporation

DE 90-154
Order No. 19,950

New Hampshire Public Utilities Commission

October 11, 1990

ORDER nisi approving the proposed merger of GTE Corporation and Contel Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 19 — Grounds for approval — Public good — Telecommunications.

[N.H.] The commission approved the proposed merger of GTE Corporation and Contel Corporation; it was found that to the extent that authorization for the merger was required by state statute, the proposed merger was consistent with the public good. p. 664.

2. CONSOLIDATION, MERGER, AND SALE, § 42 — Terms and conditions — Telecommunications.

[N.H.] The commission approved the proposed merger of GTE Corporation and Contel Corporation, subject to an agreement by Contel of New Hampshire that telephone service to a GTE Electrical Products facility would be furnished under the applicable tariff. p. 664.

By the COMMISSION:

ORDER

GTE Corp (GTE) and Contel Corp (Contel) having filed on September 14, 1990 a petition requesting a ruling that:

> 1. No Commission approval or authorization of, or consent to the Merger Transaction is necessary, or
>
> 2. The Merger Transaction is consistent with the public good and is therefore unconditionally authorized and approved, to the extent required by NH RSA Title XXXIV, and;

[1, 2] WHEREAS, Contel has averred that GTE Electrical Products facility in Hillsboro, New Hampshire is expected to remain a major tariffed subscriber for their telephone service, and;

WHEREAS, the public should be offered an opportunity to respond in support of or in opposition to the petition, before the Commission makes a final determination; it is hereby

ORDERED *NISI*, that to the extent that authorization under NH RSA Title XXXIV is required, we find that the proposed merger is consistent with the public good; and it is

FURTHER ORDERED, that this approval is conditional on service provided to GTE Electrical Products by Contel of New Hampshire be furnished under the applicable tariff; and it is

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FURTHER ORDERED, that all persons wishing to respond to the petition shall submit their comments, or a written request for a hearing, to the commission no later than November 12, 1990; and it is

FURTHER ORDERED, that the petitioner publish an attested copy of this order once in a newspaper having general circulation in that portion of the state in which operations are conducted, said publication to be no later than October 12, 1990, and documented by affidavit to be filed with the Commission no later than November 12, 1990; and it is

FURTHER ORDERED, *NISI* that the merger transaction is hereby approved, and that this order shall become effective on November 12, 1990 unless a request for hearing is filed with the Commission as provided above, or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1990.

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NH.PUC*10/15/90*[51093]*75 NH PUC 670*AT&T Communications of New Hampshire

[Go to End of 51093]

75 NH PUC 670

Re AT&T Communications of New Hampshire

DE 90-002
Order No. 19,956

New Hampshire Public Utilities Commission

October 15, 1990

ORDER, in a proceeding to review a petition by an interexchange telecommunications carrier for authority to commence business as a public utility, asserting statutory authority to grant franchises to more than one utility to serve the same service territory.

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1. MONOPOLY AND COMPETITION, § 11 — Jurisdiction and powers — State commissions — To authorize competition.

[N.H.] The statutory franchising authority of the commission enables it to authorize competition among regulated utilities. p. 673.

2. MONOPOLY AND COMPETITION, § 11 — Jurisdiction and powers — State commissions — Franchising authority — To allow competition.

[N.H.] The commission must grant franchises to companies applying to compete with currently franchised utilities when such a result would be in the public good; to hold otherwise would lead to the anomalous result that the commission could find that competition is in the

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public good, but could not franchise carriers who desire to compete. p. 673.

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3. MONOPOLY AND COMPETITION, § 28 — Division of territory — State commission powers — Franchising authority — Statutory considerations.

[N.H.] The statute setting forth the franchising authority of the commission does not specify that the commission must grant exclusive franchises and it would be inappropriate to infer such a limitation. p. 673.

4. MONOPOLY AND COMPETITION, § 83 — Telecommunications — Franchising authority — Nonexclusive franchises.

[N.H.] The commission, based upon the plain language of the state franchising statute and relevant legal precedent, concluded that it has the authority to authorize and regulate competition among telephone companies upon such terms and conditions as it finds to be in the public interest; such authority includes the power to grant franchises to more than one telephone utility for the provision of service in the same service territory. p. 673.

5. MONOPOLY AND COMPETITION, § 94 — Telecommunications — Intrastate toll service — Deregulation.

[N.H.] A determination by the commission that it would be in the public good to allow other telecommunications carriers to compete with the dominant local exchange carrier for intrastate toll customers would not necessarily require it to deregulate the dominant carrier. p. 676.

6. PUBLIC UTILITIES, § 117 — Telecommunications — Competition — Deregulation.

[N.H.] A finding by the commission that competition in the intrastate telecommunications market would serve the public good would not necessary compel a corresponding finding that telephone companies should no longer be regulated as public utilities. p. 676.

APPEARANCES: Harry Davidow, Esq. for AT&T Communications of New Hampshire; Helen Hall, Esq. for U. S. Sprint; Shaines & McEachern by Paul McEachern, Esq. for Atlantic Connections, Ltd; Lee Weiner, Esq. for MCI; Michael Holmes, Esq. for Office of the Consumer Advocate; John Reilly, Esq. for New England Telephone Company; Shaheen, Cappiello, Stein & Gordon by Dorothy Bickford, Esq. and Ellen Schemitz, Esq. for Union Telephone Company; Devine, Millimet & Branch by Frederick Coolbroth, Esq. for Granite State Telephone Company and Merrimack Telephone Company; Myers, Jordon & Gfroerer by David Jordon, Esq. for Long Distance North of New Hampshire; Orr & Reno, by Thomas Platt, Esq. and John Cunningham, Esq. for Contel of New Hampshire and Contel of Maine; Michael Roddy of Telephone and Data Systems for Kearsarge Telephone Company; Audrey Zibelman, Esq. and Eugene Sullivan, III, Esq. for Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

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On January 4, 1990, AT&T Communications of New Hampshire (AT&T) filed with the New Hampshire Public Utilities Commission (commission) a Petition for Authority to Commence Business as a Public Utility in the State of New Hampshire pursuant to RSA 362:2 and RSA 374:22 (petition).[1](71) Although the petition requests a general certificate, AT&T states that at this time it intends to offer only the following four Custom Network Services: AT&T Megacom Wats, AT&T Megacom 800, AT&T 800 Readyline and AT&T Multiquest. As described in the petition, these services are specialized services that AT&T currently offers on an interstate basis. AT&T claims the services are "add-on" services designed to meet the needs of customers who subscribe to the corresponding interstate services.

A prehearing conference was conducted on March 5, 1990 to address matters of

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intervention and procedure. After due notice, the commission granted intervenor status to New England Telephone (NET), Granite State Telephone, Inc. (Granite State), Merrimack County Telephone Company (Merrimack), Contel of New Hampshire, Inc. and Contel of Maine, Inc. (jointly referred to as Contel), and Union Telephone Company (Union). The commission further directed the parties to file memoranda on the scope of the proceeding in which they were to address *inter alia* whether the commission should commence a generic investigation into competition in the telecommunications industry and, if so, the scope of the investigation.[2](72) Memoranda on scope were filed by AT&T and all intervenors. In addition to addressing the scope issue, the Union memorandum argued that the commission does not have the statutory authority to permit competition among telephone utilities.

In Order No. 19,853 (75 NH PUC 316) (June 7, 1990), the commission determined to pursue the AT&T petition by simultaneously examining the generic competition issues and pursuing its investigation into the merits of the four proposed AT&T services. The commission also granted the intervention requests of U.S. Sprint (Sprint), MCI Telephone (MCI), Kearsarge Telephone Company (Kearsarge) and Long Distance North Telephone Co. (LDN). The commission further determined that Union's memorandum raised important threshold issues that required immediate attention.[3](73) A hearing on the issue of commission jurisdiction was held on July 19, 1990.

II. *POSITIONS OF THE PARTIES*

A. *Union Telephone Company*

Union's claim regarding the commission's authority is based upon its interpretation of RSA 374:26. Union argues that the commission was originally established by the legislature to authorize and regulate monopolistic public utilities. Claiming that the legislature delegated this authority to the commission to protect the public good and for reasons of sound economic policy, Union argues that the commission may not infer from this delegation the authority to permit and regulate competition among public utilities. According to Union, the franchises which the commission has granted to utilities pursuant to 374:26 must be exclusive. Union further contends that competition within a utility's service area is tantamount to a partial withdrawal of the franchised utility's right to operate; thus, RSA 374:28 is applicable and the commission can only permit competition on an *ad hoc* basis in which it addresses the willingness and ability of the

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franchised utility to meet service obligations. Union argues that AT&T should be required to demonstrate a need for "each specific service it would like to offer in every franchise area in which it seeks to operate." Memorandum at 14.

B. *AT&T; Sprint; LDN; and MCI*

AT&T, Sprint, LDN and MCI interpret RSA 374:26 as conferring upon the commission the authority to grant franchises to competing utilities when it concludes that competition will further the public good. In contrast to Union, these companies contend that the commission has no authority to grant exclusive franchises. In support of this interpretation, the companies rely upon New Hampshire's express constitutional policy favoring competition.

C. *Contel*

Contel argues that the commission should not allow local exchange service competition for economic and social policy reasons. Contel further argues that as a consequence of the technological changes which have taken place in the telecommunications industry since the relevant statutes were enacted, the issue of the commission's legal authority to allow competition is unclear. Nonetheless, Contel urges the commission to proceed with its generic investigation and consider granting interim authority to AT&T in order that the commission may better examine the benefits, if any, that the services will supply to New Hampshire residents.

D. *ACL*

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ACL argues that the commission should interpret the phrase "public utility" narrowly so as to permit the development of competitive telecommunication services. According to ACL, this commission has the authority to amend franchise areas to permit competition when it finds that it is in the public good. At the same time, however, ACL states that the commission may not regulate competitive telecommunication providers.

E. *Granite State and Merrimack*

Granite State and Merrimack argue that the commission does not have the authority to permit competition within local telephone company franchise areas because franchises are exclusive. The companies further argue that the same exclusivity does not apply to the provision of toll service. Under this interpretation, we may grant AT&T a franchise if we conclude that the provision of the four intended services will be in the public good.

III. *COMMISSION ANALYSIS*

The issue before the commission is the scope of its franchising authority under RSA 374:26.[4(74)] Pursuant to RSA 374:22, no company may commence business as a public utility in this state unless it first receives a franchise from the commission. RSA 374:26 sets forth the standard to be applied to franchise determinations and states as follows:

> *Permission*. The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall

> consider for the public interest. Such permission may be granted without hearing when all interested parties are in agreement.

The crux of Union's argument is its contention that the statute is ambiguous and must be interpreted in accordance with its underlying purpose. Relying *inter alia* on the Court's decisions in *Opinion of the Justices*, 84 N.H. 559 (1930) and *Parker-Young Co. v. State*, 83 N.H. 551 (1929) and the legislature's recent enactment of RSA 374:22-e (authorizing the commission to establish and amend telephone company service territories), Union claims that the legislature's intent was to create monopoly public utilities with exclusive service rights. Based upon this interpretation, Union claims that the commission does not have the authority to grant franchises to companies who intend to compete with the currently franchised utility.

[1, 2] We disagree. Upon thorough consideration of the briefs and oral argument of the parties, we find that our franchising authority enables us to authorize competition among regulated utilities. In reaching this conclusion, we initially disagree with Union's contention that RSA 374:26 is ambiguous. The language of the statute is clear and resort to legislative history to discern the statute's meaning is neither necessary nor appropriate. *Bradley Real Estate Trust v. Taylor*, 128 N.H. 441 (1986); *Appeal of Public Service Company of N.H.*, 125 N.H. 46, 52 (1984). In accordance with the plain meaning of the terms of the statute, the commission must grant franchises to companies applying to compete with currently franchised utilities when such a result would be in the public good. Indeed, as argued by LDN, to hold otherwise would produce the anomalous result that the commission could find that competition is in the public good, but could not franchise carriers who desire to compete. *See, State v. Kay*, 115 N.H. 696 (1975) (statutes should not be interpreted in a manner that produces an absurd or illogical result).

[3, 4] Reduced to its essentials, Union's argument is that the public good always requires the grant of exclusive franchises and the only choice open to the commission is to identify which company should be granted the right to serve. Notwithstanding this argument, Union admits that the terms of the statute do not specify that the commission must grant exclusive franchises. We do not deem it appropriate to infer such a limitation.

Since at least 1915, the New Hampshire Supreme Court has recognized that the

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legislature's delegation of the "public good" determination to the commission confers broad discretion. In *Grafton County Electric Light and Power Co v. State*, 77 N.H 539, 540 (1915) the Court described the scope of our discretion as follows:

> The measure by which the matter is to be determined is described by the legislature as the "public good." ... This is equivalent to a declaration that the proposed action must be a thing reasonably to be permitted under all the circumstances of the case. If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good. It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: it is not for the public good that public utilities be unreasonably denied the rights as corporations which are given corporations not engaged in the public service.

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(Citations omitted.) *See also, Boston and Maine R.R. v. State,* 102 N.H. 9 (1959); and *Gordon v. Public Service Co.*, 101 N.H. 372 (1958).

The determination of the public interest for the purpose of deciding whether to grant a franchise has acquired an even more particularized application. In such cases the totality of the circumstances analysis includes, *inter alia*, consideration of whether the public good is best served by having one or several utilities serve in a particular service area. *N.E. Household Moving & Storage, Inc.*, 117 N.H. 1038 (1977); *Household Goods Carriers Ass'n. v. Ouellette*, 107 N.H. 199, 201 (1966). We are mindful of Union's argument that the cited cases construed the commission's authority under statutes pertinent to the regulation of motor carriers and, accordingly, should not be read to speak to the commission's discretion to allow more than one "fixed" utility to serve a particular franchise area. We do not read those cases so narrowly. As discussed previously, RSA 374:26 establishes a "public good" standard. This standard requires the commission to engage in a totality of the circumstances analysis. *Grafton County Electric Light and Power v. State, supra.* The motor carrier cases articulate factors that certainly fall within the totality of the circumstances. *See, also, Swiezynski v. Civiello*, 126 N.H. 142 (1985) (where reasonably possible, statutes should be construed as consistent with each other).

When interpreting and applying statutes, this commission follows the common and approved usage of the language used. RSA 21:2; *Appeal of Public Serv. Co. of N.H.*, 125 N.H. 46 (1984). The above cited decisions conclusively demonstrate that the legislature delegated broad discretionary authority to grant franchise applications. Consistent with this broad authority and concomitant obligation, the commission may authorize competition among regulated utilities if it concludes that the public good will thereby be served.

As we stated earlier, our conclusion that the statute is unambiguous obviates any need to turn to the legislative history to discern meaning. *Appeal of Public Service Co. of N.H., supra* at 52. However, review of the material authority convinces us that our conclusions are consistent with the legislature's intent when it enacted Chapter 374 in 1911. Laws 1911, c.164, s.13.

We start with the New Hampshire Constitution which provides at Pt. II, Art. 83, *inter alia*:

> ... Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it ... .

We must construe our statutory authority to be consistent with the policy of the state embedded in its Constitution. It would indeed be ironic if, in looking to legislative intent to construe an ambiguous statute, we selected an interpretation that is inconsistent with Constitutional policy. Union's interpretation, which requires the protection of monopolies even where we find that such protection is not consistent with the public good, would lead to such an anomalous result.

Union primarily relies upon *Opinion of the Justices*, 84 N.H. 559 (1930) for its argument that the legislature intended to restrict commission discretion to grant only exclusive franchises. (Memorandum at 3-4). There, the state's power to tax such franchises was challenged on the ground that the franchises were not

exclusive and hence were of no value. In holding that utility franchises are taxable, the Court reasoned as follows:

> *While it is true that the grant is not exclusive in the sense that the state cannot give a like grant to a competitor, it is also true that the whole policy of modern public utility legislation and control is against any such second grant*. In theory, competition may have to be met. As a practical proposition, known to and acted upon by everybody, no competition will be permitted.
>
> * * *
>
> *It is also said that the right is still common, since it is open to anyone to obtain like permission, if he can procure the requisite finding by the commission*. It is conceded that as a practical proposition no such finding can be obtained, because it is said, the business is a natural monopoly. The policy has been to keep it a monopoly for sound economic reasons. *The monopoly is not in the course of nature but of good business. Its maintenance is designed to promote economies by furnishing protection against things promoted by nature.*

84 N.H. at 567 (Emphasis added).

Union reads the above language as evidencing an opinion that public utility franchises must be exclusive to stay within the commission's legislative mandate. We interpret the Court to be holding precisely the opposite. In rendering its opinion, the Court was considering the reality of the economics of public utilities at that time. As the Court explained, the then current economies of scale and scope associated with public utilities made competition impractical. To say, however, that competition is impractical is a far cry from holding that it is prohibited by statute. The issue presently before the commission is whether it is now both practical and, more importantly, in the public good to allow competition given the technological changes that have been and are continuing to occur in the telecommunications industry.[5(75)]

We also disagree with Union's interpretation of *Parker-Young Co. v. State*, 83 N.H. 551 (1929). There, the issue before the Court was the proper factual analysis to be applied by the commission when it is attempting to decide which of two competing utilities should be granted a franchise. *Id.* at 553. The Court's holding that the commission's authority to grant franchises includes within it the power to decide between two utilities competing for an exclusive franchise cannot fairly be interpreted as holding that all franchises are necessarily exclusive. There is nothing in the Court's opinion which suggests that the commission may never find that the public good will be served by the grant of more than one competing franchise. Given the economic reality of electric utilities at the time, we assume that the question of whether competition between the two companies would be in the public

good was never raised. In any event, we find that the Court's holding does not bear on the

issue at hand.

Similarly without merit is Union's claim that the decision in *Re Sharing and Resale of Local Exchange Service*, 66 PUR4th 343 (N.C. Util. Comm'n. 1985) (North Carolina Utilities Commission does not have the statutory authority to permit resale of local exchange service) is authoritative on the scope of this commission's regulatory authority. While the value of applying an interpretation of a statute of another state to the determination of the intent of the New Hampshire legislature could be questioned, the proffered analysis is fundamentally flawed even on its own terms. As Union notes, the North Carolina Commission relied on the previous decision of the North Carolina Supreme Court, *State v Carolina Telephone and Telegraph Company*, 267 N.C. 257, 148 S.E.2d 100 (1966), as the basis of its decision that local exchange service franchises are exclusive. In *Carolina Telephone*, the court upheld a commission decision declining to award a certificate of public convenience and necessity to a mobile radio telephone company which was seeking to compete with a local exchange company. A careful reading of that decision demonstrates it was not based on a holding that the North Carolina commission lacked the authority to permit competition; rather, the Court upheld the commission's refusal to grant the certificate in the absence of factual proof that competition between the two carriers would be in the public interest. *Id.*, at 253. The negative implication of the court's discussion is that the commission could allow competition in those circumstances where it is factually warranted.[6](76)

[5, 6] In summary, based upon the plain language of the statute and relevant precedent we conclude that we have the authority under RSA 374:26 to authorized and regulate competition that we find to be in the public interest. In so holding we are not unmindful of the argument made by ACL that if we conclude that the structure and technology of the telecommunications industry suggests that market competition would serve the public good, *Appeal of Omni Communications, Inc.*, 122 N.H. 860 requires that telephone companies no longer be regulated as public utilities. Under this interpretation, a commission decision that it is in the public good to allow carriers to compete with NET for intrastate toll customers requires us to deregulate NET. While it is perhaps possible to read *Omni* in that manner, we do not believe that the Supreme Court intended such a result. The federal experience of developing interstate telephone competition, as well as basic economic principles, show that authorizing competition does not in and of itself produce a competitive market. There must be at least a period of transition in which regulation acts as a vehicle to allow competition to develop (and perhaps flourish) in a manner that is consistent with the needs and interests of the consuming public. *See, generally*, Phillips, C. Jr., *The Regulation of Public Utilities*, (1984). If we were to accept ACL's interpretation of *Omni* we could not provide such a vehicle in New Hampshire. Moreover, if we were to conclude that competition is in the public good when appropriately regulated we would find ourselves in a "Catch 22"[7](77) ; in which the public interest would be served neither by allowing competition nor by forbidding it. For these reasons we conclude that the Court's holding in *Omni* should be limited to its facts.

Finally, Union requested that we exercise our discretionary authority under RSA 365:20 to reserve, certify and transfer the question of our authority to the Supreme Court. We decline this request. The issue of whether competition among telephone utilities is in the public good raises numerous questions of law, fact and public policy. It is our intent to develop a factual record to

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assist us in answering as many of these questions as possible during the course of our investigation. A full record should also be developed to allow complete Supreme Court review. Having addressed threshold jurisdiction herein, our order will schedule a further pre-hearing conference in this docket so that the process of resolving these issues can be expeditiously concluded.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is

ORDERED, that the commission has the statutory authority to grant franchises to more than one utility to serve the same service territory, provided that it finds that such a grant of authority would be for the public good; and it is

FURTHER ORDERED, that the Motion to Dismiss of Union Telephone Company be, and hereby is, denied; and it is

FURTHER ORDERED, that the Motion to Reserve, Certify and Transfer a Question of Law of Union Telephone Company be, and hereby is, denied; and it is

FURTHER ORDERED, that a prehearing conference pursuant to RSA 541-A:16 and N.H. Admin. Rules, Puc 203.05 be held at the offices of the commission at 8 Old Suncook Road, Concord, New Hampshire at ten o'clock in the forenoon on the second day of November, 1990, *inter alia* to establish a schedule for the remaining part of this proceeding.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1990.

FOOTNOTES

[1]AT&T presently has authority to offer discreet services *inter alia* to the federal government (FTS 2000). This is the first opportunity presented to us to consider whether the grant of requested authority would foreclose our ability to grant similar authorization to competing carriers.

[2]We note that in the last several months the commission has received a number of formal requests and informal petitions from toll carriers interested in

operating in New Hampshire. In view of this interest the need for a generic inquiry has become even more apparent.

[3]For the purposes of this order, we construe the threshold issues raised in Union's memorandum as a motion to dismiss in that Union is contending that, regardless of the facts, we cannot as a matter of law grant the requested relief. We shall also construe as a motion Union's request that we reserve, certify and transfer the threshold question of law to the New Hampshire Supreme Court pursuant to RSA 365:20.

[4]In its brief Contel raised additional issues for the commission to consider, including *inter*

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alia the proper interpretation of the definition of a "public utility" as used in RSA 362:2. While we believe that the issues raised by Contel are important and require our review, they do not concern our statutory jurisdiction and we will therefore address them in the course of the evidentiary hearings. We note also that the precise issue of what is a "public utility" is being considered in *Re ACL*, Docket No. DE 90-042 (provision of Intra-Lata toll service).

[5]It is also noteworthy, that the grant of an exclusive monopoly franchise was never used by the United States Supreme Court as a litmus test for state regulation of public utilities. *See, e.g., Munn v Illinois*, 94 U.S. 113 (1876), (holding that the state of Illinois did not violate the due process clause of the fourteenth amendment by regulating nine competing grain warehouses since the business was "affected with a public interest"). Indeed, since the Court decided *Nebbia v State of New York*, 291 U.S. 502 (1934), due process analysis has required only that the state show that its regulation of a particular enterprise, regardless of its competitive or monopolistic nature, is rationally related to a legitimate state concern.

[6]The distinction drawn by the North Carolina Supreme Court is also dispositive of Union's arguments relative to the applicability of RSA 374:22-e and 374:22-f (commission to establish telephone company service areas) and RSA 374:28 (withdrawal of franchise authority). These statutes address the procedures to be followed when the commission has made a finding that it is in the public good to have a single company supply particular services within a given franchise area. They are not applicable to the current docket in which the commission will be examining the threshold issue of whether it is in the public good to have several carriers compete to furnish select telephone services to the same customer.

[7]Heller, Joseph, *Catch 22* (1961).

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NH.PUC*10/15/90*[51094]*75 NH PUC 677*Hanover Water Works Company

[Go to End of 51094]

75 NH PUC 677

Re Hanover Water Works Company

DR 90-105
Order No. 19,957

New Hampshire Public Utilities Commission

October 15, 1990

ORDER setting temporary rate for water utility service and establishing a schedule for a proceeding to establish permanent rates.

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1. RATES, § 630 — Temporary rates — Stipulation — Water utility.

[N.H.] The commission adopted a stipulation setting temporary rates for water utility service

at current levels pending the completion of proceeding to establish permanent rates. p. 678.

2. RATES, § 640 — Procedural schedule — Permanent rate proceeding — Water utility.

[N.H.] The commission adopted a stipulation establishing a schedule for a proceeding to establish permanent rates for water utility service. p. 678.

APPEARANCES: S. John Stebbins, Esq. on behalf of Hanover Water Works Company; Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On July 31, 1990, Hanover Water Works Company (Hanover) filed with the Public Utilities Commission proposed rates schedules and

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supporting documents which would result in an increase of annual water revenues of $167,449 or a 29.33% increase in rates. On August 28, 1990, the commission issued order no. 19,927 suspending the proposed rate increase and ordering an investigation prior to the issuance of a decision. Said order also established a pre-hearing conference which would address procedural matters, temporary rates and interventions at 2:00 o'clock in the afternoon on October 3, 1990.

II. *Position of the Parties*

The parties stipulated to temporary rates at current levels and further stipulated to the following procedural schedule:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Data Requests to the Company	October 26, 1990
Data Response from the Company	November 9, 1990
Second Set of Data Request to the Company	November 16, 1990
Second Set of Data Responses from the Company	November 30, 1990
Staff and Intervenor Testimony	December 14, 1990
Data Requests to Staff and Intervenors	December 21, 1990
Data Responses from Staff and Intervenors	January 11, 1991
Settlement Conferences	January 17, 1991 & January 18, 1991
Hearing on the Merits	January 25, 1991

III. *Commission Analysis*

[1, 2] Commission finds that the Company is currently earning an overall rate of return of 4.6% based on the testimony of Richard Deres. This overall rate of return is based on

calculations using the used and useful assets of the Company in conveying water to the public. Commission further finds the above procedural schedule to be in the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that temporary rates be set at current levels; and it is

FURTHER ORDERED, that the procedural schedule set forth in the foregoing report is adopted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 1990.

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NH.PUC*10/16/90*[51095]*75 NH PUC 678*Northern Utilities, Inc.

[Go to End of 51095]

75 NH PUC 678

Re Northern Utilities, Inc.

DR 90-159
Order No. 19,959

New Hampshire Public Utilities Commission

October 16, 1990

ORDER approving proposed interim transportation, LNG processing, and balancing agreements between a gas distributor and an interruptible customer and authorizing the distributor to amend its interruptible sales agreement with the customer.

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1. RATES, § 384 — Gas — Interruptible sales contract — Amendment.

[N.H.] The commission approved an amendment to an interruptible gas sales contract between a gas distribution utility and a manufacturing plant to extend the term of the contract and add a pricing provision for the winter period. p. 679.

2. RATES, § 384 — Gas — Transportation — LNG processing — Balancing — Revenue allocation.

[N.H.] The commission approved proposed interim transportation, LNG processing, and balancing agreements between a gas distributor and an interruptible customer; pursuant to stipulation, all revenues received by the utility as a result of the service provided under the agreements would be deferred pending a

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commission decision on an appropriate allocation methodology. p. 679.

By the COMMISSION:

ORDER

[1, 2] On September 25, 1990, Northern Utilities, Inc. ("Northern") petitioned the commission for approval of interim transportation, LNG processing and balancing agreements with Domtar Gypsum, Inc. ("Domtar"). In addition, Northern requested approval of an amendment to an interruptible sales agreement with Domtar approved by commission Order No. 19,744 (75 NH PUC 145); and

WHEREAS, absent the proposed agreements, Domtar's wallboard manufacturing plant would be without a fuel supply for the upcoming winter; and

WHEREAS, Domtar has recently concluded an agreement in principle on the pricing of gas for the longer-term; and

WHEREAS, Northern intends to file the long-term business arrangement with Domtar before October 31, 1990; and

WHEREAS, the parties to this proceeding have entered into a stipulation and agreement that resolves all issues related to the interim agreements; and

WHEREAS, the amendment to the interruptible sales agreement would extend the term of the contract to March 31, 1991 and add a pricing provision for the winter period; and

WHEREAS, the stipulation requires that all revenues received as a result of the transportation, vaporization and balancing services be deferred on Northern's balance sheet pending a decision from this commission on the appropriate method for allocating such revenues; it is hereby

ORDERED, that the proposed interim transportation, LNG processing and balancing agreements be, and hereby are, approved; and it is

FURTHER ORDERED, that the amendment to the currently effective interruptible gas sales contract be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1990.

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NH.PUC*10/16/90*[51096]*75 NH PUC 679*West Epping Water Company

[Go to End of 51096]

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DE 90-061
Order No. 19,960

New Hampshire Public Utilities Commission

October 16, 1990

ORDER closing, without prejudice, the docket in a proceeding to review a petition by a water utility to expand its franchise area.

CERTIFICATES, § 163 — Procedure — Petition to expand franchise — Docket closing — Water utility.

[N.H.] The commission closed, without prejudice, the docket in a proceeding to review a petition by a water utility to expand its franchise area where the utility had not filed all the required information, was still pursuing other required regulatory permits and approvals, and agreed that it should refile its petition at a later date.

By the COMMISSION:

ORDER

The West Epping Water Company, having filed in March 1990, a petition to expand its franchise area in the Town of Epping; and

WHEREAS, the commission opened docket DE 90-061 to investigate this matter and to determine if it would be in the public interest to grant the authority sought; and

Page 679

WHEREAS, approval from the Town of Epping and certain information required by staff had not been filed; and

WHEREAS, by letters of July 23, 1990 and August 22, 1990, staff sought this information and, further, requested the water company's position on whether its petition should be pursued at this time or refiled at a later date; and

WHEREAS, by letter dated August 27, 1990, the company indicated that it was still pursing other regulatory permits and approvals; and

WHEREAS, in a telephone conversation with staff on October 5, 1990, the company, through Richard Fisher, agreed that this docket should be closed without prejudice and that a future filing would be made when all matters had been settled by the company; it is hereby

ORDERED, that this docket DE 90-061 be closed without prejudice.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1990.

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NH.PUC*10/17/90*[51097]*75 NH PUC 680*Littletown Water and Light Department

[Go to End of 51097]

75 NH PUC 680

Re Littletown Water and Light Department

DR 90-122
Order No. 19,961

New Hampshire Public Utilities Commission

October 17, 1990

ORDER rejecting the tariff filing of a water and light department for failure to conform with the format required by commission rules.

RATES, § 253 — Tariff filings — Form and content — Commission rules.

[N.H.] The tariff filing of a water and light department was rejected for failure to conform with the format required by commission rules.

By the COMMISSION:

ORDER

On September 14, 1990, Littleton Water and Light Department (LWLD) filed a tariff to apply to all customers of the LWLD that reside outside the Town of Littleton. The filing, which includes direct testimony and supporting materials, was submitted for LWLD by La Capra Associates of Boston, Massachusetts; and

WHEREAS, the New Hampshire Code of Administrative Rules PUC 1601.04, *Format and Contents of Tariffs and Special Contracts*, specifies the applicable format of tariff filings; and

WHEREAS, the LWLD filing does not conform to PUC 1601.04(b) marking of tariff pages, which requires that tariff be numbered, paginated and signed by a designated officer of the company; it is hereby

ORDERED, that the LWLD tariff filing is rejected; an it is

FURTHER ORDERED, that current rates remain in effect until such time as this commission orders otherwise.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October 1990.

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NH.PUC*10/22/90*[51098]*75 NH PUC 680*EnergyNorth Natural Gas, Inc.

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[Go to End of 51098]

75 NH PUC 680

Re EnergyNorth Natural Gas, Inc.

DR 90-166
Order No. 19,963

New Hampshire Public Utilities Commission

October 22, 1990

ORDER granting a request by a gas distributor for a protective order prohibiting public disclosure of certain confidential information.

PROCEDURE, § 16 — Production of documents — Confidential information — Protective order.

Page 680

[N.H.] The commission granted a request by a gas distribution utility for a protective order prohibiting public disclosure of certain confidential information where the utility alleged that disclosure of the information would cause a cognizable harm to the utility in its competitive environment; should any member of the public seek disclosure of the information, the commission would provide an opportunity for hearing and, upon a finding that a valid exemption from disclosure exists, apply a balancing test weighing the benefits of disclosure to the public versus the benefits of nondisclosure to the utility.

By the COMMISSION:

ORDER

EnergyNorth Natural Gas, Inc., (EnergyNorth) having filed a Motion for Protective Order on October 16, 1990, which, in pertinent part, requested authority to decline to produce a document, identified as the Company's response to Data Request 3 by the Staff of the Public Utilities Commission; and

WHEREAS, EnergyNorth asserts that disclosure of the aforesaid information would cause a cognizable harm to ENPI in its competitive environment; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A: and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ..."; it is hereby

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ORDERED, that EnergyNorth shall, upon receipt hereof, provide the commission and the commission staff the data requested, Staff Request 3; and until otherwise ordered, said data is to be viewed only by the commission and the commission staff, and the information contained therein shall not be copied or reproduced, nor shall the information contained therein be further disseminated; and it is

FURTHER ORDERED, on motion by any party the commission will reconsider the extent to which the material in question 3 shall be made a part of the public record pursuant to RSA Chapter 91-A, or for the development of relevant testimony and cross-examination and to aid the commission in determining the public good; and it is

FURTHER ORDERED, that unless otherwise ordered all copies of the propriety documents shall be destroyed or returned to the originator of the response within 30 days after the conclusion of these proceedings; and it is

FURTHER ORDERED, in the event that any member of the public seeks disclosure, the commission will notify the parties of such request prior to disclosure and the commission will provide an opportunity for a hearing. Upon a finding by the commission that there is a valid exemption claimed by EnergyNorth for the materials in question, the commission will apply a balancing test by weighing the benefits of disclosure to the public versus the benefits on nondisclosure to EnergyNorth.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of October, 1990.

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NH.PUC*10/22/90*[51099]*75 NH PUC 681*Telephone and Data Systems, Inc.

[Go to End of 51099]

75 NH PUC 681

Re Telephone and Data Systems, Inc.

Petitioners: Meriden Telephone Company, Inc.; Chichester Telephone Company; and Kearsarge Telephone Company

DF 90-144
Order No. 19,964

New Hampshire Public Utilities Commission

October 22, 1990

ORDER granting petitions by telephone operating companies for the transfer of stock and internal service agreements from their parent company to a recently-formed, wholly-owned subsidiary of the parent.

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1. INTERCORPORATE RELATIONS, § 18.1 — Affiliated interests — Security transactions — Telephone operating companies.

[N.H.] The commission granted petitions by telephone operating companies for the transfer of stock from their parent company to a recently formed wholly-owned subsidiary of the parent. p. 682.

2. INTERCORPORATE RELATIONS, § 14.2 — Affiliated interests — Internal service contracts — Telephone operating companies.

[N.H.] The commission granted petitions by telephone public utilities for the partial assignment of internal service contracts from their corporate parent to a recently-formed, wholly-owned subsidiary of the parent; approval of the contract assignments was conditioned on the filing of the contracts with the commission. p. 682.

By the COMMISSION:

ORDER

[1, 2] On August 22, 1990, Meriden Telephone Company, Inc. and Kearsarge Telephone Company (the companies), both subsidiaries of Telephone and Data Systems, Inc. (TDS) filed petitions seeking approval of the New Hampshire Public Utilities Commission (commission) for (1) the transfer of stock from TDS to TDS Telecommunications Corporation (TDS-Telecom) a wholly-owned subsidiary of TDS, and (2) a partial assignment to TDS-Telecom of the internal service agreement between TDS and the companies; and

WHEREAS, on August 27, 1990, Chichester Telephone Company (Chichester) also a subsidiary of TDS filed a petition for a partial assignment to TDS-Telecom of the internal service agreement between TDS and Chichester; and

WHEREAS, TDS-Telecom is a recently formed wholly-owned subsidiary for the TDS landline telephone business; and

WHEREAS, TDS-Telecom is a Delaware corporation incorporated in 1988; and

WHEREAS, TDS provided an organization structure showing the current ownership by the parent company, i.e., TDS, of a large number of TDS telephone operating companies throughout the nation including the companies and Chichester; and

WHEREAS, TDS provided a proposed organization chart showing the transfer of ownership to TDS-Telecom, of the telephone operating companies owned by the parent company, including the companies and Chichester; and

WHEREAS, TDS the parent company provides various management services, to its various operating companies, through a division of TDS known as the Telephone Systems Service Division (TSSD); and

WHEREAS the contracts and transactions between the companies and TSSD have previously been filed with this commission; and

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WHEREAS, a number of the TSSD service personnel provide management support and a number of related administrative services, exclusively to the TDS landline telephone operating companies, including the companies and Chichester; and

WHEREAS, those exclusively landline telephone services of TSSD are provided by Telephone Systems Service Division-Telephone Operations (TSSD-Telephone Operations); and

WHEREAS, as a part of the establishment of TDS-Telecom the rendering of services by TSSD-Telephone Operations will be transferred to TDS-Telecom by TDS with all rights and obligations under said service contracts; and

WHEREAS, TDS seeks approval of that assignment and of the continued provision of those services for the companies in accordance with the terms of the prior commission orders; and

WHEREAS, TDS provided a copy of the proposed form entitled "Partial Assignment of Service Contract Between Telephone Systems Service Division and [the companies and Chichester]"; and

WHEREAS, subject to the conditions set forth herein, the commission finds that the petition for relief is consistent with the public good pursuant to RSA 374:32 and RSA 366:3; and it

is hereby

ORDERED, that the foregoing requests be, and hereby are, approved conditioned on the filing of revised service contracts between TSSD and the companies and Chichester.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of October, 1990.

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NH.PUC*10/29/90*[51100]*75 NH PUC 683*Granite State Electric Company

[Go to End of 51100]

75 NH PUC 683

Re Granite State Electric Company

DR 90-147
Order No. 19,965

New Hampshire Public Utilities Commission

October 29, 1990

ORDER approving a revised purchased power cost adjustment rate filed by a retail electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 3 — Jurisdiction and powers — State commissions — Wholesale purchased power — Investor-owned utility.

[N.H.] The commission does not have jurisdictional authority to establish the wholesale purchase power rate for investor-owned utilities, but may disallow cost incurred in excess of alternative available rates. p. 683.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Rate revision — Retail electric utility.

[N.H.] A retail electric utility was authorized to revise its purchased power cost adjustment rate to reflect increased costs associated with Hydro-Quebec power purchased from its wholesale supplier; the revision will take effect for service rendered on or after the commercial operation date of the Hydro-Quebec facilities. p. 683.

By the COMMISSION:

ORDER

Granite State Electric Company (Granite State) having filed a proposed Purchased Power Cost Adjustment (PPAC) W-12(a) (H-Q) on October 1, 1990 in Docket No. DR 90-147 to become effective upon commercial operation of the Hydro-Quebec Phase II Project (Project); and

WHEREAS, Granite State's PPCA filing reflects increased purchase power costs associated with the Project included as a rider in New England Power Company's (NEP) Rate W-12(a) filing which was accepted by the Federal Energy Regulatory Commission (FERC) on September 26, 1990 in Docket No. ER90-525-000, and made effective upon commercial operation of the Project, subject to refund; and

WHEREAS, NEP will pass the costs associated with the Project to its wholesale customers, including Granite State, effective on the in-service date of the Project; and

WHEREAS, the Hydro-Quebec in-service date is anticipated to be on or near November 1, 1990; and

WHEREAS, the costs associated with the Project will increase Granite State's PPCA by $0.00120 kWh over current levels, for a cumulative PPCA level of $0.02087; and

WHEREAS, the commission has intervened in FERC Docket No. ER90-525-000; and

[1, 2] WHEREAS, the commission does not have the jurisdictional authority to establish the wholesale purchase power rate for investor owned utilities but may disallow costs incurred in excess of alternative available rates, *Appeal of Sinclair Machine Prod's., Inc.,* 126 N.H. 822 (1985); and

WHEREAS, Granite State's proposed PPCA W-12(a) (H-Q) reflects its share of the Host State bonus share for the Project as established in Order No. 18,499 and Supplemental Order No. 19,024 resulting in net benefits to Granite State's customers; it is therefore

ORDERED, that Granite State's proposed PPCA W-12(a) (H-Q) is hereby approved,

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effective for service rendered on or after the commercial operation of the Hydro-Quebec

Phase II facilities; and it is

FURTHER ORDERED, that Granite State shall inform the Commission of the commercial operation date of the Project and submit tariff pages annotated with that effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 1990.

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NH.PSC*10/30/90*[51101]*75 NH PUC 684*New Hampshire Electric Cooperative, Inc.

[Go to End of 51101]

75 NH PUC 684

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 19,969

New Hampshire Public Service Commission

October 30, 1990

ORDER denying a motion by an electric cooperative to limit the scope of commission review of a Seabrook nuclear capacity sellback agreement.

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1. PROCEDURE, § 33 — Rehearings and reopenings — Grounds for denial — Seabrook capacity sellback agreement — Commission review.

[N.H.] The commission denied a motion by an electric cooperative to limit the scope of commission review of a Seabrook nuclear capacity sellback agreement; it was found that the motion failed to raise any issue that was not already presented to and thoroughly considered by the commission in its prior order asserting jurisdiction to review the agreement. p. 685.

2. RATES, § 70 — Commission powers — Statutes — Rate plan — Electric cooperative — Seabrook capacity sellback agreement.

[N.H.] The plenary authority of the commission to review and approve the electric rate plan of an electric cooperative under RSA 362-C:7 carries with it the obligation to examine and, if necessary to produce a rate plan that is consistent with the public good, to modify the terms of a Seabrook nuclear capacity sellback agreement between the cooperative and Public Service Company of New Hampshire. p. 686.

3. RATES, § 49 — Jurisdiction and powers — State commissions — Contract rates — Seabrook capacity sellback agreement.

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[N.H.] Pursuant to RSA 378:20 contracts between utilities for the delivery of power are not effective until they are approved by the commission; accordingly, an unapproved Seabrook nuclear capacity sellback agreement was not an existing enforceable contract and was subject to commission review. p. 686.

4. PROCEDURE, § 36 — Res judicata — Estoppel — Seabrook nuclear capacity sellback agreement — Commission review.

[N.H.] The equitable principles of *res judicata* and estoppel did not bar the commission from considering the terms and conditions of a Seabrook nuclear capacity sellback agreement involving an electric cooperative notwithstanding prior commission approval of the cooperative's financing of its Seabrook investment; it was found that the fact that the commission did not evaluate and approve the terms and conditions of the sellback agreement in the financing decision, and indeed could not have lawfully done so under its statutory rate-making authority, defeated the claims of *res judicata* and estoppel. p. 686.

5. PROCEDURE, § 36 — Laches — Seabrook nuclear capacity sellback agreement — Commission review.

[N.H.] The question of whether the equitable doctrine of laches should be applied to preclude a litigant from pursuing a claim is a fact issue which requires resolution by an adjudicator; accordingly, the commission could not resolve a laches claim in the context of a motion to limit the scope of its jurisdiction over the terms and conditions of a Seabrook nuclear capacity sellback agreement. p. 686.

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6. CONSTITUTIONAL LAW, § 24 — Impairment of contracts — Seabrook nuclear capacity sellback agreement — Commission review.

[N.H.] In denying a motion by an electric cooperative to limit the scope of commission review of a Seabrook nuclear capacity sellback agreement, the commission reaffirmed its conclusion that the prohibition against impairment of contracts contained in the Contract Clause of the United States Constitution did not prevent the commission from reviewing the sellback agreement. p. 688.

7. ELECTRICITY, § 2 — Jurisdiction and powers — State commissions — Capacity sellback agreement — Electric cooperative.

[N.H.] In denying a motion by an electric cooperative to limit the scope of commission review of a Seabrook nuclear capacity sellback agreement, the commission reaffirmed its conclusion that it had the jurisdiction to review and approve the terms of the agreement. p. 688.

APPEARANCES: Merrill and Broderick by Stephen E. Merrill, Esquire and Mark Dean, Esquire for the New Hampshire Electric Cooperative, Inc.; Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Rath, Young, Pignatelli and Oyer, P.A. by Thomas D. Rath, Esquire for Northeast Utilities Service Company; John P. Arnold, Esquire, Attorney General and

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Harold Judd, Esquire, Assistant Attorney General for the State of New Hampshire; Michael W. Holmes, Consumer Advocate; United States Department of Justice by James A. Gresser, Esquire for the United States Rural Electrification Administration; Audrey Zibelman, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Introduction*

[1] On October 16, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC) moved for partial rehearing of Report and Order No. 19,946 (75 NH PUC 649), dated October 1, 1990. The NHEC is requesting that the commission restrict its review of the sellback agreement to part of its overall evaluation of whether the NHEC rate plan is in the public good as required by RSA 362-C:7. We disagree with the NHEC's suggested limitations on the scope of our reviewing authority and because the motion fails to raise any issue that was not already presented to and thoroughly considered by the commission, it is denied.

II. *Positions of the Parties*

The NHEC agrees with the commission's determination that it has the authority to examine the sellback agreement as part of its examination of the NHEC rate plan under RSA 362-C:7.1(78) The NHEC contends, however, that our review of the sellback agreement is limited. The company argues that under RSA 362-C:7 the commission may only review the sellback as an element of the NHEC rate plan and contends that we do not have the authority to amend or enforce its terms. The NHEC also reiterates its earlier arguments that the commission does not have the authority to review the sellback agreement under RSA 378:20 or RSA 378:1 and 7 and again contends that commission consideration or modification of the agreement is barred by equitable principles of *res judicata*, estoppel and laches and would violate the constitutional prohibition against impairment of contracts.

Northeast Utilities Service Company (NUSCO) and Public Service Company of New Hampshire (PSNH) filed an Objection to the Motion for Rehearing on October 24, 1990. The companies supported the commission's order and argued that the NHEC failed to raise any new matters warranting rehearing. According to NUSCO and PSNH, the commission has the statutory authority under RSA 362-C:7 and RSA 378:20 and 378:1 and 7 to review and approve the sellback agreement. The companies further contend that because the commission never approved the sellback agreement its equitable defenses fail. Finally, NUSCO and PSNH

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agree with the commission's conclusion that the NHEC's contract clause argument is contrary to well established constitutional principles regarding the state's authority over regulated utilities.

III. *Commission Analysis*

For the most part the NHEC's arguments were addressed in our initial order. Accordingly, our analysis herein should be viewed as supplementing the commission's order 19,146 analysis in light of the issues raised in the NHEC's motion for rehearing.

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[2] The NHEC initially argues that the commission erred in concluding that its plenary authority to review and approve the rate plan under RSA 362-C:7 carries with it the obligation to examine and, if necessary, modify the sellback agreement. The NHEC contends that the statute restricts the commission to considering the agreement only to the extent necessary for it to approve the rate plan. Thus, according to the NHEC, the commission may not modify the terms of the agreement even if it concludes that the modification is necessary to produce a rate plan that is consistent with the public good.

As we explained in our Order, this proceeding primarily involves cost allocation issues that are present in any utility rate case. Order at 7. When examining proposed rates in the context of general rate proceedings commenced under RSA Chapter 378, the commission always considers costs associated with contracts entered into by the utility if the utility is seeking to recover the costs in its rates. For example, if a utility contracts to purchase a computer system and seeks to pass the costs through its rates, the commission must examine the contract for prudency and, if appropriate, allocate a portion or all of the costs to the utility's investors. Similarly, our review of the sellback agreement is intended to make certain that the NHEC's share of the Seabrook costs are fairly allocated among its investors and member/ratepayers. The NHEC's restrictive interpretation of the commission's authority suggests that we should not engage in such scrutiny since it may result in an allocation of costs that is different than is currently contemplated by the NHEC. We believe that such limited scrutiny would be in violation of our statutory mandate under RSA Chapter 362-C to approve a rate plan for the NHEC only if it is consistent with the public good.

[3] The NHEC next argues that the commission misconstrues RSA 378:20 by failing to consider that the statute does not authorize the commission to review existing contracts. The NHEC does not recognize that under the express terms of RSA 378:20 and RSA 378:30-a, the sellback agreement is not an existing enforceable contract. Pursuant to RSA 378:20 contracts between utilities for the delivery of electric energy are not effective *until* they are approved by the commission. Under RSA 378:30-a, which prohibits utilities from including in rates costs associated with uncompleted construction, the NHEC could not obtain commission approval of the contract until Seabrook became commercially available in July of this year. Thus, as we stated in our original order, this docket is the first opportunity for the NHEC to seek commission approval of the agreement.[2](79)

[4, 5] The NHEC's arguments that the equitable principles of *res judicata,* estoppel and laches bar the commission from considering the terms and conditions of the sellback agreement are similarly flawed. The NHEC reiterates its claim that the commission's earlier approval of the company's financings of its Seabrook investment in *Re NHEC,* 70 NH PUC 422 (1985), *aff'd sub. nom Appeal of McCool,* 128 N.H. 124 (1986) is *res judicata* on the terms of the sellback agreement. However, as we explained in the Order, the commission's approval of the NHEC's petition for financing under RSA Chapter 369 did not result in the establishment of rates the NHEC may now charge PSNH for its share of Seabrook. The commission's decision was explicit that the determination of the NHEC's recoverable Seabrook costs would be the subject of a subsequent rate proceeding brought pursuant to RSA Chapter 378. *Re NHEC, supra* at 960 and 977. Indeed, under RSA 378:30-a the commission could not set a NHEC Seabrook wholesale or retail rate at that time.[3](80)

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The NHEC ignores the holding of *Re NHEC, supra,* and focuses instead on footnote

7 of the decision to argue that the commission reviewed the sellback agreement as part of its financing approval. The footnote states as follows:

> The record indicates that the sellback agreement between the NHEC and PSNH ... will insulate both the NHEC's ratepayers and the REA investor from the direct responsibility for the cost of Seabrook for the first ten years of Seabrook operation.

70 NH PUC at 977, n.7 (citation omitted)

The subject matter of the order to which footnote 7 refers is the commission's discussion of the "reasonable probable range of the NHEC's investment in Seabrook." Unquestionably, the presence of the sellback agreement was a factor in the commission's determination that the public good would be served by authorizing the financing and completion of Seabrook. *Id.* Thus, at most the footnote expresses the commission's observation that the sellback agreement provided protection to the NHEC members and, potentially, the REA against unreasonably high Seabrook related costs. To the extent, however, that the footnote may be read to suggest that the commission was approving a wholesale rate that permitted the NHEC the right to pass all of its Seabrook costs onto PSNH and its ratepayers, regardless of the imprudency of those costs, it is clearly contrary to RSA 378:30-a and, therefore an erroneous statement of the commission's ratemaking authority.

Similarly without merit is the NHEC's reliance on a brief filed on behalf of the State in the appeal of the commission's financing decision. As NUSCO and PSNH point out in the Memorandum of Law filed in support of their objection to the motion for rehearing, an advocate's argument crafted to persuade the Supreme Court to reach a certain result cannot be relied on to support the NHEC's contention that the commission reviewed and approved the sellback agreement. Moreover, as Attorney General Merrill explained in his brief, questions concerning the prudency of the NHEC's Seabrook expenditures and their ultimate allocation between the NHEC ratepayers and investors were not resolved by the financing order:

> The distinction between the prudency determination for the purpose of establishing just and reasonable rates and the public good determination for financing purposes was clearly set forth in order no. 17,568 at 14. There the PUC recognized that a financing proceeding is forward looking and thus cannot involve the same type of retrospective evaluation inherent in a prudency review. The distinction is that the prudency review evaluates the prudency of historical sunk costs; public good hearings evaluate investment to finance future prospective costs.
>
> A hypothetical may be useful to illustrate the point. Assume that the utility determines that it needs a building and it imprudently hires the Laurel and Hardy Construction Company to build it a cost of $50,000. After two months, when the utility has spent $40,000 and is facing a pile of wood, it decides to fire Laurel and Hardy and hire Ace Construction for an additional $55,000 to clean the site and complete the job. In the above hypothetical, the financing question is not how the utility found itself

> confronted with a pile of wood, but rather whether it still needs the building and whether the incremental $55,000 and associated financing charges are the least cost means of meeting that need. In other words, the regulator is engaging in a forward looking examination of how best to extricate the utility from the consequences of its imprudent behavior. Subsequently, when the utility seeks ratemaking treatment for the total direct cost of $95,000 plus associated financing costs, the regulator can take a retrospective look and find that if the utility had been prudent in hiring Laurel and Hardy or in monitoring the work, it would have been able to meet its need for a total cost of $50,000. Thus, the regulator can disallow $45,000 plus the associated financing costs; in effect, a disallowance in a prudency proceeding of cost previously found to be consistent with the public good for the purpose of a forward looking financing proceeding.

Brief at 11-12.

As set forth in the order, the fact that the commission did not evaluate and approve the terms and conditions of the sellback agreement in the financing decision and, indeed, could not legally engage in such an evaluation under RSA 378:30-a is dispositive of the NHEC's claims of *res judicata,* estoppel and laches. "The doctrine of res judicata forbids a party to relitigate in a second action matters actually litigated or matters that could have been litigated in an earlier action between the same parties for the same cause of action." *Appeal of White Mts. Educ. Ass'n.*, 125 N.H. 774 (1984); *Scheele v. Village District,* 122 N.H. 784 (1982). In this case the NHEC cannot show that evaluation of the terms and conditions of the sellback was either an actual or potential issue for litigation in previous PUC proceedings.[4](81)

The NHEC argues that the order fails to address its laches argument. In the first instance, the question of whether the equitable doctrine of laches should be applied to preclude a litigant from pursuing a claim is a fact issue for resolution by the adjudicator. *Cote v Cote*, 94 N.H. 372, 373 (1947). Hence, we cannot resolve the NHEC's laches claim on this motion. Moreover, when evaluating a laches defense, courts consider whether the party claiming laches has demonstrated that there has been an unreasonable and prejudicial delay in prosecuting the claim. *Jenot v White Mt. Acceptance Corp.*, 124 N.H. 701, 710 (1984). As noted, the sellback agreement was not enforceable until Seabrook became commercially operable in July of 1990. In order to succeed on its laches defense the NHEC must demonstrate that PSNH's failure to request commission consideration of the sellback agreement for the three month period from July to September 1990 was unreasonably prejudicial to the NHEC. While the NHEC may be able to present evidence that will persuade us that this is the case, we cannot conclude that such a delay is unduly prejudicial on its face.

[6] The NHEC finally contends that the commission's order misconstrues the New Hampshire Supreme Court's holding in *Richter v Mountain Springs Water Company, Inc.*, 122 N.H. 850 (1982), with respect to the company's argument that the prohibition against impairment of contracts contained in the Contract Clause of the federal Constitution prevents the commission from reviewing the sellback agreement. We disagree with the NHEC's interpretation of *Richter.* A fair reading of that decision makes it clear that the New Hampshire Supreme Court adheres to the well established principle that state modification of existing utility contracts is a

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lawful exercise of the state's police power to regulate utilities in order to protect the public interest. *Id.* at 852, citing, *Midland Co. v K.C. Power Co,* 300 U.S. 109, 112-13 (1937).

[7] In conclusion, nothing in the NHEC motion for rehearing raises issues warranting further consideration of the commission's order finding that it has the authority and responsibility to review the sellback agreement. The motion is therefore denied.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the motion of New Hampshire Electric Cooperative, Inc. for rehearing is hereby denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1990.

FOOTNOTES

[1]The NHEC also is not challenging the commission's denial of the request to issue an order that the NHEC cease and desist from any judicial action to enforce the sellback agreement.

[2]The NHEC also argues that the commission erred in concluding that in the absence of review under RSA 378:20, RSA 378:1 and 7 grant us jurisdictional authority to review the sellback agreement. The NHEC claims that our authority under the latter statutes is contingent upon our promulgation of rules for wholesale rates. As is more fully explained in the order, our statutory authority to establish wholesale rates for the NHEC is not negated by the absence of rules specifying what the NHEC must file. *Kimball v New Hampshire Board of Accounting,* 118 N.H. 567 (1978).

[3]As we note in our October 1 order, the sellback

agreement is a substitute for a wholesale rate between the NHEC and PSNH.

[4]The NHEC's motion ignores the due process notice problems inherent in a ruling that *Re NHEC* estops PSNH from requesting commission review and approval of the sellback agreement. Because *Re NHEC* was noticed as a RSA Chapter 369 financing proceeding the commission could not engage in a RSA 378 review of the wholesale rate contemplated by the sellback agreement as part of that docket. *DeWees v N.H. Board of Pharmacy,* 130 N.H. 396 (1988).

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75 NH PUC 689

Re New England Telephone Company

DE 90-119
Order No. 19,970

New Hampshire Public Utilities Commission

October 31, 1990

ORDER authorizing a telephone local exchange carrier (LEC) to introduce a new digital private line service and directing the LEC and staff to pursue a generic investigation into the task oriented costing methodology used in developing cost support for the new service.

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1. SERVICE, § 433 — Telecommunications — Digital private line service — Local exchange carrier.

[N.H.] A telephone local exchange carrier was authorized to introduce a new digital private line service known as Digipath Digital Service II; it was found that the service would promote business activity in the state and would provide a net contribution to the revenue requirement of the LEC. p. 689.

2. RATES, § 143 — Cost of service — New service offerings — Telecommunications — TOC methodology.

[N.H.] A telephone local exchange carrier and commission staff were directed to pursue a generic investigation into the task oriented costing (TOC) methodology used in developing cost support for new telecommunications service offerings. p. 690.

By the COMMISSION:

ORDER

[1] WHEREAS, on July 13, 1990, New England Telephone Company (the Company) filed a petition seeking authority to introduce Digipath Digital Service II (DDS II) a digital private line service which provides for the simultaneous transmission of digital signals, for effect on August 12, 1990; and

WHEREAS, the filing was suspended via order no. 19,914, on August 10, 1990, to give staff adequate time to review the petition and obtain additional marketing and cost support; and

WHEREAS, approval of the DDS II service will promote business activity in the State of New Hampshire, and the service as priced will provide a net contribution to the Company's revenue requirement; and

WHEREAS, while Staff has a continuing concern with the Company's Task Oriented Costing Methodology (TOC), examination of the TOC methodology requires a more generic investigation; and

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WHEREAS, commission approval of an appropriate TOC methodology is necessary to facilitate NHPUC analysis of subsequent New England Telephone petitions for new services; it is hereby

ORDERED, that the New England Telephone and Telegraph Company, NHPUC Tariff No. 75, pages:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Master Table of Contents

Part C-Section 1 — First Revision of
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— First Revision of Page 1,
Part C-Section 9 — Original of Table of
Contents Page 1,
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through 12,

be and hereby are approved, and

[2] FURTHER ORDERED, that in order to facilitate commission analysis of new services, the Company and Staff pursue a generic investigation into the TOC methodology, and report back their findings to the Commission by December 3, 1990.

By Order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1990.

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NH.PUC*10/31/90*[51103]*75 NH PUC 690*Keene Gas Corporation

[Go to End of 51103]

75 NH PUC 690

Re Keene Gas Corporation

DR 90-164
Supplemental Order No. 19,971

New Hampshire Public Utilities Commission

October 31, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Gas distribution utility.

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[N.H.] A revised cost of gas adjustment rate of $0.2286 per therm was approved as just and reasonable for a gas distribution utility; the commission noted and approved the utility's action in amending its original filing by revising its costs downward in light of favorable conditions in the gas market.

APPEARANCES: For Keene Gas Corporation: Robert F. Egan, General Manager. For Consumer Advocate: Kenneth E. Traum. For Staff: Richard B. Deres, PUC Examiner.

By the COMMISSION:

REPORT

On September 28, 1990, Keene Gas Corporation, (Keene or the Company), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with this commission certain revisions to its tariff which provided for a winter period 1990-1991 Cost of Gas Adjustment (CGA), effective November 1, 1990. The original filing requested a CGA rate of $0.4595 per therm.

A revised filing was submitted on October 23rd, and the CGA will be bases on this filing. This later filing requests a CGA rate of $0.2286 per therm, excluding the N.H. State Franchise Tax, which is a decrease from the CGA rate of $0.2433 per therm allowed by the commission for the prior winter period. The proposed CGA of $0.6500 per therm is an increase from the base rate of $0.4214 per therm excluding the N.H. Franchise Tax.

A duly noticed public hearing was held at the commission's office in Concord, N.H. on October 25, 1990.

Areas covered by direct testimony and cross-examination of the Company witness included contracts, questions concerning adequate supplies, and transportation issues.

The Company submitted a revised filing late in the month to correct its original submission. In addition to correcting a discrepancy in that original filing, it took the opportunity to revise its proposed cost of gas downward based on changes in the market since the original filing was prepared.

In response to questions from staff and the Consumer Advocate, Company witness, Mr. Egan, explained how the Company arrived at its projections for this forthcoming period. In addition, questions concerning how contracts are arranged for, the amount of gas under contract, and availability of supplies were discussed.

In prior years the Company contracted for

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roughly 50% of its needs and consequently, went into the market for the other 50%. After the supply problems experienced last winter, the Company has placed approximately 80% of its needs under contract this year. Its contracts amount to over 2.2 million gallons for this coming winter period.

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Realizing the uncertainties of current events in the Middle East, staff raised several questions regarding the possibility of sharply rising fuel costs and continued availability of transportation. The Company indicated that several of its contracts include transportation, and it feels that a number of the companies that it has used in the past would remain available even if prices rose so sharply that some others were forced out of business.

It was found that in Attachment C of the filing, the average balance figure shown for the month of May was calculated by using a beginning balance of zero when it should have been the prior period balance; therefore, it was only one half of what it should have been. In the future the amount shown as the average balance in the first month on this Attachment shall be the full amount of the prior period balance.

The projected sales, costs and adjustments to the 1990-1991 winter CGA filing are consistent with those approved by the commission in past CGA's. The commission finds that Keene Gas Corporation's CGA rate of $0.2286 per therm is just and reasonable and therefore accepts such as filed.

Finally, the commission notes and approves Keene's actions in revising its costs downward in light of more favorable conditions which occurred late in the month. The Company could have retained its original, higher costs and temporarily increased its cash flow through the winter months. This could have resulted in possible financial hardship to some of its customers which has been avoided. The Company's actions show concern for its customers and recognition of the fact that high energy costs are a financial burden to many.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the 13th Revised Page 26, Superseding 12th Revised Page 26 of Keene Gas Corporation Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $0.2286 per therm for the period November 1, 1990 through April 30, 1991 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff page approved by this order become effective with all billings issued on or after November 1, 1990; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by a one time publication in newspapers having a general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities Classification in the Franchise Tax Docket DR 83-205, order no. 16,524

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1990.

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NH.PUC*11/01/90*[51104]*75 NH PUC 691*Claremont Gas Company

[Go to End of 51104]

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75 NH PUC 691

Re Claremont Gas Company

DR 90-167
Order No. 19,972

New Hampshire Public Utilities Commission

November 1, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Gas distribution utility.

[N.H.] A revised cost of gas adjustment rate of $0.3754 per therm was approved as just and reasonable for a gas distribution utility. p. 693.

2. AUTOMATIC ADJUSTMENT CLAUSES,

Page 691

§ 22 — Cost of gas adjustment clause — Rate revision — Lost and unaccounted for gas.

[N.H.] In a proceeding to revise the cost of gas adjustment rate of a gas distribution utility, the commission directed the utility to respond to concerns over its high level of lost and unaccounted for gas. p. 693.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 28 — Cost of gas adjustment clause — Rate revision — Credits — Rental income — Propane storage service.

[N.H.] The revised winter cost of gas adjustment rate of a gas distribution utility included a credit for rental income associated with propane storage facilities used to provide storage service to an affiliated propane supplier. p. 693.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman on behalf of Claremont Gas Company; Ken Traum, Consumer Advocate Office; Stuart Hodgdon and Mary Jean Newell, for Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On October 1, 1990, Claremont Gas Corporation, (Claremont or the company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission 129th Revised, Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit OCA 1). Said

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tariff was withdrawn prior to the CGA hearing.

On October 18, 1990, Claremont filed with this commission 129th Revised, Page 12-2 Tariff, N.H.P.U.C. No. 9 — Gas. (Exhibit 1). Said tariff provided for a 1990/1991 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1990 of $0.3683 per therm, before franchise tax. This is an increase of $0.4041 over the current effective rate of $(0.0358).

An Order of Notice was issued setting hearings for October 19, 1990. It was further ordered that a copy of the Order of Notice be published in a local newspaper.

ISSUES

During the hearing the following issues were addressed: a.) competitive bidding; b.) supply security; c.) lost and unaccounted for gas; d.) rental income and e.) computational errors.

COMPETITIVE BIDS

The subject of competitive bidding was raised by the Office of Consumer Advocate. The same subject was addressed at length in commission Reports and Orders No. 19,076 (73 NH PUC 196) and 19,810 (75 NH PUC 257).

The company witness, Joe Broomell, stated that although bids were sought over the telephone, no suppliers were willing to offer a fixed price contract. He said this unwillingness was due largely to unrest in the Middle East.

In response to questions from Commissioner Ellsworth, Mr. Broomell stated that Synergy Gas Corporation (Synergy), Claremont's parent, might be able to offer Claremont a six month fixed price, fixed volume contract if this was required. Exhibit #3 has been reserved for such a supply contract between Synergy and Claremont. The witness stated that this would be available within 10 working days of the date of this hearing.

SUPPLY SECURITY

Mr. Broomell testified that Synergy has an adequate supply of propane for Claremont, enough to last the winter period. Mr. Broomell assured Commissioner Ellsworth that Synergy would take care of the supply needs of Claremont. If supplies become tight in Selkirk N.Y., Mr. Broomell stated that Synergy could obtain product from companies with rail car storage.

LOST AND UNACCOUNTED FOR GAS

Page 692

Claremont has been providing monthly reports on its lost and unaccounted for gas. According to Mr. Broomell, the losses at Claremont are still in the 18% range although the commission only allows 8% recovery in the CGA. Mr. Broomell reported that new meters have been installed and some distribution line work has been done to cut down on losses. The commission reserved Exhibit #2 for a written response from the company concerning actual losses and what is being done to correct this ongoing problem.

RENTAL INCOME

In the absence of formal bids for propane supplies, Mr. Broomell accepted that the agreement between the parties in DR 89-185 (See Order #19,837 [75 NH PUC 298]), regarding

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compensation to Claremont for propane storage service to Synergy required a credit to the CGA equal to $.026 per gallon withdrawn for the next six months. This is in addition to a capacity credit of $.005 per gallon or $150 per month on the 30,000 gallon retail tank used by Synergy.

Mr. Broomell also agreed that the best way to track the Synergy withdrawals in the future is to take the information from Claremont's monthly propane report. The accountants for Synergy will add the actual monthly retail deliveries to the 30,000 gallon tank, each month, and multiply by $.026 starting May 1, 1990 for gas withdrawn by Synergy. The monthly through-put charge to Synergy as well as the capacity charge of $150 will appear as a credit on Claremont's books.

The company undertook to include an additional schedule, (F), in its CGA filing to forecast the winter rental income. A calculation of actual 1990/91 rent to forecasted will be done during the winter 1991/92 period to adjust for any overage or shortage.

Because the storage service agreement started on May 1, 1990, but Claremont failed to reflect this on its Summer CGA, Mr. Broomell agreed that a reconciliation will take place in the Summer 1991 CGA. In the summer period, Claremont will include a credit on its filed CGA for the expected 1991 summer rent as well as a summer 1990 actual rent.

COMPUTATIONAL ERRORS

The first winter period filing dated October 1, 1990 was withdrawn. The revised filing dated October 18, 1990, was found to have many errors, including; a.) the rental forecast was calculated at a rate of $0.031; b.) April 1990 propane purchases were omitted from the company's reconciliation analysis.

On October 22, 1990 a second revised CGA was filed. Said tariff provided for a 1990/91 Winter Cost of Gas Adjustment of $0.3754 per therm, before franchise tax. This is an increase of $0.4112 over the current effective rate of ($0.0358).

COMMISSION ANALYSIS

[1-3] Claremont is to provide the commission with two additional exhibits. Exhibit #2 is for the report on lost and unaccounted for gas. In this regard, Claremont is directed to file with this commission a report which explains why the company did not purchase a calorimeter (see transcript DR 90-044, page 14). This report is to be filed prior to December 1, 1990. Exhibit #3 is for a draft of a firm gas contract between Synergy and Claremont. These Exhibits are to be filed within ten working days of the date of the hearing.

The CGA for the 1990/1991 winter period reflects forecasted retail rental revenues received from Synergy to Claremont based on the approved agreement in DR 89-185. We find this appropriate and in accordance with our previous orders.

Company witness, Joe Broomell, introduced himself as the Acquisition Coordinator for Synergy Gas, which is the parent company of Claremont Gas. The commission directs that a representative from Claremont be in attendance at all future CGA hearings.

Because of Claremont's estimate of rising gas prices for the upcoming winter period, the commission directs Claremont to fill its two utility tanks prior to November 1, 1990.

Finally, based on Claremont's projected gas costs, we find the company's proposed CGA rate of $0.3754 to be reasonable.

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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Claremont Gas Corporation, 129th Revision, Page 12-2, N.H.P.U.C. No. 9 — Gas, issued October 22, 1990, providing for a Winter Cost of Gas Adjustment of $0.3754 per therm, before the franchise tax, is approved; and it is

FURTHER ORDERED, that Claremont file written documentation detailing actual unaccounted for gas, and the company's effort to reduce these losses; and it is

FURTHER ORDERED, that Claremont submit a six month fixed price, fixed volume draft gas contract between Synergy and Claremont; and it is

FURTHER ORDERED, that for the 1991 Summer CGA, formal written letters of solicitation seeking bids for propane be mailed to suppliers and that the responses be submitted to the commission.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1990.

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NH.PUC*11/01/90*[51105]*75 NH PUC 694*Public Service Company of New Hampshire

[Go to End of 51105]

75 NH PUC 694

Re Public Service Company of New Hampshire

DR 90-131
Order No. 19,973

New Hampshire Public Utilities Commission

November 1, 1990

ORDER approving a settlement agreement governing the interruptible rate programs of an electric utility.

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1. RATES, § 322 — Electric rate design — Demand and load — Interruptible rate program.

[N.H.] Pursuant to a settlement agreement, the Rate WI interruptible rate program of an electric utility was revised to set the full interruptible demand credit level for customers taking service under the one-hour notification option at $33 on an annual basis or $11 per kilowatt for each of the three winter months during which the rate is available. p. 696.

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2. RATES, § 322 — Electric rate design — Demand and load — Interruptible rate program.

[N.H.] Pursuant to a settlement agreement, the Rate WI interruptible rate program of an electric utility was revised to eliminate a provision that allowed new customers with less than the minimum requirement of 100 KW of designated load to take service under Rate WI if the customer paid for the cost of separately metering the load; existing customers with less than 100 KW of designated load would remain eligible for participation in the program. p. 696.

3. RATES, § 322 — Electric rate design — Demand and load — Interruptible rate program.

[N.H.] Pursuant to a settlement agreement, an electric utility was authorized to offer a New England Power Pool interruptible rate (Rate N-5); customers taking service under the rate would receive payment for each kilowatt of interruption provided during each requested interruption. p. 696.

4. RATES, § 322 — Electric rate design — Demand and load — Interruptible rate program.

[N.H.] Pursuant to a settlement agreement, the commission authorized an electric utility to offer a New England Power Pool (NEPOOL) interruptible rate containing the following substantive provisions: (1) the load must be available for winter interruption during at least one NEPOOL capability period; (2) interruptions would be requested whenever NEPEX notifies the utility of the need for interruption; (3) the level of credit would be applied based on the customer's average response during each requested interruption; (4) the timing and duration of interruptions would not be predetermined: and (5) no credit would be given if interruption were not requested. p. 696.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; James T. Rodier, Esq. on behalf of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On June 29, 1990, the commission received a letter from Public Service Company of New Hampshire (PSNH) that outlined PSNH's intentions with respect to its 1990-1991 interruptible program. In that letter, PSNH stated its intention of offering a NEPOOL interruptible rate in the future as well as a PSNH stand alone Rate WI program for the upcoming winter period.

On August 1, 1990, PSNH filed proposed revisions to Rate WI, with a proposed effective date of December 1, 1990, and also filed NEPOOL Type 5 Interruptible Service Rate N-5 (Rate N-5) with a proposed effective date of November 1, 1990.

On August 14 and 22, 1990, PSNH representatives informally met with the commission staff in an effort to reach an agreement on PSNH's proposals.

On August 22, 1990, the commission issued an order of notice scheduling a hearing on

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September 25, 1990. The parties met on several occasions subsequent to the issuance of the order of notice, and on September 24, 1990, the parties filed a document entitled "Recommendations of the Parties for Resolution of this Proceeding" (Recommendations) (appended hereto as Appendix A) which disposed of all issues in this case. A hearing on the recommendations was held on September 25, 1990.

II. *Position of the Parties*

A. PSNH

The only substantive change proposed by PSNH to Rate WI in its August 1, 1990 filing was a reduction to the level of credit paid to customers. PSNH proposed that the level of credit for full compliance be set at $30.00 per KW ($10.00 per KW per month) for customers selecting a one hour notification lead time option.

PSNH also proposed a new Rate N-5, which is a NEPOOL interruptible service. The provisions of Rate N-5 are as follows:

1. The load must be available for interruption during at least one Capability Period (winter or summer);

2. Interruptions will be requested whenever NEPEX notifies PSNH of the need for interruption;

3. The timing and duration of interruptions are not predetermined;

4. Credit is applied based on the Customer's average response during each requested interruption. The level of credit for full compliance is currently $2.10 per KW per day; and

5. No credit is given if interruption is not requested during the month.

All other provisions, including the manner in which the amount of interruption that the customer has provided is determined, are essentially the same as the provisions of Rate WI. PSNH proposed that Rate N-5 become effective on November 1, 1990, which is the beginning of the winter Capability Period.

Finally, PSNH proposed, in its August 1, 1990 filing, that the credit level under Rate WI be reduced to provide funds for wiring incentive payments to customers to encourage participation under Rate N-5.

B. STAFF

The staff was in general agreement with PSNH on most of its proposals, but took the position that the wiring incentive payment program under Rate N-5 had not been developed sufficiently to warrant approval. The staff also questioned whether allowing customers with Designated Loads of less than 100 KW to participate under Rate WI and Rate N-5 was cost effective.

In its testimony at the hearing, PSNH Witness Hall stated that after discussion with the

staff, PSNH decided not to offer a wiring incentive program this year.

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III. *Summary of the Recommendations of the Parties*

The Recommendations contained proposed revised tariff pages for Rate WI (5th Revised Pages 69 and 70 and 3rd Revised Page 71), and proposed new tariff pages for Rate N-5 (Original Pages 72, 73 and 74). The Recommendations described the changes being proposed to Rate WI and the substantive provisions of Rate N-5, as discussed below.

A. PROPOSED REVISIONS TO
RATE WI

[1, 2] The Recommendations proposed that the level of credit for full compliance under Rate WI be set at $33.00 per KW for the three-month period, or $11.00 per KW per month.

The Recommendations also proposed elimination for new customers of the provision of Rate WI which allowed customers with less than the minimum requirement of 100 KW of Designated Load to take service under Rate WI if the customer paid for the cost of separately metering the load. The parties concluded that the administrative burden and cost associated with implementation and administration of special contracts for interruptible loads less than 111 KW exceeded the benefit realized by allowing such smaller interruptible loads over Rate WI. Existing customers with loads less than 100 KW are still eligible for participation.

B. RATE N-5

[3, 4] The Recommendations proposed that Rate N-5 be approved essentially as filed by PSNH in its August 1, 1990 filing, excluding the provision for waiver of the 100 KW minimum for Designated Load, as discussed above.

C. FORM CONTRACTS FOR RATE N-5
CUSTOMERS

The Recommendations proposed the use of the same form of contract for Rate N-5 Customers with temperature-sensitive loads that was approved for Rate WI customers in Docket No. DR 89-171. The parties proposed that the same order *NISI* process used for Rate WI special contracts be adopted for Rate N-5 special contracts.

D. RECOVERY OF COSTS ATTRIBUTABLE TO INTERRUPTIBLE RATES

The Recommendations did not propose anything with respect to recovery of costs associated with interruptible rates. PSNH reserved its right to seek cost recovery at a later time in a manner consistent with the commission's order no. 19,889 (75 NH PUC 396) in Docket No. DR 89-244.

IV. *Commission Analysis*

Based upon our review of the foregoing recommendations and the examination conducted during the hearing on September 25, 1990, we find that the Recommendations are soundly based upon principles previously adopted by the commission and are, therefore, just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the "Recommendations of the Parties for Resolution of the Proceeding" be

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approved.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1990.

APPENDIX A

Recommendations of The Parties For Resolution Of This Proceedings

I. INTRODUCTION

These recommendations are made by the Staff of the New Hampshire Public Utilities Commission (Staff) and Public Service

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Company of New Hampshire (PSNH). These recommendations provide for a comprehensive settlement of all issues in this docket. The parties recommend that the Commission approve the revised tariff pages for Rate VI attached hereto as Attachment 1, and the new tariff pages for Rate N-5 attached hereto as Attachment 2. Further, the parties recommend that the Commission approve the expenditure of the incentive payments and cost recovery specified herein.

II. BACKGROUND OF THIS PROCEEDING

Rate VI has been offered to customers since the winter of 1987-1988. On August 1, 1990, PSNH filed proposed revisions to Rate WI to become effective on December 1, 1990 and also filed for a new interruptible rate, NEPOOL Type 5 Interruptible Service Rate N-5, to become effective on November 1, 1990.

PSNH met with the Staff on August 14 and 22, 1990, and were able to reach agreement on the concepts and principles contained in these Recommendations.

III. REVISIONS TO RATE VI TARIFF PAGES

The revised Rate VI tariff pages included in Attachment 1 contain two changes from the tariff pages currently in effect, as described below.

A. Level of Credit

The parties recommend that the full Interrupted Demand Credit level for customers taking service under the one hour notification option be set at $33.00 on an annual basis or $11.00 per kilowatt for each of the three winter months during which the rate is available. All other credit amounts, including the Excess Interrupted Demand Credit, will be adjusted in the same proportions applied to last year's credit levels, as shown in Attachment 1.

PSNH originally proposed a $30.00 per kilowatt annual credit level ($10.00 per kilowatt per month) based on its interpretation of the framework and methodology developed by the Staff in Docket No. DR 89-171. Pursuant to discussions with the Staff to clarify the framework and methodology, the parties have agreed to the higher credit levels cited above.

The parties also recommend that the Participation Incentive Credit be set at $2.50 per kilowatt per month for customers taking service under the one-hour notification option and $1.75 per kilowatt per month for customers taking service under a six-hour notification option.

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B. Elimination of 100 KW Waiver

The parties recommend elimination of the provision in Rate VI which allows customers with less than the minimum requirement of 100 KW of Designated Load to take service under Rate VI if the customer pays for the cost of separately metering the load. Whenever the waiver was granted, a special contract was filed with the Commission for approval. The parties have concluded that the administrative burden and cost associated with implementation and administration of contracts for interruptible loads less than 100 KW exceeds the benefits realized by allowing such smaller interruptible loads under Rate WI.

Customers who can provide at least 100 KW of interruptible load in aggregate from different smaller accounts that individually have less than 100 KW of interruptible load will still be allowed to take service under a special contract, as was the case last year. Additionally, PSNH will continue to honor existing special contracts which granted waivers for smaller customers because the ongoing cost of administering such existing contracts is low.

IV. DESCRIPTION OF RATE N-5

Attachment 2 contains a new interruptible rate, Rate N-5, that is a NEPOOL interruptible service. Customers taking service under Rate N-5 will receive payment for each kilowatt of interruption provided during each requested interruption. The substantive provisions of Rate N-5 are as follows:

• The load must be available for interruption during at least one NEPOOL Capability Period (winter or summer).

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• Interruptions will be requested whenever NEPEX notifies PSNH of the need for interruption.

• The timing and duration of interruptions are not predetermined.

• Credit is applied based on the customer's average response during each requested interruption. The level of credit for full compliance is currently $2.00 per KW per day.

• No credit is given if interruption is not requested during the month.

All other provisions, including the determination of the amount of interruption the customer has provided, are essentially the same as the provisions of Rate VI.

V. FORM CONTRACT FOR RATE N-5 CUSTOMERS WITH TEMPERATURE-SENSITIVE LOADS

The parties recommend that the Commission approve the use of the same form contract for Rate N-5 customers with temperature-sensitive loads that was approved for Rate VI customers last winter. The parties also recommend that the same Order *Nisi* process used for Rate VI special contracts be adopted for Rate N-5 Special contracts.

VI. RECOVERY OF COSTS ATTRIBUTABLE TO INTERRUPTIBLE RATES

The parties make no recommendation at this time with respect to recovery of costs associated with interruptible rates. PSNH reserves the right to request recovery of program costs at a later

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time in a manner consistent with the provisions of Order No. 19,889 in Docket No. DR 89-244.

VII. CONDITIONS

A. The recommendations contained in this agreement are a full, complete and final agreement of the parties with respect to all the issues considered within the scope of this agreement.

B. The parties' agreement to the terms of these recommendations is subject to the approval and acceptance of the terms of these recommendations in their entirety and without change or condition by the Commission. Should the Commission reject these recommendations in whole or in part, no portion thereof shall be offered or introduced as evidence or otherwise used in this or any other proceeding.

C. The discussions which have produced these recommendations have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion and are not to be used or disclosed in any manner in connection with this proceeding, any other proceeding or otherwise.

D. These recommendations are made this 24th day of September, 1990 by and among the parties who represent that they are fully authorized to do so on behalf of their principals.

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION STAFF

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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75 NH PUC 707

Re Northern Utilities, Inc. — New Hampshire Division

DR 90-168
Order No. 19,974

New Hampshire Public Utilities Commission

November 5, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Gas distribution utility.

[N.H.] A revised cost of gas adjustment rate of a $0.1592 per therm credit was approved as just and reasonable for a gas distribution utility. p. 707.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Cost of gas adjustment clause — Rate revision — Emergency sales — Cost allocation.

[N.H.] In a proceeding to revise the cost of gas adjustment rate of a gas distribution utility, the commission directed the utility to provide the commission with a study indicating whether the allocation of costs associated with the provision of emergency gas supplies to an interruptible customer in its Maine division resulted in an increase or decrease in the cost of gas for New Hampshire ratepayers. p. 708.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Prior period deficiency — Cost allocation.

[N.H.] The proposed cost of gas adjustment rate of a gas distribution utility was revised to reflect the fact that it would be charged a pro rata share of a prior period deficiency incurred by

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another operating division where some 75% of the customers of that operating division would be transferred to it. p. 708.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Procurement practices — Cost of gas adjustment clause — Vapor service supplies.

[N.H.] In a proceeding to revise the cost of gas adjustment rate of a gas distribution utility, the commission directed the utility to file a study that supports its contentions regarding its choice of vapor service supplier. p. 709.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 25 — Cost of gas adjustment clause — Take-or-pay cost passthrough — Gas distributor.

[N.H.] A gas distribution utility was authorized to include a surcharge of $0.0005 per therm in its cost of gas adjustment rate to recover its share of pipeline take-or-pay (TOP) costs approved by the Federal Energy Regulatory Commission (FERC) notwithstanding the fact that a federal court had ruled that the FERC-approved TOP recovery methodology constituted retroactive ratemaking; should the FERC amend its recovery mechanism, any resulting overrecovery or underrecovery by the distributor would be addressed through a surcharge or surcharge credit to customer bills. p. 709.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; James J. Rodier, Esquire, Staff Attorney; George McCluskey, and James J. Cunningham, Jr., for Staff; and Kenneth Traum, for the Office Consumer Advocate (OCA).

By the COMMISSION:

REPORT

[1] On October 1, 1990 Northern Utilities, Inc., (Northern or the company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission Nineteenth Revised Page 24, Superseding Eighteenth Revised Page 24, N.H.P.U.C. No. 7 providing for a 1990/1991 Winter Cost of

Page 707

Gas Adjustment (CGA) effective November 1, 1990. This Cost of Gas Adjustment is a credit of $(.1592) per therm before New Hampshire franchise tax.

An Order of Notice was issued setting the date of the hearing for October 25, 1990 at 10:00 a.m. at the commission office in Concord, New Hampshire.

During the hearing the following issues were discussed: emergency sales, prior period deficiency, Bay State supplemental supplies, Distrigas vapor service, take-or-pay charges, and firm pipeline transportation.

Emergency Sales

[2] During the month of February, 1990, Northern provided emergency gas supplies to an interruptible customer in the Maine division. As a result, the volume of firm send out increased

for the Maine division and for Northern as a whole, thereby increasing its total cost of gas in an amount equal to the cost of the incremental supply. Since the cost of gas (CGA) for Northern is allocated between the New Hampshire and Maine divisions based on the volume of firm send out, the Maine division received a larger percent allocation of the total cost of gas. In turn, the New Hampshire division received a smaller percent allocation of the total cost of gas.

In response to questioning from staff, Mr. Ferro was unable to say whether the lower percentage when applied to a greater total cost resulted in an increase or decrease in costs for New Hampshire ratepayers. To provide an answer the company would have to perform a study that involved a number of assumptions regarding the availabilities of supplementary gas supplies. The company agreed to provide the commission with such a study. The commission has reserved Exhibit #6 for this study.

Prior Period Deficiency

[3] In response to questioning from the OCA, Mr. Ferro stated that during the prior winter period, the Salem division of Northern supplied propane to eighty-six customers resulting in a prior period deficiency of $7,925. However, effective December 1, 1990, only twenty-five of these customers will remain. The other sixty-one customers will be transferred to the New Hampshire division.

Since the prior period deficiency pertains to all eighty-six customers, Mr. Ferro agreed that it would be unreasonable to assign the total prior period deficiency to the remaining Salem customers. A more reasonable solution, according to Mr. Ferro, would be to allocate a pro-rata portion of the total deficiency (i.e., $6,275) to the New Hampshire division. However, Mr. Ferro did state that because the dollars involved are relatively insignificant, the proposed New Hampshire division CGA adjustment should remain unchanged.

Bay State Supplemental Vapor Supplies

A. *Sales to ENGI*

Bay State Gas Company, the parent of Northern, provides supplemental gas service ("off-system" sales) to several New England gas utilities, including Northern and EnergyNorth Natural Gas (ENGI). In order to safeguard gas supplies for customers of Bay State and Northern, Mr. Saco testified that starting on December 20, 1989, Bay State curtailed vapor supplies to all "off-system" customers that had fully taken their December contracted quantities. Subsequently, however, as part of the arrangement that produced the Governor's Energy Office (GEO) program, Bay State agreed to provide in December ENGI's vapor quantities for January and February 1990. In return, ENGI undertook to make available propane supplies to certain New Hampshire retail propane companies. Consequently, the GEO agreement limited ENGI's curtailment of vapor service to just one day, December 20, 1989. (See Exhibit #3). Mr. Saco stressed that Bay State's curtailment of vapor service to ENGI was not the cause of propane shortages in New Hampshire since the curtailment occurred only after a very substantial overrun of the contractually specified firm amounts had occurred.

B. *Sales to Northern*

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[4] Mr. Saco stated that Northern's supplemental fuel requirements for the 1990/91 winter will be met by a combination of propane purchased from wholesalers and "supplemental supplies" furnished by Bay State Gas Company. He went on to say that although Bay State "supplemental supplies" can comprise propane and liquid or vapor LNG, most will be delivered by pipeline in the form of LNG vapor. The rate charged for Bay State supplemental gas service is set by the Massachusetts DPU. In this regard, Mr. Saco was asked whether Northern could reduce its gas costs by purchasing vapor service directly from Distrigas instead of from Bay State. Mr. Saco responded that an internal study showed Distrigas vapor to be more costly and less flexible than the same supply from Bay State. In support of this claim, Mr. Saco agreed to provide the commission with a copy of his study. Further, Mr. Saco stated that Distrigas vapor is less reliable because it is dependent on "best efforts" interruptible transportation on the Tennessee pipeline. In contrast, Bay State vapor service is dependent on transportation from the Granite State Gas Transmission pipeline which is owned and controlled by Bay State.

Take-or-Pay Charges

[5] Northern's filing contains a surcharge of $0.0005 per therm to recover the Northern New Hampshire division share of the FERC approved Tennessee take-or-pay charges. In response to questions from staff, Mr. Ferro reported that the US Supreme Court had recently denied review of the D.C. Circuit Court's decision that the FERC approved take-or-pay recovery mechanism was retroactive ratemaking. Nevertheless, it is the company's belief that unless the FERC withdraws its authorization for Tennessee's take-or-pay charges, the company still has approval to recover from ratepayers charges levied by Tennessee. Since November 1988 these changes have totalled $344,813. Mr. Ferro noted that, should the FERC ultimately decide to amend the recovery mechanism, the resulting over or under collection of take-or-pay costs can be addressed through an surcharge/credit surcharge to customers bills.

Commission Analysis

We will approve the proposed CGA of $(0.1592) based on our finding that it is reasonable and in the public interest.

Regarding the recovery of the reported deficiency in the Salem division filing for the 1989/90 winter period, we direct Northern to allocate a pro-rata share (i.e., $6,275) of that total deficiency to Northern's New Hampshire division to which sixty-one customers will be transferred effective December 1, 1990.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is

ORDERED, that Nineteenth Revised Page 24, Superseding Eighteenth Revised Page 24, of N.H.P.U.C. No. 7 — Gas providing for a cost of gas adjustment of $(.1592) per therm, be, and hereby is, approved; and it is

FURTHER ORDERED, that publication of this Cost of Gas Adjustment be given one time public notice in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the company shall file Exhibit #6 within ten (10) days on the

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impact on New Hampshire ratepayers of the emergency sale to the Maine division customer during the 1989/1990 winter period; and it is

FURTHER ORDERED, that Northern file within ten (10) working days of this order the study that supports its contention that Bay State vapor service is less costly than Distrigas vapor service; and it is

FURTHER ORDERED, that the over/under collection of Northern Utilities, Inc. — New Hampshire Division adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

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By order of the Public Utilities Commission of New Hampshire this fifth day of November, 1990.

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NH.PUC*11/05/90*[51107]*75 NH PUC 710*Northern Utilities, Inc. — Salem Division

[Go to End of 51107]

75 NH PUC 710

Re Northern Utilities, Inc. — Salem Division

DR 90-165
Order No. 19,975

New Hampshire Public Utilities Commission

November 5, 1990

ORDER revising the cost of gas adjustment rate of a gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Gas distribution utility.

[N.H.] A revised cost of gas adjustment rate of $0.3111 per therm was approved as just and reasonable for a gas distribution utility. p. 710.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment clause — Rate revision — Prior period deficiency — Cost allocation.

[N.H.] The proposed cost of gas adjustment rate of a gas distributor was revised to reflect the fact that a pro rata share of a prior period deficiency would be charged to another operating

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division to which some 75% of its customers had been transferred. p. 710.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; Kenneth Traum for the Consumer Advocate; James J. Cunningham, Jr., for Staff.

By the COMMISSION:

REPORT

On October 1, 1990, Northern Utilities, Inc. Salem Division (Salem or the company), a public utility engaged in the business of supplying gas to the towns of Salem and Pelham, New Hampshire filed with this commission 2nd Revised Page 28, Superseding 1st Revised Page 28 N.H.P.U.C., providing for the 1990/1991 Winter Cost of Gas Adjustment (CGA) effective November 1, 1991. On October 19, 1990, the company filed 3rd Revised Page 28, Superseding 2nd Revised Page 28 providing for 1990/1991 Winter CGA effective November 1, 1990 which included an update on inventory activity and propane prices. The revised filing requested a CGA rate of $0.4042 per therm excluding the New Hampshire state franchise tax. On October 31, 1990, the company filed 4th Revised Page 28, Superseding 3rd Revised page 28 providing for 1990/1990 Winter CGA effective November 1, 1990 which included a revision for the prior period deficiency.

Areas covered through direct testimony and cross examination included an explanation of the 3rd Revised Page 28 and the following: prior period deficiency and direct deliveries.

Prior Period Deficiency

[1, 2] The Office of the Consumer Advocate raised the issue of recovery of prior period deficiency. The company agreed to allocate a portion of the Salem division's prior period deficiency of $7,925 to the New Hampshire division. The company indicated that the full cost of the prior period deficiency is included in the Salem division's costs. The company stated that during the prior winter period, the Salem division supplied propane to eighty-six customers. However, effective December 1, 1990, it will supply only twenty-five of these customers. The balance of sixty-one customers will be transferred to natural gas supply and will be customers of the New Hampshire division.

Since the prior period deficiency pertains to all eighty-six customers, the cost should be allocated to all these customers on a pro-rata

Page 710

basis. The company and the commission staff are in agreement that the Salem division's pro-rata portion of this deficiency should be $1,650 and that the New Hampshire division's pro-rata portion is $6,275. The reduced amount for the Salem division will be booked as a cost of gas for Northern's Salem division for the 1990/1991 Winter period. The impact of this adjustment is to reduce the CGA to $0.3111/therm. The commission reserved Exhibit #3 for the company's study summarizing this adjustment.

Direct Deliveries

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The company segregates its propane costs into two categories; inventory and direct delivery. In response to questions from staff, the company indicated that the propane costs for direct delivery are provided by its retail propane division, Northern Propane, and that its costs include handling, transportation and other operating expenses. The company stated that these costs amount to roughly $0.29 per gallon in addition to Northern Propane's current average cost of gas of $0.6521 per gallon.

The company stated that it is aware of the difference in cost between direct deliveries and inventory and indicated that the direct deliveries are to a tank farm in Salem that serves only 8 customers. Since the tank farm is fed by two 1,000 gallon tanks, deliveries cannot be arranged by scheduling transport trailers which have a capacity of more than 9,000 gallons. Thus the tanks are not supplied by a wholesale supplier but are supplied by Northern Propane's retail propane delivery truck.

In response to staff questions about competitive bidding, the company indicated that Northern Propane has been supplying the propane for the 8 Salem customers since roughly June 1989. The company indicated that retail prices in the area have consistently been higher than Northern Propane's prices and that retail prices are currently about $0.30 per gallon higher than the forecast used in the 1990/1991 Winter CGA.

Commission Analysis

We will approve the proposed CGA of $0.3111 per therm based on our finding that it is reasonable and in the public interest.

Regarding the prior period deficiency we direct Northern to charge the New Hampshire division a pro-rata share (i.e., $6,275) of the total deficiency. This share will be booked as a cost of gas for Northern's New Hampshire division for the 1990/1991 Winter period.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is

ORDERED, that 4th Revised Page 28, Superseding 3rd Revised Page 28, N.H.P.U.C. tariff of Northern Utilities, Inc. — Salem Division, providing for a cost of gas adjustment of $0.3111 per therm for the period of November 1, 1990 through April 30, 1991 is approved by this Order, said rates to become effective with all billings issued on or after November 1, 1990; and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal*. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utility classification in the Franchise Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this fifth day of November, 1990.

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75 NH PUC 712

Re New England Power Company

DF 90-128
Order No. 19,976

New Hampshire Public Utilities Commission

November 6, 1990

ORDER authorizing an electric utility to issue and sell general and refunding mortgage bonds to support the issuance of pollution control revenue bonds to finance expenditures related to pollution control equipment.

SECURITY ISSUES, § 111 — Financing methods and practices — Bond issuance — Pollution control revenue bonds — Seabrook facilities — Electric utility.

[N.H.] An electric utility was authorized to issue and sell general and refunding mortgage bonds to support the issuance of pollution control revenue bonds (PCRBs) to finance expenditures related to pollution control equipment associated with its ownership share of certain facilities at the Seabrook nuclear generating station; the PCRBs would be sold to the public pursuant to negotiated underwriting agreements between the Industrial Development Authority of the State of New Hampshire (NHIDA) and one or more underwriters and NHIDA would lend the proceeds from the sale of the PCRBs to the utility in exchange for its promise to make payments to NHIDA corresponding to the payment of the principal, premium (if any) and interest on the PCRBs sold to the public; to secure it obligation, the utility would issue general and refunding mortgage bonds to NHIDA.

APPEARANCES: Gregory A. Hale, Esquire and Geraldine M. Zipser, Esquire for New England Power Company; Eugene F. Sullivan, Finance Director and Thomas Frantz, Economist, for the Commission staff.

By the COMMISSION:

REPORT

New England Power Company (the "company"), is a utility subject to our jurisdiction. On July 26, 1990, the company filed a petition requesting authorization and approval from the commission for the issue and sale of not exceeding $150,000,000 aggregate principal amount outstanding at any one time of the company's General and Refunding Mortgage Bonds ("New

G&R Bonds"). The $150,000,000 authorization request for New G&R Bonds consists of two parts: $70,000,000 would be used to refinance existing G&R Bonds and $80,000,000 would be used to reimburse the company for expenditures related to pollution control or solid waste disposal equipment that have not previously been financed with pollution control revenue bonds. The company's petition also requests authority to issue and pledge First Mortgage Bonds ("New Pledged Bonds") in aggregate principal amount equal to the aggregate principal amount of the New G&R Bonds issued. The company also requests authorization and approval of the commission for the execution of one or more loan agreements or supplemental loan agreements with The Industrial Development Authority of the State of New Hampshire ("NHIDA"), a public agency empowered to issue pollution control revenue bonds ("PCRBs") on behalf of enterprises such as the company.

The commission bifurcated consideration of the company's petition and in Order No. 19,947 (75 NH PUC 659) dated October 2, 1990 authorized and approved the issue and sale of not exceeding $70,000,000 aggregate principal amount outstanding at any one time of the New G&R Bonds, an equal amount of New Pledged Bonds, and the execution of one or more loan agreements with NHIDA. This Order addresses the remaining requests contained in the company's petition.

A public hearing was held on the petition on October 24, 1990.

The company presented one witness,

Page 712

Michael E. Jesanis, Director of Corporate Finance for New England Power Service Company, an affiliate of the company.

The company also filed the following exhibits: NEP-1, the prefiled testimony of Michael E. Jesanis; NEP-2, the company prefiled financial statements; NEP-3, the company's amended application; and NEP-4, the supplemental direct testimony of Michael E. Jesanis.

The company's financial statements provided the basis of testimony relating to the company's capitalization. They indicate that as of March 31, 1990, the company's outstanding common stock totalled $128,997,920, represented by 6,449,896 share outstanding having a par value of $20 per share. Premiums on capital stock amounted to $86,891,450. Other paid-in capital was $288,000,000. Retained earnings were $12,293,676. The company had 860,280 shares of preferred stock outstanding which were composed of two classes: 6 percent cumulative preferred stock having a par value of $100, of which one series is outstanding; and dividend series preferred stock, also having a par value of $100, of which seven series are outstanding with dividend rates ranging from 4.56 percent to 8.68 percent. The combined aggregate par value of the company's preferred stock was $86,028,000. Long-term debt outstanding, net of unamortized premiums and discounts, amounted to $761,054,493, consisting of eleven issues of First Mortgage Bonds and thirteen issues of General and Refunding Mortgage Bonds ("G&R Bonds") with interest rates ranging from 4-3/8 percent to 10-5/8 percent and with maturity dates from 1991 to 2019. Not shown in the capitalization is $540,350,000 of pledged First Mortgage Bonds held by the Trustee for the G&R Bonds.

The company reported that as of March 31, 1990 its utility plant was $2,044,467,406

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(including capital leases). Construction work in progress was shown to be $337,928,023, for a total utility plant of $2,382,395,429. The accumulated depreciation reserve against such property amounted to $734,107,574. In addition, the company reported its investment in nuclear fuel as $9,900,572 for a net utility plant of $1,658,188,427. Other property and investments, of which a majority was authorized investments in securities of nuclear generating companies, was shown as $53,273,121.

Under the company's proposal, New G&R Bonds would be issued in one or more series, with each series having one or more classes, under and pursuant to the terms of the company's General and Refunding Mortgage Indenture and Deed of Trust dated January 1, 1977, as amended and supplemented ("G&R Indenture"). The New G&R Bonds will have a lien subordinate to the company's First Mortgage Bonds, and will mature in not more than 30 years from the date of initial issue. The exact maturity date will be fixed before each issue. Only fully registered bonds will be issued. All of the New G&R Bonds will be issued in connection with the of PCRBs.

Mr. Jesanis testified that up to $80,000,000 of New G&R Bonds would be issued to support the issuance of PCRBs to finance permanently expenditures related to pollution control equipment associated with the company's ownership share of certain facilities that have been constructed at the Seabrook 1 nuclear generating station. Any PCRBs issued on the company's behalf would be issued by NHIDA. The PCRBs would be sold to the public pursuant to negotiated underwriting agreements between NHIDA and one or more underwriters. While the company would not be a party to any underwriting agreements, any such agreements will provide that their terms will be satisfactory to the company. Additionally, the company may provide certain written assurances to the underwriter or underwriters.

The company has requested NHIDA to issue PCRBs to be sold to the public which contain provisions whereby the interest rate is either (i) periodically adjusted by a remarketing agent on the basis of prevailing market conditions, or (ii) at a fixed rate for the entire term of the bonds. In the case of variable rate bonds, the company would determine the length of the interest period. Pursuant to one or more loan agreements or supplemental loan agreements between the company and NHIDA, NHIDA would lend the proceeds from the sale of the PCRBs to the company in exchange for the company's promise to make payments to

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NHIDA corresponding to the payment of the principal of and premium, if any, and interest on the PCRBs sold to the public. To secure its obligations, the company would issue G&R Bonds to NHIDA.

Mr. Jesanis explained that the New G&R Bonds may contain sinking fund, mandatory redemption, and optional redemption provisions that differ from those of typical G&R Bonds.

Because the interest paid to holders of the PCRBs would be exempt from Federal income tax under the Internal Revenue Code (except for certain alternative minimum taxes), the company anticipates that purchasers of these bonds would be willing to accept a lower interest rate than on a taxable security of like maturity. Mr. Jesanis stated that, based on the most current market conditions, the company would expect a two percentage point differential (for a fixed interest

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rate) between the cost of the proposed tax-exempt bonds and any taxable G&R Bonds issued directly to the public by the company. He further explained, that based on the issuance of $80,000,000 of new tax-exempt bonds, the company would save approximately $1,700,000 per year in interest expense over the 30-year term of the issue.

Mr. Jesanis testified that the proposed issuance of $80,000,000 of new tax-exempt bonds is contingent upon the company receiving an allocation of the State of New Hampshire "volume-cap" from NHIDA. According to Mr. Jesanis, the company may not receive this allocation in the near future, and, therefore, the company may issue the $80,000,000 requested as taxable bonds, in hopes that volume cap may be allocated later. However, Mr. Jesanis also testified that the company has proposed to NHIDA that in return for the allocation of volume cap that the company would flow-through to its New Hampshire customers an annual credit of 50% of the company's current estimate of savings for the first five years of such financing. The commission will follow this proposal to assure that the credit for the savings is realized. At each purchase power adjustment for Granite State Electric following the time that an allocation of volume cap is made, the company will file a calculation of the savings being credited to New Hampshire.

Mr. Jesanis testified that the proceeds from the sale of PCRBs would be held in trust pending disbursement to refund pollution control revenue bonds or to reimburse the company for expenditures related to pollution control equipment.

The company suggests that the maximum interest rate of New G&R Bonds issued to support PCRBs with a variable interest rate should not exceed 14 percent per annum, and the maximum interest rate on New G&R Bonds issued to support PCRBs with a fixed rate should not exceed 10 percent per annum. The commission has decided that the maximum interest rate shall be 12 percent per annum. The company shall have the option of petitioning the commission to have the maximum interest rates raised of conditions warrant.

The New Pledged Bonds would be issued and pledged, from time to time, to the Trustee for the G&R Bonds as additional security, representing a First Mortgage claim for the holders of all G&R Bonds. When issued, the New Pledged Bonds will contain the same interest payment provisions and have the same maturity date as the series of G&R Bonds with respect to which they are issued. The New Pledged Bonds will not pay interest as long as interest payments are made on the G&R Bonds. The company will receive no proceeds from the issue and pledge of the New Pledged Bonds.

Upon such investigation and consideration of the evidence submitted, the commission is of the opinion that granting the petition will be consistent with the public good.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the issue by New England Power Company of one or more series, with each series having one or more classes, of General and Refunding Mortgage Bonds, in an aggregate principal amount not to exceed

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$80,000,000 outstanding at any one time, and one or more series, with each series having one or more classes, of First Mortgage Bonds, in an aggregate principal amount not to exceed $80,000,000 outstanding at any one time, are reasonably necessary for the purposes for which such issues have been authorized; and it is

FURTHER ORDERED, that the execution and delivery by New England Power Company of one or more loan agreements or supplemental loan agreements with The Industrial Development Authority of the State of New Hampshire is reasonably necessary for the purpose for which such loan agreements or supplemental loan agreements have been authorized; and it is

FURTHER ORDERED, that the commission hereby grants to New England Power Company its authorization and approval, in conformity with all the provisions of law relating thereto, of the issue and sale of one or more series, with each series having one or more classes, in an aggregate principal amount not exceeding $80,000,000 outstanding at any one time, of General and Refunding Mortgage Bonds, to mature in not more than 30 years from the date on which the Bonds are issued; and it is

FURTHER ORDERED, that the General and Refunding Mortgage Bonds authorized and approved by the commission herein if issued with an adjustable interest rate shall bear interest at a maximum rate not in excess of 12 percent per annum, and if issued with a permanently fixed interest rate shall bear interest at a rate not in excess of 10 percent per annum (in either case unless a subsequent Order of the commission approves a higher rate), and are to be sold with an interest rate and at a price closely matching the interest rate and price of pollution control revenue bonds to be issued by The Industrial Development Authority of the State of New Hampshire; and it is

FURTHER ORDERED, that, in connection with the financing of expenditures relating to pollution control and solid waste disposal facilities, the commission hereby grants New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, of execution and delivery of one or more loan agreements or supplemental loan agreements between New England Power Company and The Industrial Development Authority of the State of New Hampshire, under which loan agreements or supplemental loan agreements New England Power will agree to make payments to such agency as such times and in such manner as will correspond to the payments for principal, premium, if any, and interest on pollution control revenue bonds issued on the company's behalf; provided, however, the terms of any such loan agreements or supplemental loan agreements will provide that the maximum variable interest rate payable by the company is not to exceed 12 percent per annum and the maximum fixed interest rate payable by the company is not to exceed 10 percent per annum, unless otherwise ordered by the commission; and it is

FURTHER ORDERED, that the commission hereby grants to New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, from time to time to issue and pledge First Mortgage Bonds, in one or more series, with each series having one or more classes, in an aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized and approved by the commission herein, said additional First Mortgage Bonds to bear the same interest rate and to

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have the same maturity as the General and Refunding Mortgage Bonds with respect to which they are issued; and it is

FURTHER ORDERED, that the authorization to issue securities contained herein, except with regard to First Mortgage Bonds, shall expire at such time as the above-described pollution control revenue bonds are no longer outstanding, but in no event later then thirty years from the date of the initial issue of General and Refunding Mortgage Bonds authorized hereby; and it is

FURTHER ORDERED, that the authorization to issue and pledge First Mortgage Bonds contained herein shall expire at such time as there are no longer any publicly held First Mortgage Bonds outstanding; and it is

FURTHER ORDERED, that on or about January first and July first in each year, said New England Power Company shall file with this commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said

securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1990.

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[Go to End of 51109]

75 NH PUC 716

Re Northern Utilities, Inc.

DR 90-182
Order No. 19,979

New Hampshire Public Utilities Commission

November 8, 1990

ORDER approving modifications to interruptible gas service contracts.

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1. RATES, § 380 — Gas — Special factors — Interruptible service — Economic conditions — Contract modification.

[N.H.] A gas distributor was authorized to modify an interruptible gas service contract so that it could sell interruptible gas to a building products manufacturer at a price below that derived from its interruptible pricing formula where the manufacturer contended that use of the pricing formula might require it to transfer its production to out-of-state plants; it was found that

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the contract modification would allow for continued operation of the plant while still enabling the distributor to generate margins for firm ratepayers. p. 716.

2. RATES, § 380 — Gas — Special factors — Interruptible service — Economic conditions — Contract modification.

[N.H.] Where a gas distributor was authorized to modify an interruptible gas service contract so that it could sell interruptible gas to a building products manufacturer at a price below that derived from its interruptible pricing formula, the distributor was also authorized to make a corresponding modification to its contract with another interruptible customer that manufactured the same products and served the same market; the commission found that failure to modify both contracts would place the latter manufacturer at a competitive disadvantage. p. 716.

By the COMMISSION:

ORDER

On October 23, 1990, Northern Utilities, Inc. ("Northern") petitioned the commission for approval of short term modifications to the interruptible sales contracts of Gold Bond Building Products ("Gold Bond") and Domtar Gypsum, Inc. ("Domtar"). Specifically, Northern requested authority to cap the interruptible sales price for the period of October, 1990 through March, 1991; and

WHEREAS, the Gold Bond and Domtar interruptible sales agreements were approved by orders issued February 13, 1990 and October 16, 1990 respectively; and

WHEREAS, Northern was informed by Gold Bond that the October and November gas prices based on the interruptible pricing formula will exceed $7.50 per MMBTU; and

[1] WHEREAS, Gold Bond contends that such a price will cause its New Hampshire operation to become non-competitive relative to Gold Bond plants in other States and as a result may force production to be transferred elsewhere; and

WHEREAS, the continued operation of the New Hampshire plant will enable Northern to recover its investment in the Gold Bond project, generate margins for firm ratepayers, and provide economic benefits to Gold Bond's employees and the State as a whole; and

[2] WHEREAS, Domtar manufactures the same product as Gold Bond, serves the same geographic market, and would be placed at a competitive disadvantage if it were not accorded the same pricing treatment as Gold Bond; it is hereby

ORDERED, that for the period of October

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1, 1990 through March 31, 1991, Northern be authorized to sell interruptible gas to Gold Bond and Domtar at a price below that derived from the interruptible pricing formula; and it is

FURTHER ORDERED, that the actual interruptible price to Gold Bond and Domtar may be set as low as $5.50 per MMBTU whenever the formula price exceeds $5.50 per MMBTU; and it

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is

FURTHER ORDERED, that at no time shall the actual price be less than the incremental cost of gas to Northern.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1990.

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NH.PUC*11/08/90*[51110]*75 NH PUC 717*EnergyNorth Natural Gas, Inc.

[Go to End of 51110]

75 NH PUC 717

Re EnergyNorth Natural Gas, Inc.

DR 90-166
Order No. 19,980

New Hampshire Public Utilities Commission

November 8, 1990

ORDER approving an interim revision to the winter cost of gas adjustment rate of a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost of gas adjustment — Interim rate revision — Gas distributor.

[N.H.] An interim revised winter cost of gas adjustment rate of consisting of a $0.0254 per therm credit was approved for a gas distribution utility; approval was made subject to reconciliation in accordance with a final commission determination on the merits of the revision.

By the COMMISSION:

ORDER

On October 1, 1990, EnergyNorth Natural Gas, Inc. (ENGI) filed with this commission Seventh Revised Page 1. Said tariff provided for a 1990/91 winter cost of gas adjustment (CGA) of $(F0.0212) per therm, before franchise tax, for effect November 1, 1990; and

WHEREAS, on October 29, 1990, the company filed an amendment to Seventh Revised Page 1 which increased the proposed credit to $(0.0254) per therm; and

WHEREAS, a hearing on the merits was held on October 29, 1990, and continued to November 5, 1990; and

WHEREAS, it is in the public interest to implement the proposed rates on an interim basis

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effective November 1, 1990, pending final commission decision on the petition; it is hereby

ORDERED, that the proposed CGA credit of $(0.0254) per therm be approved for effect November 1, 1990 for the period October 1, 1990 through March 31, 1991, subject to reconciliation in accordance with the final commission determination.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1990.

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NH.PUC*11/09/90*[51111]*75 NH PUC 717*Spring Wood Hills Water Company, Inc.

[Go to End of 51111]

75 NH PUC 717

Re Spring Wood Hills Water Company, Inc.

DE 90-051
Order No. 19,982

New Hampshire Public Utilities Commission

November 9, 1990

ORDER granting a franchise to conduct business as a public water utility and establishing temporary rates for service.

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1. RATES, § 124 — Reasonableness — Unfranchised operations.

[N.H.] A public utility is not allowed to charge rates for the provision of service until it has obtained a franchise. p. 718.

2. CERTIFICATES, § 88 — Factors affecting grant — Statutory considerations — Public good.

[N.H.] State statute provides that the commission shall not issue a franchise to conduct business as a public utility unless it would be for the public good. p. 719.

3. CERTIFICATES, § 88 — Factors affecting grant — Statutory considerations — Public good — Water public utility.

[N.H.] The public good standard requires an applicant for a franchise to conduct business as a public water utility to demonstrate the legal, technical, and financial expertise to operate a public water utility and the acquiescence of the municipality in which the franchise would be located. p. 719.

4. CERTIFICATES, § 125 — Water public utility — Factors affecting grant — Statutory considerations — Requisite approvals.

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[N.H.] State statute specifically requires an applicant for a franchise to conduct business as a public water utility to obtain the approval of the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resource Division. p. 719.

5. CERTIFICATES, § 125 — Water public utility — Factors affecting grant.

[N.H.] The commission granted an application for a franchise to conduct business as a public water utility where (1) the municipality in which the franchise would be located made no objection, (2) the fact that the applicant had been providing water service in the area for more than two years demonstrated that it had the requisite legal, technical, and financial expertise to operate a public water utility, and (3) the applicant had obtained the approval of the Department of Environmental Services, Water Supply and Pollution Control Division and Water Resource Division. p. 719.

6. RATES, § 630 — Temporary rates — Water service — Newly-franchised utility — Stipulation.

[N.H.] The commission approved a stipulation establishing temporary rates for a newly-franchised water utility where the resulting rates appeared just and reasonable based on the used and useful property of the utility. p. 719.

APPEARANCES: Robert H. Fryer, Esq. on behalf of Spring Wood Hills Water Company, Inc.; Eugene F. Sullivan, III, Esq. on behalf of the New Hampshire Public Utilities Commission.

REPORT

I. *Procedural History*

On April 20, 1990, Spring Wood Hills Water Company, Inc. (Spring Wood or company) filed a petition to provide water service to a limited area in the town of Derry, New Hampshire and implicitly to establish rates therefore pursuant to RSA Chapter 378. On April 13, 1990, the commission issued an order of notice setting a prehearing conference for July 27, 1990, to establish a procedural schedule and to address matters on intervention. At the hearing the parties stipulated to a procedural schedule. On August 10, 1990, the commission issued order no. 19,913 (75 NH PUC 548) accepting the stipulated procedural schedule.

On August 30, 1990, a hearing was held before the commission on the issue of temporary rates and a franchise. The company prefiled its testimony on both issues.

[1] Pursuant to previous commission decisions, a public utility is not allowed to charge rates for the provision of service until it has obtained a franchise. See *Re Southern New Hampshire Water Company, Inc.*, 74 NH PUC 304 (1989); *Re Quin-Let Trust*, 74 NH PUC 415 (1989) Spring Wood Hills has complied with said orders since approximately 1987 when it filed its first petition for a franchise which was subsequently closed by the commission due to

inaction in the docket while Spring Wood attempted to negotiate with other public utilities

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and municipalities to purchase the system. These negotiations were not successful. See docket DE 87-010. The company now requests a franchise and temporary rates pursuant to a petition for permanent rates.

II. *Commission Analysis*

A. Franchise

[2-5] RSA 374:22 and RSA 374:26 provide that the commission shall not issue a franchise unless it would be for the public good. The public good standard requires the petitioning utility to demonstrate, *inter alia*, the legal, technical, managerial and financial expertise to operate a public water utility and the acquiescence of the municipality in which the franchise is located. See e.g., *Re Pennichuck Water Works, Inc.*, 73 NH PUC 279 (1988) In addition, RSA 374:22, III specifically requires the approval of the Department of Environmental Services, Water Supply and Pollution Control Division (WSPC) and Water Resources Division (Water Resources).

Spring Wood has supplied the commission with letters from WSPC and Water Resources indicating their support for the grant of a franchise.

On August 2, 1990, Spring Wood sent a letter to the Londonderry Water Commission (Londonderry) via certified mail requesting Londonderry to notify this commission of its objection or lack thereof to the grant of a franchise to Spring Wood. As of the date of this report and order, neither Spring Wood nor this commission has received a response from the town. The commission will assume that the town's silence on the matter indicates it has no objection to the franchise request.

In regard to the legal, technical, managerial and financial expertise of the petitioner to own and operate a public water utility the commission notes that Spring Wood has been providing water service to its customers since 1987 without complaint, the company has retained a professional operator licensed by the Department of Environmental Services, legal counsel and a Certified Public Accountant. (See Exhibit 1)

Based on these facts the commission will conditionally grant the requested franchise in that area of Londonderry known as Spring Wood Hills and more particularly described as follows:

> Those lots bordering Summer Drive, Seasons Lane, Autumn Lane and Snowflake Lane in the Town of Londonderry.

B. Temporary Rates

[6] In regard to the request for temporary rates pursuant to RSA 378:27, Staff and Spring Wood have stipulated to a flat rate fee of forty dollars ($40) per quarter for the duration of the proceeding because the customers are not currently metered.

RSA 378:27 states, in pertinent part, that the commission may fix for the duration of any proceeding

> reasonable temporary rates; provided, however that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service less accrued depreciation ....

The commission finds from the record that Spring Wood has an unaudited and unexamined rate base of $150,000. Multiplying that rate base times a 10% rate of return which is well below

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the usual 11.9% rate of return allowed water utilities of this type, the result is a $15,000 revenue requirement, exclusive of operation and maintenance costs. When the $15,000 is divided by a potential customer base of 70 customers (the number of customers the system was built to serve) the result is $405 per customer per year.

The company is requesting $160 per customer per year. Because temporary rates are subject to recoupment or refund at the time of a permanent rate order, the commission will reconcile any over or undercollection of rates at that time. See RSA 378:29, RSA 378:30. The commission, therefore, approves the stipulation

Page 719

between staff and Spring Wood as the result appears just and reasonable based on the used and useful property of the utility.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Spring Wood Hills Water Company, Inc. be and hereby is granted a franchise, subject to the conditions set forth in this order, to conduct business as a public water utility in that area of Londonderry, New Hampshire described in the foregoing report; and it is

FURTHER ORDERED, that Spring Wood Hills Water Company, Inc. be, and hereby is, granted temporary rates in the amount of $40 per quarter effective the date of this order; and it is

FURTHER ORDERED, that a copy of this report and order be served on the Town of Londonderry Water Commission via first class mail to provide said commission with notice of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1990.

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NH.PUC*11/19/90*[51112]*75 NH PUC 720*Indian Mound Water Corporation

[Go to End of 51112]

75 NH PUC 720

Re Indian Mound Water Corporation

DE 90-104
Order No. 19,985

New Hampshire Public Utilities Commission

November 19, 1990

ORDER granting a motion to intervene in, and extending the procedural schedule for, a proceeding to review an application for a franchise to provide water public utility service.

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1. PARTIES, § 19 — Intervenors — Associations — Franchise proceeding.

[N.H.] An association of property owners was authorized to intervene in a proceeding to review an application for a franchise to provide water public utility service to the development in which the association members resided. p. 720.

2. CERTIFICATES, § 158 — Procedural schedule — Extension — Franchise proceeding.

[N.H.] The procedural schedule for review of an application for a franchise to provide water public utility service was extended where the applicant requested additional time to file testimony and no party objected. p. 721.

APPEARANCES: Paul Downey, pro se, for the Indian Mound Water Corporation; Paul A. Savage, Esq., representing the Indian Mound Water Property Association; Audrey Zibelman, Esq., for the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This docket was opened on June 4, 1990, upon filing by the Indian Mound Water Corp. (company) of a petition to establish a franchise to provide water to the Indian Mound Development and, implicitly, for rates to be established therefore pursuant to RSA 378:27 and 378:28.

The commission issued an order of notice on August 2, 1990 scheduling a prehearing conference for September 24, 1990 at 10:00 a.m. On September 20, 1990, the Indian Mound Property Association filed a timely motion to intervene.

[1] At the scheduled prehearing conference, the motion to intervene filed by the Indian Mound Property Association was granted, there being no objection thereto.

The hearing examiner expressed concern that the company was providing water service, and charging rates therefore, without proper

authorization prior to the time the petition was filed, and requested staff to investigate during the course of the proceedings whether appropriate sanctions should be recommended or if any of the unauthorized revenues should be refunded to customers. The company has been charging $48.00 per year per customer for the provision of water service since the company's inception in 1973. The company is now requesting rates to be authorized at a level of $96.00 per year.

The intervenor objected to the granting of temporary rates at the requested level but does not object to authorization of temporary rates at the currently charged amount of $48.00 even though the company did not request temporary rates in this proceeding. The Hearing Examiner explained to the company representative, Mr. Paul Downey, that it was up to him to secure an

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attorney and submit an appropriate temporary rate request during the proceedings. Mr. Downey has not yet done so, and thus, the temporary rate issue will not be addressed in this order.

The procedural schedule recommended by the parties at the prehearing conference is as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

November 16, 1990 Company shall file
                    its direct testimony
                    and exhibits
December 7, 1990  Staff and intervenor
                    data requests to the
                    company
December 21, 1990 The company's responses
                    to staff and intervenor
                    data requests
January 25, 1991  Staff and intervenor
                    testimony due
February 15, 1991 Company data requests
                    to staff and intervenor
February 28, 1991 Staff and intervenor
                    responses to company
                    data requests
March 22, 1991    Settlement conference
                    (off-the-record)
April 2, 1991     Hearing on the merits
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[2] The company subsequently requested an extension of time to file its direct testimony and exhibits. There being no objection to the request, it is hereby granted. However, the extension of the first procedural date necessitates a like extension of the remainder of the procedural schedule. Accordingly, each of the procedural dates cited above is extended by fourteen days.

The procedural schedule is adequate to accommodate consideration of a temporary rate request by the company when filed.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof, it is hereby

ORDERED, that the Motion to Intervene filed by the Indian Mound Property Owners Association is hereby granted; and it is

FURTHER ORDERED, that the procedural schedule governing these proceedings is as follows:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

November 30, 1990 Company shall file
                    its direct testimony
                    and exhibits
December 21, 1990 Staff and intervenor
                    data requests to the
                    company
January 04, 1991  The company's responses
                    to staff and intervenor
                    data requests
February 08, 1991 Staff and intervenor
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	testimony due
March 01, 1991	Company data requests to staff and intervenor
March 14, 1991	Staff and intervenor responses to company data requests
April 05, 1991	Settlement conference (off-the-record)
April 16, 1991	Hearing on the merits

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1990.

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NH.PUC*11/19/90*[51113]*75 NH PUC 722*EUA Power Corporation

[Go to End of 51113]

75 NH PUC 722

Re EUA Power Corporation

DF 90-158
Order No. 19,986

New Hampshire Public Utilities Commission

November 19, 1990

ORDER authorizing a public utility to finance certain pollution control and solid waste disposal equipment at the Seabrook nuclear power plant through the issuance and sale of solid waste disposal revenue bonds.

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1. SECURITY ISSUES, § 111 — Financing methods and practices — Pollution control equipment — Solid Waste Disposal Revenue Bonds — Public utility.

[N.H.] A public utility was authorized to finance certain pollution control and solid waste disposal equipment at the Seabrook nuclear power plant through the issuance and sale of solid waste disposal revenue bonds; specifically, the utility was authorized to arrange for the issuance and sale through the New Hampshire Industrial Development Authority (NHIDA) of up to $25 million principal amount of 1990 Solid Waste Disposal Facility Revenue Bonds, the proceeds from which would be borrowed by the utility in connection with the financing of its share of Seabrook pollution control or solid waste disposal facilities; consummation of the financing was made subject to the final approval of NHIDA, the Governor and Executive Council, and the Securities and Exchange Commission. p. 723.

2. CONSOLIDATION, MERGER, AND SALE, § 19 — Holding company merger — Public good — Effect of financing order.

[N.H.] In an order authorizing a public utility to finance certain pollution control and solid waste disposal equipment, the commission adopted a stipulation to the effect that its decision should have no effect on its decision in an ongoing proceeding to determine whether the

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proposed acquisition of one public utility holding company by another would be in the public good. p. 723.

3. SECURITY ISSUES, § 44 — Financing authorization — Factors considered — Public good.

[N.H.] State statute provides that the commission shall approve a proposed utility borrowing if it finds that the transaction is "consistent with the public good"; the public good standard requires the commission to examine whether the financing request is reasonably to be permitted under all circumstances of the case. p. 724.

4. SECURITY ISSUES, § 111 — Financing authorization — Factors considered — Tax exempt financings.

[N.H.] Generally, tax exempt financings by public utilities are to be encouraged because they lower the average weighted interest rate upon long-term debt. p. 724.

5. SECURITY ISSUES, § 111 — Financing authorization — Factors considered — Effect on capitalization and liabilities — Relation to utility obligations — Pollution control — Solid Waste Disposal Revenue Bonds — Public good.

[N.H.] A public utility was authorized to finance certain pollution control and solid waste disposal equipment at the Seabrook nuclear power plant through the issuance and sale of solid waste disposal revenue bonds; it was found that the financing proposal was in the public good because it would replace higher cost short-term debt with the least expensive long-term financing available, was reasonably related to the ability of the utility to discharge its utility obligation, and would not increase the utility's capitalization or expand its liabilities. p. 724.

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APPEARANCES: Steven V. Camerino, Esq. and Mark C. Rouvalis, Esq. for EUA Power Corporation; Dom D'Ambruoso, Esq., Paul Connolly, Jr., Esq. for UNITIL Corporation; and James T. Rodier, Esq. on behalf of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *INTRODUCTION*

[1] EUA Power Corporation ("EUA Power") is a New Hampshire corporation authorized by the Public Utilities Commission pursuant to RSA 374:22 and 374:26 to engage in business in New Hampshire as a public utility solely for the purpose of participating as a joint owner in the construction of the Seabrook Power Plant ("Power Plant") and upon completion of construction, for the purpose of selling its share of the output of the Power Plant for resale. On September 21, 1990, EUA Power filed a petition with the Public Utilities Commission seeking authority to borrow the proceeds from the sale of tax-exempt bonds by the New Hampshire Industrial Development Authority ("IDA").

EUA Power proposes to arrange for the issuance and sale through the New Hampshire Industrial Development Authority ("IDA") of up to $25,000,000 principal amount of 1990 Solid

Waste Disposal Facility Revenue Bonds (the "Bonds"), the proceeds of which would be borrowed by EUA Power and used in connection with financing EUA Power's 12.1324% share of the cost of certain pollution control or solid waste disposal facilities at the Power Plant. Consummation of the financing is subject to the final approval of the IDA and the Governor and Executive Council, as well as the Securities and Exchange Commission. EUA Power filed direct testimony and exhibits on October 5, 1990. Notice of a hearing was published in Foster's Daily Democrat on October 4, 1990, the Manchester Union Leader, on October 4, 1990, and the Portsmouth Herald on October 3, 1990. Affidavits of publication were filed with the commission on October 22, 1990. UNITIL Corporation filed a Petition to Intervene on October 19, 1990. A hearing was conducted on October 24, 1990 before Hearing Examiner Wynn Arnold the Executive Secretary and Director of the commission. At the hearing, Robert Cushing of the Campaign for Ratepayers Rights (CRR) orally requested to intervene individually and on behalf of CRR.

II. *INTERVENTION*

[2] In connection with UNITIL's Petition to Intervene, counsel for UNITIL read into the record a stipulation reached among UNITIL, EUA Power and commission staff. The stipulation was in the form of a recommendation to the commission and provided a resolution to UNITIL's petition which preserved UNITIL's right to seek intervention in this proceeding if the commission failed to adopt the stipulation. The stipulation recommends that any commission order and approval in this proceeding not have a prejudicial or precedential effect upon any issue related to EUA Power in DR 89-085.

The commission agrees that its ruling in this proceeding should not effect its decision in DR 89-085, and to this extent we accept the recommendations contained in the stipulation. Mr. Cushing's motion to intervene on behalf of himself and CRR was denied as untimely by the hearing examiner. The commission's order of notice, which was duly published, required that persons seeking to intervene do so in writing at least three days in advance of the hearing. Mr. Cushing also conceded that he had not complied with the requirements of the Administrative Procedure Act, RSA Ch. 541-A. Mr. Cushing was granted limited intervention status for the purpose of presenting public comment to the commission. Mr. Cushing provided unsworn testimony in opposition to the proposed financing both at the outset and at the conclusion of EUA Power's case.

III. *POSITIONS OF THE PARTIES*

EUA Power presented its exhibits and testimony through Basil Pallone, Assistant Treasurer to the company. EUA Power requests

commission approval to enter into a Loan and Trust Agreement with the IDA in which EUA Power would borrow from the IDA the proceeds from the sale of up to $25,000,000 of tax-exempt solid waste disposal facility revenue bonds ("the bonds"). EUA Power's obligation to repay the loan would be guaranteed by a Letter of Credit from Citibank, N.A. for up to $26,000,000. The Letter of Credit, in turn, would be guaranteed by Eastern Utilities Associates, the parent company of EUA Power. No property of either EUA Power or Eastern Utilities

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Associates would be used to secure either company's obligation.

The IDA has to date allocated $22,500,000 of its private activity bond limit to EUA Power, and has voted to approve a financing with EUA Power in that amount. The company indicated that it is seeking authority from this commission to borrow up to $25,000,000 in order to enable it to borrow an additional $2,500,000 from the IDA if additional private activity volume cap becomes available before year-end. The bonds have a thirty (30) year nominal maturity and would be sold by the IDA pursuant to an underwriting agreement with Goldman, Sachs & Co. Once issued, the bonds could be converted to any one of four interest rate modes, depending upon prevailing financial market conditions. EUA Power also would enter into a Remarketing Agreement with a Remarketing Agent (Goldman, Sachs & Co.) who would be responsible for remarketing the bonds. The bonds' maximum interest rate would be twelve percent (12%), unless market conditions required a higher rate. EUA Power proposes to notify the commission in writing in advance of any change in the maximum interest rate. The bonds are not a general obligation of the State. The IDA's only obligation to repay bondholders is with funds from EUA Power.

Mr. Pallone testified that the proceeds from the bonds would be used to reimburse the company for expenditures incurred in financing solid waste disposal facilities in connection with EUA Power's approximately 12.1% interest of the power plant. The funds made available by this reimbursement will then be applied by EUA Power to pay off then existing short-term debt. According to engineering studies performed on behalf of EUA Power, the company has at least $25,000,000 in solid waste disposal facility costs which are eligible for the tax-exempt refinancing proposal.

The proposed financing is expected to bear interest at a rate that will be 200-300 basis points less expensive than other available debt financing. If the letter of credit cost of approximately 50 basis points is considered, the interest rate will be 150-250 basis points less expensive than other debt financing. On a $22,500,000 principal amount of borrowing, the annual interest cost savings may range from $337,500 to $562,500. Mr. Pallone also testified that this financing represented the least cost available financing for the company.

The IDA bonds must be issued no later than December 31, 1990, because the IDA's authority to issue the bonds expires on that date. The financing is also subject to regulatory approval from the Securities and Exchange Commission and the New Hampshire Governor and Executive Council, and the financing cannot proceed until these approvals are obtained. The company stated that once all regulatory approvals have been obtained, the final financing documents will be executed and filed with the commission.

IV. *COMMISSION ANALYSIS*

[3-5] Under RSA 369:1 and :4, the commission shall approve a proposed utility borrowing if it finds that the transaction is "consistent with the public good." In deciding whether or not a financing is in the public good, the commission must examine whether the financing request is "reasonably to be permitted under all the circumstances of the case." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 614 (1986), quoting *Appeal of Easton*, 125 N.H. 205, 212 and *Grafton City Elec. Light & Power Co. v. State*, 77 N.H. 539, 540 (1915).

Generally, tax-exempt financings by a public utility are to be encouraged, because they lower

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the average weighted interest rate upon long-term debt. *See Re New England Power Company*, 73 NH PUC 216 (1988) (1 1/2% differential was expected on a tax-exempt financing as against a taxable financing.) Here, the

company's witness testified that the $22,500,000 of the State's private activity bond limit that has been allocated to this financing will expire at the end of 1990 if it is not used before then.

In *Easton*, the court held that

> ...financing in the public good must be one "reasonably to be permitted under all the circumstances of the case." *Id.*, at 212, 480 A.2d at 91 (quoting *Grafton, supra* at 540, 94 A. at 194). Accordingly, we emphasized that the express statutory concern for the public good comprises more than the terms and conditions of the financing itself, and we held that the commission was obligated to determine whether the object of the financing was reasonably required for use in discharging a utility company's obligation, which is to provide safe and reliable service. *id.* at 211, 480 A.2d at 90. Moreover, we specifically decided that the commission was obligated to determine whether the company's plans to accomplish that object were economically justified when measured against any adequate alternatives, and whether the capitalization resulting from the utility company's plans would be supportable. *Id.* at 212-13, 480 A.2d at 91.

Appeal of Conservation Law Foundation, supra at 614.

The record clearly indicates that the object of this financing is to replace higher cost short-term debt with the least expensive long-term financing available. Thus, we are compelled to conclude that the proposed financing on its face meets the *Easton* test:

(a) lower-cost financing is reasonably related to EUA Power's ability to discharge its utility obligation;

(b) EUA Power's plans to accomplish its objective of lower cost replacement financing is economically justified when measured against alternative financing; and

(c) the capitalization resulting from EUA Power's plans will not increase and its liabilities will not expand.

Mr. Cushing, in his statement raised several issues. Although unsworn testimony does not rise to a level where it must be addressed in our decision making, we nevertheless value and consider public input. One of Mr. Cushing's assertions is that there will be no direct benefit to New Hampshire consumers from the proposed financing.

We are aware that some New Hampshire utilities have already purchased a portion of EUA Power's Seabrook generation on a short-term basis and there exists the possibility of further contract sales to New Hampshire utilities.[1(82)] Further, our obligation to establish rates that are just and reasonable carries with it a responsibility to consider favorably measures to minimize costs ultimately borne by ratepayers consistent with sound utility practice. One way to accomplish that goal is to reduce the cost of capital. A lower cost of capital also assists the utility in a competitive market place and will contribute to the utility's financial viability. It is in

everyone's best interest for the Seabrook Joint Owners to remain financially viable, especially now that the plant is in service.

EUA Power submitted evidence concerning its financing proposal demonstrating that it is likely to save between $337,500 to $562,600 in annual interest costs. The evidence presented by the company was uncontested. Having considered the evidence presented, the commission concludes that EUA Power should be granted the authority to proceed with the proposed financing transaction.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof, it is hereby

ORDERED, that pursuant to RSA 369:1-4 the commission finds that the proposed financing, upon the terms proposed, is consistent with the public good; and it is

FURTHER ORDERED, that EUA Power be, and hereby is granted the authority to enter into a bond financing transaction with the Industrial Development Authority for the issuance of up to $25,000,000 of solid waste disposal facility revenue bonds, as proposed, and to take all actions necessary for the issuance of

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such bonds, including but not limited to entering into a loan and trust agreement with the New Hampshire Industrial Development Authority; and it is

FURTHER ORDERED, that after executing all documents necessary to complete this transaction, EUA Power shall file copies of same with the commission; and it is

FURTHER ORDERED, that the bonds to be issued shall have a maximum interest rate of 12%, unless financial market conditions require a higher rate, in which case EUA Power shall have the option of petitioning to have the ceiling rate changed; and it is

FURTHER ORDERED, that EUA Power file with this commission a detailed statement showing the expenses incurred in accomplishing this financing; and it is

FURTHER ORDERED, that on or about January first and July first of each year, said EUA Power shall file with this commission detailed statement duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1990.

FOOTNOTES

[1]We also note that there may be a regional benefit obtained from the financing. For the present, the commission continues to believe that a regional outlook is appropriate.

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75 NH PUC 726

Re New Hampshire Electric Cooperative, Inc.

DR 90-169
Order No. 19,987

New Hampshire Public Utilities Commission

November 19, 1990

ORDER revising the fuel charge adjustment rate of an electric cooperative.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Procedure — Intervention — Fuel adjustment clause proceeding.

[N.H.] Northeast Utilities Service Company and Public Service Company of New Hampshire (PSNH) were granted leave to intervene in the fuel adjustment clause proceeding of an electric cooperative; however, their intervention status was limited to matters related to a wholesale power contract between PSNH and the cooperative. p. 729.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel charge adjustment rate — Inclusion of SPP costs — Electric cooperative.

[N.H.] The commission rejected a proposal by an electric cooperative to include in its fuel adjustment charge rate small power production (SPP) costs that it anticipated would be included in the wholesale fuel charges of its power supplier; it was found that inclusion of SPP costs was not warranted inasmuch as it was undisputed that the wholesale power supplier did not currently include SPP costs in its wholesale fuel adjustment charges to the cooperative; the cooperative was authorized to seek an adjustment to its fuel charge adjustment rate in the event that the wholesale supplier obtains authority from the Federal Energy Regulatory Commission to include SPP costs in its wholesale fuel adjustment charge. p. 729.

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3. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel charge adjustment rate — Special circumstance — Bankruptcy — Impending rate increase — Electric cooperative.

[N.H.] The commission required an electric cooperative to reduce its fuel adjustment charge rate to reflect forecasted fuel costs notwithstanding the argument that maintenance of the current rate was justified by special circumstances such as its poor financial condition and an anticipated increase in rates; it was found that it would not be good public policy to permit the cooperative to maintain its fuel charge at a current level that was above its costs, particularly in light of the fact that the possible bankruptcy of the cooperative would imperil the ability of the commission

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to secure the refund of any overcharges. p. 729.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel charge adjustment rate — Special circumstance — Nonpayment of wholesale charges — Escrow account — Electric cooperative.

[N.H.] In revising the fuel adjustment charge rate of a financially-troubled electric cooperative, the commission rejected the suggestion that it reduce the fuel charge to reflect the alleged nonpayment by the cooperative of wholesale fuel charges and place the withheld amount into an interest bearing escrow account; it was found that such a course would be inappropriate inasmuch as the dispute over the payment of wholesale fuel charges centered on the terms and conditions of a Seabrook capacity sellback agreement that was the subject of an ongoing proceeding in another docket; moreover, the commission questioned the value of an escrow account as a means of protecting the interests of the wholesale supplier. p. 729.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel charge adjustment rate — Fuel forecast — Electric cooperative.

[N.H.] A revised fuel charge adjustment rate of $0.00199 cents/kwh was approved for an electric cooperative; the rate was based on the fuel forecast received by the cooperative from its wholesale power supplier. p. 729.

APPEARANCES: Merrill and Broderick by Mark Dean, Esquire for the New Hampshire Electric Company of New Hampshire; Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Rath, Young, Pignatelli and Oyer, P.A. by Paul Baradoro, Esquire and William F. J. Ardinger, Esquire for Northeast Utilities Service Company; Michael W. Holmes, Esquire, Consumer Advocate; Audrey Zibelman, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On October 1, 1991, New Hampshire Electric Cooperative, Inc. (NHEC or Cooperative) filed a proposed fuel charge adjustment to retail rates for the period from November 1, 1990 through October 31, 1991. The filing contemplates no change in the NHEC's April through October 1990 rate of $0.01692 per kilowatt hour. The NHEC proposal is based upon estimated Resale Service Fuel Adjustment Rates provided by Public Service Company of New Hampshire (PSNH) plus an additional amount for Small Power Producer costs which the NHEC anticipates it will incur in the event PSNH files a request to amend its wholesale fuel tariff with the Federal Energy Regulatory Commission (FERC).

On October 19, 1990, the commission issued an Order of Notice scheduling a hearing on the NHEC's proposed fuel charge for November 2, 1990. The Order of Notice also waived the seventeen day notice requirement contained in N.H. Admin. Rules PUC 203.01(a) and directed parties to file Motions to Intervene no later than three days before the November 2 hearing.

II. *Intervention*

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Northeast Utilities Service Company (NU) filed a Motion to Intervene on October 30, 1990. On October 31, 1990, PSNH made a Late-Filed Motion for Intervention. Both companies argued that they were proper intervenors because of the connection between NHEC's retail fuel charges and the Partial Requirements Service Contract between PSNH and the NHEC. PSNH and NU asserted that the NHEC failed to make payments for power supplied under the Service Contract for the months of August and September 1990. The companies contended that the NHEC should not be permitted to charge its retail customers while it is not paying its wholesale power bill. PSNH also claimed an interest in the proceeding on the grounds that it is a retail customer of the NHEC at several remote locations in the NHEC's service territory.

During the hearing, the NHEC objected to the Motions to Intervene. The NHEC contended that the fuel charge the NHEC imposes on its ratepayers is not related to its obligation to PSNH under the Service Contract. The NHEC further disputed the PSNH/NU claims of non-payment and claimed that payment was being made in the form of an offset of amounts the NHEC claims is owed to it by PSNH under the Seabrook sellback agreement.

Following oral arguments on the intervention motions, the commission ruled from the bench that PSNH and NU would be granted leave to intervene. The commission required PSNH and NU to consolidate their participation and limited their intervention status to matters related to the PSNH and NHEC wholesale power contract.

III. *Positions of the Parties*

The NHEC is requesting the commission to authorize an average fuel charge rate of 1.692¢/kwh for the period from November, 1990 through October, 1991. According to the NHEC witness Teresa Burzynski, the company calculated this rate by considering first the fuel forecast it received from PSNH for the same period and adding to that amount Small Power Producer (SPP) costs the Cooperative anticipates will be included in its wholesale fuel charges from PSNH.[1(83)]

Currently, PSNH's wholesale power rate does not include SPP costs in the fuel charge adjustment. According to Witness Burzynski, during settlement negotiations concerning the Cooperative's rate plan in Docket DR 90-078, NU represented that it would be asking the FERC for authority to amend PSNH's wholesale tariff to pass through SPP costs in the fuel charge adjustment rate. Ms. Burzynski testified that when these projected SPP costs are added to PSNH's forecasted fuel costs, the amount results in a kwh rate that is slightly lower than the rate that the Cooperative is currently charging its ratepayers.

Witness Frederick Anderson further testified on the behalf of the NHEC that for policy reasons he believed that it was appropriate for the commission to authorize the Cooperative to retain its current fuel charge adjustment. Anderson claimed that because the NHEC anticipates increases in its rates in the near future, it would send the wrong signal to ratepayers to reduce rates at this time. Mr. Anderson then testified that in the event the fuel charge adjustment results in an overcollection, the commission could order a refund of the overcollection with interest.

In connection with PSNH and NU's claims of nonpayment, the NHEC asserted that it had

made full payment to PSNH of the wholesale power costs. Witness Anderson testified that since August of 1990 the NHEC has billed PSNH for amounts which the Cooperative contends PSNH owes it under the sellback agreement for Seabrook power.[2](84) According to the NHEC, PSNH currently owes it approximately $6 million dollars for Seabrook power during the months of July, August and September. For power supplied during August and September PSNH billed the NHEC approximately $3.5 million. Based on these figures, the NHEC is contending it currently does not owe PSNH under the wholesale contract and further, that PSNH owes the NHEC approximately $2.7 million under the sellback agreement.

In closing comments to the commission, the Consumer Advocate (OCA) expressed concern over the NHEC's proposal to include SPP costs in its fuel adjustment charge. The OCA

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contended that the combination of the speculative nature of the SPP costs together with potential of the NHEC filing for bankruptcy made it incumbent upon the commission to make certain that funds overcollected by the NHEC were available for refund. The OCA further suggested that the commission reduce the NHEC's fuel charges to reflect non-payment of its wholesale fuel charges or place its withheld amount into an interest bearing escrow account.

The commission staff argued that the evidence was insufficient to permit the NHEC to include SPP costs in its fuel charge adjustments. The staff further recommended that because of the NHEC's statements regarding its financial condition, the commission should require the company to escrow amounts representing payments withheld from PSNH.

IV. *Commission Analysis*

[1-5] The primary issue before the commission is the proper calculation of the NHEC's fuel adjustment charge. With respect to this issue, there is no dispute over the propriety of the NHEC's reliance on PSNH wholesale forecasts as the basis of its own forecast. The only aspect of the NHEC's forecast that is challenged is its inclusion of SPP costs in the fuel charge. The commission initially agrees with staff and the OCA that the evidence does not provide a reasonable basis for inclusion of the SPP costs. It is undisputed that PSNH currently does not include SPP costs in its wholesale fuel adjustment charges to the Cooperative. The NHEC conceded that in order for PSNH to pass on these charges, it must seek FERC approval to amend its wholesale tariff.[3](85) Further, it appears that NU suggested to the NHEC that PSNH would make such a filing as one of four possible settlement alternatives. Thus, in the absence of the parties reaching settlement and subsequent FERC approval, PSNH may not include SPP costs in the NHEC's wholesale fuel rates. Under these circumstances the commission finds that it is speculative for the NHEC to include SPP costs in its fuel charges at this time. In the event PSNH seeks and obtains authority from the FERC to include SPP costs in its wholesale fuel charge adjustment, the NHEC can seek necessary adjustment to its retail fuel charge.

The NHEC contended that despite the uncertainty of its SPP cost projections, it is good public policy for the commission to permit the company to retain its current fuel adjustment charge. Counsel for the Cooperative argued the circumstances of the company's alleged poor financial condition and proposed rate increases in its rate plan made it appropriate for the commission to approve the proposed rate. According to the NHEC, considerations of rate

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stability and sending accurate signals to ratepayers militate in favor of retaining the current rates.

The NHEC is essentially arguing that special circumstances justify a departure from the general rule that fuel adjustment charges should track costs. When making such decisions, the commission should look to the totality of circumstances. In this case, the financial condition of the NHEC is a particularly significant fact for commission consideration. During the hearing NHEC Witness Anderson was examined on a NHEC press release dated November 1, 1990 (Exhibit 9-A). The press release states that the Cooperative is being forced closer to bankruptcy and, according to Witness Anderson, the company reviews the issue on a daily basis. The evidence produced during the hearing also showed that the Cooperative has accumulated cash in the approximate amount of $7 million and is not making payments to its major creditor, the Rural Electrification Association (REA). Even without the press release, the commission believes that the Cooperative's conduct is indicative of a corporation contemplating bankruptcy protection. The evidence also revealed that if the commission permits the NHEC to add SPP costs even though it is not incurring such costs in its wholesale rates, the resulting fuel charge would likely produce a monthly overcollection of $1.5 million. Though overcollected fuel charge revenues are subject to refund, in the event the NHEC does file for bankruptcy, the commission's ability to require that the overcollection amounts be returned to ratepayers will be placed at risk — both in terms of its ability to require a timely refund and its ability to order a

refund at all. *See e.g.* Final Rule Promulgated by the REA pertaining to Federal Pre-Emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy. 55 Fed. Reg. 38,649 (September l9, 1990) (to be codified at 7 CFR §§ 1717.350 *et se*.); *but see, Wabash Valley Power Association, Inc. v. Rural Electrification Administration*, 903 F.2d 445 (7th Cir. 1990). Under all of these circumstances we do not find it good public policy to permit the NHEC to maintain its fuel charge at a current level that is undisputedly above its costs. Whatever advantage may be supplied by rate stability is far outweighed by the desirability of protecting unsecured ratepayers from fuel clause overcharges that are at risk of not being returned.

The last issue before the commission is the NHEC's alleged non-payment of its wholesale fuel costs. During the hearing several suggestions were made to the commission, including, *inter alia*, ordering the Cooperative to discontinue charging its ratepayers for power purchases and putting the sums representing PSNH's bills in escrow.

The commission shares the concerns of staff and OCA of the risks to ratepayers created by the conduct of NHEC and PSNH. The failure of the Cooperative to make debt payments and wholesale fuel payments could result in an involuntary bankruptcy and discontinuance of wholesale power. At a minimum, the commission expects the Cooperative to be prepared for the latter by having procured alternative sources. For PSNH, the NHEC's claimed financial condition imposes a risk that it will not be paid for its power sales. While to some extent the commission can insulate ratepayers from these harms by placing the associated risks onto investors, the potential for harm is real.

Notwithstanding the commission's recognition of these potential harms, we do not believe it appropriate to establish an escrow account at this time. The parties, dispute centers on the

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sellback agreement. As we held in Order No. 19,946, the determination of the terms and conditions of the sellback agreement will be made by the commission in Docket DR 90-078.

Moreover, based on the evidence in this record, the commission questions the value of escrow account as a mechanism for protecting PSNH's interests, if any. Under these circumstances the commission will not order the NHEC to establish an escrow account but will leave it to the parties to determine whether the issue should be readdressed in Docket DR 90-078 or at some other appropriate time.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the New Hampshire Electric Cooperative, Inc.'s fuel charge adjustment rate for the period of November 1, 1990 through October 31, 1991 shall be $.00199 cents/kwh and it is;

FURTHER ORDERED, that the Cooperative shall make a compliance filing, including a tariff showing its fuel adjustment charge within ten days of this order; and it is

FURTHER ORDERED, that the request to require the Cooperative to escrow revenues received by its customers under its fuel charge adjustment is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1990.

FOOTNOTES

[1]PSNH provides approximately 90 percent of the NHEC's purchased power through its wholesale power contract.

[2]In *Re NHEC*, 75 NH PUC 649 (1990) the commission ruled that it would be considering the terms and conditions of the sellback agreement between, PSNH and the NHEC as part of its examination of the NHEC's rate plan filed pursuant to RSA Chapter 362-C. One of the contract terms the commission anticipates that it will address in that docket is the wholesale rate which the NHEC may charge PSNH for Seabrook power.

[3]The FERC regulations governing power adjustment clauses require PSNH to obtain a waiver from the FERC in order to amend its tariff to include SPP costs in its fuel adjustment clause. 18 C.F.R. § 35.14 (1989)

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NH.PUC*11/26/90*[51115]*75 NH PUC 731*New Hampshire Electric Cooperative, Inc.

[Go to End of 51115]

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DR 90-078
Order No. 19,988

New Hampshire Public Utilities Commission

November 26, 1990

ORDER approving, in a proceeding to adjudicate the rate plan of an electric cooperative, withdrawal of a motion for recusal of a commissioner.

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1. COMMISSIONS, § 51 — Prejudice or bias — Recusal — Statutory considerations — Objective standard.

[N.H.] State statute, RSA 363:12, provides, in pertinent part, that a commissioner must disqualify himself from a proceeding in which his impartiality might reasonably be questioned; the statute requires the application of an objective standard so that the relevant inquiry would be whether facts exist that would cause a reasonable person to question the impartiality of a commissioner. p. 733.

2. COMMISSIONS, § 51 — Prejudice or bias — Recusal — Withdrawal of motion.

[N.H.] In approving the withdrawal of a motion for recusal that raised the issue of whether a commissioner's previous participation as assistant state attorney general in the bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) required his recusal from commission adjudication of a capacity sellback agreement between New Hampshire Electric Cooperative, Inc. and PSNH, the commissioner that was the subject of the recusal motion found that while there may be a colorable argument that the rate agreement negotiated by the state in the PSNH bankruptcy proceeding required the state to support a certain substantive position with respect to the capacity sellback agreement, it was not necessary, in view of the withdrawal of the motion for recusal, to resolve that issue in determining whether recusal should be required. p. 734.

3. COMMISSIONS, § 51 — Prejudice or bias — Recusal — Waiver of disqualification.

[N.H.] Parties may waive the disqualification of an adjudicative officer whose impartiality may otherwise be reasonably questioned provided that the adjudicative officer has no pecuniary interest in the proceeding and none of the family members of the adjudicative officer are involved in the proceeding. p. 734.

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i. COMMISSIONS, § 51 — Prejudice or bias — Recusal — Legal standards.

[N.H.] Discussion, by the chairman of the commission, of the legal standards governing whether a commissioner should be required to recuse himself from an adjudicative proceeding. p. 733.

APPEARANCES: As previously noted.

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By the COMMISSION:

REPORT

I. *INTRODUCTION*

This docket was opened for the purpose of adjudicating the rate plan of the New Hampshire Electric Cooperative, Inc (NHEC) filed with the New Hampshire Public Utilities Commission (commission) pursuant to RSA Chapter 362-C. On October 1, 1990, the commission issued Report and Order No. 19,946 (75 NH PUC 649) (Order 19,946) granting in part the joint Motion of Public Service Company of New Hampshire (PSNH) and Northeast Utilities Service Company (NUSCO)[1(86)] for an order declaring scope of proceeding and status

of sellback agreement. On October 16, 1990, the NHEC filed a Motion for Partial Rehearing of Order 19,946. Under the same cover letter, the NHEC also filed a Motion for Recusal seeking my recusal from further participation in this docket. The commission denied the NHEC's Motion for Rehearing by Report and Order No. 19,969 (75 NH PUC 684) (October 13, 1990) (Order 19,969). At the same time, the Motion for Recusal was taken under advisement pending receipt of a RSA 7:8 opinion of the Attorney General requested by letter dated October 17, 1990.[2(87)] On November 6, 1990, the NHEC filed a Withdrawal of its Motion for Recusal (Withdrawal) requesting the commission to strike the Motion for Recusal and withdraw it from consideration.

This order will examine the issues raised in the Motion for Recusal and rule favorably on the Withdrawal.

II. *FACTS*

The Motion for Recusal raises the issue of whether my previous responsibilities as a Senior Assistant Attorney General require my recusal from commission adjudication of the terms and conditions of the sellback agreement between the NHEC and PSNH.[3(88)] In particular, those responsibilities included my representation of the State in the bankruptcy proceedings of PSNH. In the course of that representation, I acted as a negotiator in discussions with many of the participants in that proceeding including *inter alia* several utilities interested in acquiring all or a portion of PSNH. Two such utilities were Northeast Utilities (NU) and the NHEC. The discussions with NU culminated in a rate agreement that became the basis of PSNH's pending bankruptcy reorganization. That rate agreement provides in pertinent part:

> 12. *Merrimack Contract, Small Power Producers and New Hampshire Electric Cooperative* — NU will undertake its best efforts to renegotiate the Merrimack contract with Vermont Electric Power Company, the arrangements with the thirteen small power producer projects identified in Exhibit D, and the Seabrook buy-back contract together with the Agreement for Partial Requirements Service, the Agreement for Transmission Service for Power from the Seabrook and Maine Yankee Generating Units, and the All-Requirements Service Agreement between PSNH and the New Hampshire Electric Cooperative ("NHEC"). The State shall support NU's efforts to renegotiate these contracts and to have the NHPUC re-examine the rates under the thirteen small power producer arrangements. Any renegotiation of the contract with NHEC shall be subject to

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> the approval of the NHPUC, both as to Stand-Alone PSNH (or NUNH) and its customers and as to NHEC and its customers. The parties reserve the right to renegotiate this Agreement to reflect any changes in Stand-Alone PSNH's (or NUNH's) rates resulting from such renegotiation of the NHEC Seabrook buy-back contract or the NHPUC's action or NU's inability to reach agreement with NHEC. If such renegotiation occurs, changes shall be applied pursuant to paragraph B.K of Exhibit C.

The above provision was not unique to the NU rate agreement. From the start, in discussions with PSNH and all potential acquirers (including the NHEC), the State's position was that a satisfactory resolution of the issues arising out of the sellback agreement (then the subject of bilateral discussions between PSNH and the NHEC) had to be achieved. Moreover, the outcome of those discussions had to be fair not only to the customers of PSNH, but also to the customers of the NHEC. The State's position was that the commission is the appropriate body to adjudicate whether such a resolution is fair to both groups of customers. The language above reflects that position.

The rate agreement also adopted several assumptions to be used to calculate certain projected costs. One of those assumptions was that the sellback agreement would be renegotiated to reflect an "avoided cost" wholesale rate for Seabrook. The above language provided for a reopener of negotiations between NU and the State in the event that the outcome of the NU/NHEC negotiations produced a Seabrook wholesale rate that differs from the "avoided

cost" assumption, or if the commission declined to approve whatever result is achieved.

The terms of the rate agreement discussed above reflect the fact that the parties considered the NHEC sellback agreement issue to be a separate matter not substantively addressed in the context of resolving the PSNH bankruptcy. The State did not become involved in that separate matter until after I left the Office of the Attorney General to assume my current position.

III. *ANALYSIS*

There are two issues to be addressed in this Order: 1) whether the applicable authority clearly compels my recusal under the above facts; and 2) whether the parties have the ability to consent to the participation of an adjudicative officer who should otherwise be recused. I will address each issue in turn.

A. *Recusal*

[1] [i] Notwithstanding the Withdrawal, I believe it is necessary to address the issue of whether I am compelled to recuse myself. This is because if my continued participation is *clearly* violative of the applicable standards, it would raise the appearance of compromising the integrity of the process even if all parties consent. For the reasons set forth below, I conclude that the resolution of the substantive issue raised in the NHEC's recusal motion is not clear; in other words, it is a close question.[4](89)

RSA 363:12 sets forth the ethical standards required of public utility commissioners. It provides *inter alia*:

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> In addition to any other type of behavior or activity of a commissioner that is proscribed by RSA 363, a commissioner shall conduct himself and his affairs in accordance with a code of ethics that shall include, but not be limited to, the following elements:
>
> * * *
>
> VII. Disqualify himself from proceedings in which his impartiality might be reasonably questioned ... .

In *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465 (1984) (*Appeal of SAPL*), the Court held that RSA 363:12, VII requires the application of an objective standard. Thus, the inquiry is whether facts exist which would cause a reasonable person to question the impartiality of a commissioner.

Here, the only such fact that exists or is asserted in the motion is the NU rate agreement language which provides that "[t]he State shall support NU's efforts to renegotiate these contracts ... ." Thus, the substantive issue of recusal may be resolved by the application of the rules of contract interpretation.

The rate agreement language contains no State commitment to a substantive result and I do not believe that a rational person could conclude that the State's commitment of support would extend to the support of an unreasonable position taken by NU. For example, if NU took the position that the NHEC's total full cost investment in Seabrook should be valued at $1.00 for purposes of the sellback agreement, I do not believe that the rate agreement compels the State to support that position. Thus, it is reasonable to construe the rate agreement language as requiring the State to support the negotiation process, rather than a substantive outcome.

The only existing adjudicative discussion of the rate agreement interpreted the term in a manner that is consistent with the above analysis. In *Re NU/PSNH*, 75 NH PUC 396 (1990) (Order 19,889), *appeal pending*, the commissions[5(90)] stated:

> According to NU, the rate agreement provides a flexible approach to addressing any result that may arise from negotiations between NU and NHEC concerning the so-called "Seabrook buy-back contract." Tr. April 18 at 141-42. Under Section 12 of the Rate Agreement, NUSCO has agreed to undertake its best efforts to renegotiate the buy-back arrangement with NHEC. Ex. NU 1-E at D-20. Section 12 of the Rate Agreement expressly provides that when the result of those negotiations is finally determined, either the State or NUSCO may reopen the Rate Agreement to address that result. This flexible approach was specifically intended to

Page 733

> permit the commission to approve the Rate Agreement without having to resolve the buy-back issue. Tr. April 9 at 44-46; Tr. April 18 at 129-34. Moreover, Section 12 of the Rate Agreement provides that any successful renegotiation is subject to the approval of the commission. Ex. NU 1-E at D-20. *Therefore, the rate agreement ensures that the State and the commission will determine both during the fixed rate period and thereafter whether the negotiated buy-back arrangement serves the public good*.

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> We find that the flexibility built into the Rate Agreement regarding future negotiations with NHEC... [is] desirable and a positive factor in the determination of the public good.

Report at 98-99 (emphasis supplied).

[2] The above language provides that Section 12 of the rate agreement does not commit the State to a particular result. Therefore, a reasonable person could not conclude that I am committed to a particular result and my recusal would not be compelled. However, I recognize that there may be a colorable argument the rate agreement language requires the State to support the NU substantive position in a situation where both NU and the NHEC adopt positions that fall within a zone of reasonableness. While the commission has not adopted that interpretation and I do not believe it is a correct interpretation, the arguable validity of such an interpretation presents an issue under an objective standard.

In view of the Withdrawal, it is not necessary to resolve that issue here, nor is it necessary to continue to seek an opinion of the Attorney General. It is sufficient to determine that my recusal is not clearly compelled because such a determination allows me to address the remaining issue of whether the parties may consent to my continued participation.

B. *Consent*

[3] In this proceeding, the Withdrawal, as well as the parties' record consent after disclosure (Transcript of the May 14, 1990 status hearing at 61-62) raises the issue of whether parties have the ability to consent to the participation of a commissioner whose impartiality may reasonably be questioned. A facile analysis may conclude that the parties as a whole embody the "reasonable person" and, therefore, consent itself is dispositive of the fact that impartiality cannot reasonably be questioned. However, because the issue involves the integrity of the process, a more thorough approach is required.

In *Appeal of SAPL*, the Court held that it is proper to look to the ethical standards applicable to judges to assist in the interpretation of standards applicable to commissioners. The Court noted that RSA 363:12, VII mirrors the federal provision governing the disqualification of a judge and, accordingly, the Court looked to federal cases construing that provision for guidance in interpreting the state statute. *Appeal of SAPL*, 125 N.H. at 470. The federal provision cited by the Court was 28 U.S.C. Sec. 455 (a) which provides:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The statute also contains a provision specifying when parties may consent to the participation of a judge that may otherwise be disqualified. 28 U.S.C. Sec. 455 (e) provides:

> No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground of disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), a waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

It is therefore apparent that under the federal law examined by the Court in *Appeal of SAPL*. the parties may waive disqualification of an adjudicative officer whose impartiality may

otherwise be reasonably questioned. I conclude that under the facts of the instant matter, the application of such a standard is appropriate here.

In so concluding, I am not ignoring the New Hampshire Code of Judicial Conduct adopted at Supreme Court Rule 38. Canon 3 D permits remittal of disqualification after disclosure to the parties and their written consent in instances where the judge *inter alia* has a pecuniary interest in the proceeding or where a spouse or other defined family member is involved in the proceeding.[6(91)] The Canon is silent about the ability of parties to waive disqualification under other circumstances. Canon 3 is not organized in the same manner as either the analogous federal provision at 28 U.S.C. Sec. 455, nor in the manner of RSA 363:12. Because the federal provision more closely tracks RSA 363:12, VII (as recognized by the Court in *Appeal of SAPL*) and because of the underlying objective reasonableness of engaging in conduct expressly permitted under the federal standard, I believe that the Rule 38 Canon is not an obstacle to my acceptance of a waiver.[7(92)]

IV. *CONCLUSION*

For the foregoing reasons, I will withdraw my request for an opinion of the Attorney General[8(93)] , decline to rule definitively on the substantive issue raised in the NHEC's Motion for Recusal, and accept the Withdrawal. However, because this order is based on a waiver standard, I believe that it is appropriate to confirm that the parties have indeed waived any objections to my further participation in this proceeding. Accordingly, this order will be issued *nisi* so that the parties will have the opportunity to file any comments or objections prior to its effective date.

My order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED *NISI*, that the New Hampshire Electric Cooperative's Withdrawal of its Motion for Recusal be accepted; and it is

FURTHER ORDERED *NISI*, that the Motion for Recusal be stricken; and it is

FURTHER ORDERED, that this order shall become effective 10 days from the date of this Order unless I provide otherwise in a supplemental Order issued prior to the effective date; and it is

FURTHER ORDERED, that the parties may file comments or objections to this Order no later that 5 days from the date of this Order.

By order of the Chairman of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1990.

FOOTNOTES

[1]PSNH and NUSCO are intervenors in this proceeding, along with the State of New

Hampshire (State), the Office of the Consumer Advocate (OCA) and the United States Rural Electrification Administration (REA).

[2]The October 17, 1990 letter to the Attorney General was served on all parties.

[3]For a discussion on the nature of the sellback agreement and the commission's jurisdiction over the terms and conditions of the sellback agreement, *see generally*, Order 19,946 and Order 19,969.

[4]It was for this reason that I sought the opinion of the Attorney General pursuant to RSA 7:8. Such a step would not have been necessary had the substantive outcome been clear.

[5]The commission which issued Order 19,889 consisted of Special Commissioner John N. Nassikas, Commissioner Bruce B. Ellsworth and Commissioner Linda G. Bisson. Because that proceeding clearly involved the same case and issues in which I participated as an attorney, I recused myself *sua sponte* pursuant to RSA 363:12, VII. Thus, I did not contribute to the commission's interpretation of the rate agreement in Order 19,889, (75 NH PUC 396).

[6]It is interesting that Rule 38, Canon 3 D allows waivers for the same grounds specified in the federal provision at 28 U.S.C. Sec. 455 (b). As noted previously, section 455 (e) prohibits judges from accepting waivers when disqualification is based on those grounds.

[7]It is appropriate to emphasize again that the closeness of the substantive recusal issue contributes to my ability to base this decision on a waiver standard in the face of the possibility of conflicting standards.

[8]I have discussed the withdrawal of the opinion request, as well as the substance of this order with a representative of the Office of the Attorney General.

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NH.PUC*11/26/90*[51116]*75 NH PUC 736*New Hampshire Electric Cooperative, Inc.

[Go to End of 51116]

75 NH PUC 736

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 19,989

New Hampshire Public Utilities Commission

November 26, 1990

ORDER clarifying a prior order asserting jurisdiction to review a Seabrook nuclear capacity sellback agreement between an electric cooperative and an investor-owned utility to specify that the commission may, if appropriate under the factual circumstances of the case, make its final order concerning the sellback agreement retroactive to the commercial operation date of the Seabrook plant.

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1. RATES, § 249 — Effective date — Retroactive enforcement — Capacity sellback agreement.

[N.H.] The commission clarified a prior order asserting jurisdiction to review a Seabrook nuclear capacity sellback agreement between an electric cooperative and an investor-owned utility to specify that the commission may, if appropriate under the factual circumstances of the case, make its final order concerning the sellback agreement retroactive to the commercial operation date of the Seabrook plant. p. 737.

2. CONTRACTS, § 20 — Enforcement — Capacity sellback agreement — Appropriate forum.

[N.H.] The commission clarified a prior order asserting jurisdiction to review a Seabrook nuclear capacity sellback agreement between an electric cooperative and an investor-owned utility to specify that the fact that it declined to issue a requested cease and desist order prohibiting the cooperative from pursuing efforts to enforce the sellback agreement in other forums was *not* intended to suggest that the cooperative was free to pursue remedies elsewhere. p. 737.

APPEARANCES: Merrill and Broderick by Stephen E. Merrill, Esquire for the New Hampshire Electric Cooperative, Inc.; Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Rath, Young, Pignatelli and Oyer, P.A. by Thomas D. Rath, Esquire for Northeast Utilities Service Company; John P. Arnold, Attorney General and Harold T. Judd, Assistant Attorney General for the State of New Hampshire; Michael W. Holmes, Consumer Advocate; United States Department of Justice by James A. Gresser, Esquire for the United States Rural Electrification Administration; Audrey Zibelman, Esquire for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *INTRODUCTION*

On October 16, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC or Cooperative) moved for clarification of Report and Order No. 19,946 (75 NH PUC 649) in which the commission found that it had the authority under RSA Chapter 362-C, 378:20 and 378:1 and 378:7 to review and approve the terms and conditions of the sellback agreement between the NHEC and Public Service Company of New Hampshire (PSNH). Specifically, the NHEC requested that the commission clarify its order to state that the commission's assertion of jurisdiction should not be "construed so as to prevent, delay, or otherwise hinder any NHEC's efforts to enforce the sellback contract at full costs, pending the commission's final decision concerning the sellback contract". The NHEC further requested the commission to modify or clarify its order to state that the commission's final order shall be effective retroactively from

July 1, 1990, the commercial operation date of Seabrook.

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On October 31, 1990, Northeast Utilities Service Company (NUSCO) and PSNH, filed an objection to the Cooperative's motion. NUSCO/PSNH objected to the NHEC's request that the commission clarify that its order should not be interpreted as precluding the NHEC from pursuing its remedies in other forums. NUSCO/PSNH, argued that the Cooperative's request is illegal, inequitable, contrary to the public good and further that the NHEC came before the commission with "unclean hands".

II. *COMMISSION ANALYSIS*

[1, 2] In *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980), the Supreme Court addressed the issue of retroactive ratemaking. The Court held that it was not retroactive ratemaking for the Public Utilities Commission to make a rate change effective for services rendered on or after the date upon which the utility petitioned for a different rate. *Id.* at 567.

The Cooperative is requesting that the commission clarify its order to provide that the sellback rate established in this proceeding may be made retroactive to July 1, 1990, the commercial operation date of Seabrook. The Cooperative filed its rate plan on June 8, 1990. In accordance with the Court's holding in *Pennichuck, supra*, the commission has the authority to establish a sellback rate effective July 1, 1990. Thus, we will clarify our order to provide when considering the terms and conditions of the sellback agreement we will also consider whether on the facts adduced during the hearing, the Cooperative is entitled to have a sellback rate retroactively applied to Seabrook power supplied to PSNH on or after July 1, 1990.[1(94)]

The Cooperative is also requesting that the commission clarify its order to provide that it should not be construed so as to prevent the Cooperative from pursuing its efforts to enforce the sellback agreement in the forums during the pendency of this proceeding. In the Motion on Scope PSNH and NUSCO requested the commission to issue an order directing the NHEC to cease and desist from its efforts to enforce the sellback agreement outside of this proceeding. We declined to issue the requested order because the PSNH/NUSCO motion contained insufficient support for such findings and because we were confident that a court would rule appropriately on the limits of its jurisdiction. In so holding the commission was not suggesting that the Cooperative is free to pursue its remedies elsewhere. To the contrary, the commission believes that this is the appropriate forum for the Cooperative to seek enforcement of the sellback agreement. While it is primarily the decision of the Cooperative's management to determine whether or not to accede to the commission's jurisdiction over the sellback agreement, we note that to the extent management elects to ignore the commission's order, it may be subjecting the company and itself to civil and criminal liability under RSA 365:40-:44.

For the foregoing reasons the commission will clarify its order to state that the commission may make a final order concerning the sellback contract retroactive to July 1, 1990, if appropriate under the factual circumstances of this case. At the same time, the commission will decline to specify that the NHEC is free to pursue its contract remedies in other forums during the pendency of this proceeding.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

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ORDERED, that the motion of the New Hampshire Electric Cooperative, Inc. that the commission clarify Order No. 19,946, to provide that if supported by evidence in the record, the commission has the authority to issue a final order considering the sellback contract retroactively effective from July 1, 1990 is hereby granted; and it is

FURTHER ORDERED, that the above motion be, and hereby, denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1990.

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FOOTNOTES

[1]We recognize that such retroactive rates would be consistent with the RSA 362-C legislative policy of providing timely relief.

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[Go to End of 51117]

75 NH PUC 738

Re Concord Steam Corporation

DF 90-184
Order No. 19,990

New Hampshire Public Utilities Commission

November 26, 1990

ORDER authorizing a public steam utility to issue short-term debt.

SECURITY ISSUES, § 52 — Authorization — Short-term debt — Necessity and appropriateness — Steam public utility.

[N.H.] A public steam utility was authorized to issue short-term debt in the form of a demand note for the purpose of retiring an outstanding long-term debt bond; the utility had been notified that the letter of credit that supported the long-term debt bond would not be renewed.

By the COMMISSION:

ORDER

WHEREAS, Concord Steam Corporation ("the company") is a duly established operating

public steam utility in Concord, New Hampshire; and

WHEREAS, pursuant to R.S.A. 366 and 369 the company filed for authority and approval for issuance of short term debt; and

WHEREAS, the company states the short term note will be in the form of a demand note in the maximum amount of $400,000 to be issued on or before December 15, 1990; and

WHEREAS, the company states that the note will be issued to the company's sole shareholders, Rachel J. Bloomfield and Peter G. Bloomfield, as co-Trustees under will Roger G. Bloomfield-Part B; and

WHEREAS, the company states that the purpose of the borrowing is to allow the company to retire its outstanding long term bond debt; and

WHEREAS, the company's reason for retiring the outstanding long term debt is that the long term debt was supported by a letter of credit issued by a consortium of banks consisting of BankEast and Citibank, N.A. that expires December 15, 1990; and

WHEREAS, Citibank has indicated that it will not renew the letter of credit and has notified the company that the bonds will be redeemed on December 15, 1990; and

WHEREAS, as of December 15, 1990, after giving effect to a periodic payment also due that date, the outstanding principal on the bonds will be approximately $550,000; and

WHEREAS, after application of the proceeds of a "bond reserve account" and available cash on hand, the company will need to borrow $400,000 to retire the bonds; and

WHEREAS, the company does not believe present conditions are conducive to obtaining a favorable long term borrowing rate and therefore the company proposes presently to borrow the necessary funds from its sole shareholder on a short term and unsecured basis; and

WHEREAS, the company anticipates that within the next year it will refinance this short term debt with long term secured bank debt; and

WHEREAS, the proposed short term debt will be evidenced by the issuance by the company of a simple demand promissory note having a variable interest rate of prime plus 1%; it is hereby

ORDERED, that the short term debt level of Concord Steam Corporation be not in excess of $400,000; and it is

FURTHER ORDERED, that this level of short term debt authorization is for the term of one year or less, or until the company refinances with long term debt, whichever is sooner; and it is

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FURTHER ORDERED, that Concord Steam Corporation file a copy of the executed note with this commission; and it is

FURTHER ORDERED, that on January first and July first the company file a disposition of proceeds on such short term debt until the whole of such proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of

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November, 1990.

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[Go to End of 51118]

75 NH PUC 739

Re Eastman Sewer Company, Inc.

DR 90-170
Order No. 19,991

New Hampshire Public Utilities Commission

November 27, 1990

ORDER suspending a proposed sewer rate schedule that would increase rates by 105%, scheduling a hearing on the utility's request for temporary rates, and scheduling a prehearing conference to address procedural matters regarding the proposed permanent rate increase.

RATES, § 248 — Schedules — Proposed rate increase — Sewer utility.

[N.H.] The commission suspended a proposed sewer rate schedule that would increase rates by 105%, scheduled a hearing on the utility's request for temporary rates, and scheduled a prehearing conference to address procedural matters regarding the proposed permanent rate increase.

By the COMMISSION:

ORDER

On November 1, 1990, Eastman Sewer Company, Inc. (petitioner) serving a limited area in the Town of Grantham, New Hampshire filed a proposed rate schedule and supporting documentation which would result in an increase of one hundred five percent (105%) in the rates over total company utility revenue or in additional annual revenue of $88,932.00; and

WHEREAS, the proposed tariff page NHPUC No. 1-Sewer, First Revised Page eleven of Eastman Sewer Company, Inc. was submitted for effect on December 1, 1990; and

WHEREAS, in conjunction with the request for a permanent increase in rates, the petitioner requested temporary rates at the level of the company's existing rates; and

WHEREAS, a thorough investigation is necessary prior to rendering a decision thereon; it is hereby

ORDERED, that the proposed tariff page be suspended pending further investigation and decision; and it is

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FURTHER ORDERED, that a hearing on the petitioner's request for temporary rates, and a prehearing conference to address procedural matters regarding the proposed permanent rate increase be held before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Building #1 in said state at ten o'clock in the forenoon on the eighth day of January, 1991; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than December 20, 1990, said publication to be documented by affidavit filed with this office on or before January 8, 1991; and it is

FURTHER ORDERED, that a copy of this order be served on each known current and prospective customer of the Eastman Sewer Company, Inc. by first class U.S. mail postmarked no later than

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December 20, 1990; and it is

FURTHER ORDERED, that, pursuant to RSA 541-A:22, the petitioner serve a copy of this order by first-class mail to the clerk of each affected city or town postmarked no later than December 20, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc §202.02, any party seeking to intervene in the proceeding shall submit a motion to intervene at least three (3) days prior to the hearing; and it is

FURTHER ORDERED, that the petitioner's direct testimony and exhibits shall be prefiled three days prior to the hearing.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of November, 1990.

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NH.PUC*11/30/90*[51119]*75 NH PUC 740*Walnut Ridge Water Company, Inc.

[Go to End of 51119]

75 NH PUC 740

Re Walnut Ridge Water Company, Inc.

Additional petitioner: Bryant Woods Water Company

DE 90-129
Order No. 19,992

New Hampshire Public Utilities Commission

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November 30, 1990

ORDER approving the transfer of a water utility franchise.

CERTIFICATES, § 143 — Franchise transfer — Public good — Water utilities.

[N.H.] The commission approved the proposed voluntary transfer of a water utility franchise and authorized the transferor to discontinue operations as a public utility in the transferred area; it was found that the transfer, which was part of a plan to interconnect two water systems, was in the public good and would improve the reliability of both systems.

By the COMMISSION:

ORDER

Walnut Ridge Water Company, Inc. (Walnut Ridge) filed on July 23, 1990 a petition for authority to engage in business as a public utility in an additional limited area of the Town of Atkinson, New Hampshire, to wit, in a residential development known as Bryant Woods, and for approval of rate schedules therein. Bryant Woods Water Company (Bryant Woods) filed a petition on July 23, 1990, for authority to transfer to Walnut Ridge its franchise rights and water supply distribution system in the Town of Atkinson, New Hampshire as established in docket DE 87-226, and Order No. 19,230 (73 NH PUC 465) and for authority to discontinue service therein; and

WHEREAS, by order of notice dated September 5, 1990, the Commission set October 8, 1990 as the date when motions to intervene had to be received; and

WHEREAS, no party sought to intervene by such date; and

WHEREAS, no other water utility has franchise rights in the area subject to transfer; and

WHEREAS, water service to the said area will be under the terms, conditions and rates as are now in effect in the Walnut Ridge tariff; and

WHEREAS, Walnut Ridge and Bryant Woods are owned by the same principals; and

WHEREAS, the planned interconnection of the Walnut Ridge and Bryant Woods systems will improve the reliability of both; and

WHEREAS, after investigation and consideration the commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to comment before the commission acts on this petition; it is hereby

ORDERED, *NISI*, that Walnut Ridge be granted a franchise in the area presently served by Bryant Woods and that Bryant Woods be allowed to discontinue operations as a public utility in the said area; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified

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that they may submit their comments to the commission or submit a written request for a hearing no later than December 31, 1990; and it is

FURTHER ORDERED, that Walnut Ridge effect said notification by publication of an attested copy of this order, once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than December 11, 1990, and designated in an affidavit to be made on a copy of this order and filed with this office on or before January 4, 1991; and it is

FURTHER ORDERED, that such authority shall be effective on January 4, 1991 unless a request for a hearing is filed with this commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1990.

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NH.PUC*12/03/90*[51120]*75 NH PUC 741*EnergyNorth Natural Gas, Inc.

[Go to End of 51120]

75 NH PUC 741

Re EnergyNorth Natural Gas, Inc.

DR 90-187
Order No. 19,993

New Hampshire Public Utilities Commission

December 3, 1990

ORDER authorizing a gas distribution utility to provide service under a special contract on an interim basis pending a final determination of whether special circumstances existed that rendered departure from general rate schedules just and consistent with the public interest.

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1. RATES, § 380 — Gas — Special contract rates — Interim approval.

[N.H.] A gas distribution utility was authorized to provide service under a special contract on an interim basis pending a final determination of whether special circumstances existed that rendered departure from general rate schedules just and consistent with the public interest; the interim authorization was conditioned on the utility bearing the risk of not recovering lost revenue and construction costs associated with the special contract. p. 741.

2. RATES, § 166 — Reasonableness — Special contract rates — Discounts — Economic development — Gas distribution utility.

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[N.H.] The commission denied a request by a gas distribution utility for expedited review and approval of a proposed special rate contract where the proposed contract raised important policy issues involving discounted and economic development rates; the utility was authorized to provide service under the contract on an interim basis pending resolution of the policy issues. p. 741.

By the COMMISSION:

ORDER

EnergyNorth Natural Gas, Inc.(ENGI), having filed on November 16, 1990 a petition pursuant to RSA 378:18 for expedited review and approval of a special contract with Hadco Corporation (Hadco) or, in the alternative, for authority to provide service in accordance with the terms of the contract on an interim basis pending final commission determination of whether special circumstances exist which render departure from ENGI's general rate schedules just and consistent with the public interest; and

WHEREAS, the proposed contract would enable Hadco to receive firm service at a rate less than the current tariffed rate; and

WHEREAS, the proposed contract requires ENGI to invest in mains and services and, assume initial responsibility for the cost of converting Hadco's plant to natural gas; and

[1, 2] WHEREAS, the proposal to provide service on an interim basis raises the important question of who will bear the risk of lost revenue and unrecovered investments should the commission ultimately deny the proposed

contract; and

WHEREAS, the proposed contract between ENGI and Hadco raises important policy issues involving discounted and economic development rates; and

WHEREAS, the resolution of these issues requires careful and full public policy deliberation by the commission; it is hereby

ORDERED, that ENGI's request for expedited review and approval of the proposed special contract be denied; and it is

FURTHER ORDERED, that ENGI's request for authority to provide service on an interim basis be granted, subject to the condition that ENGI bear the risk of not recovering the lost revenue and the construction costs incurred by ENGI and Hadco in providing natural gas service; and it is

FURTHER ORDERED, that a pre-hearing conference, to determine the scope of the proceeding, determine matters of intervention and establish a procedural schedule, be held, pursuant to RSA Chapter 378:28 and Puc 203.05, before said public utilities commission at its offices in Concord, 8 Old Suncook Road, Building #1 in said State at two o'clock in the

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afternoon on the twentieth day of December, 1990; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the petitioner notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than December 6, 1990 and documented by affidavit filed with this office on or before December 20, 1990; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene, with a copy to the petitioner, on or before December 20, 1990.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1990.

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NH.PUC*12/03/90*[51121]*75 NH PUC 742*Lakes Region Water Co., Inc.

[Go to End of 51121]

75 NH PUC 742

Re Lakes Region Water Co., Inc.

DR 88-188
Order No. 19,994

New Hampshire Public Utilities Commission

December 3, 1990

ORDER modifying a water rate order to extend the period in which the utility may reflect plant additions in a step increase.

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1. RATES, § 595 — Water rate design — Step increase — Plant additions.

[N.H.] The commission modified a water rate order to extend the period in which the utility may reflect plant additions in a step increase; the extension was granted in response to a delay in the receipt of commission, Small Business Administration, and bank approvals of financing for the plant additions.

By the COMMISSION:

ORDER

WHEREAS, by Order No. 19,704 (75 NH PUC 89), Lakes Region Water Co., Inc. (Lakes Region) was allowed a step increase to reflect additions to its fixed plant up to and including the

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anniversary date of the commissions order; and

WHEREAS, the anniversary date of Order No. 19,704 will be February 5, 1991; and

WHEREAS, Lakes Region, on October 9, 1990, filed a petition for authority to extend the time allowed to reflect such additions to plant to September 30, 1991; and

WHEREAS, Lakes Region represents that the time required for Commission, Small Business Administration and bank approvals to borrow capital dollars delayed receiving those dollars until October 15, 1990; it is hereby

ORDERED, that the step increase

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approved in Order No. 19,704 shall be modified to reflect additions to fixed plant up to the date of September 30, 1991; and it is

FURTHER ORDERED, that all other provisions of Order No. 19,704 shall remain in effect.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1990.

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NH.PUC*12/03/90*[51122]*75 NH PUC 743*Cold Spring Resort/White Mountain Country Club

[Go to End of 51122]

75 NH PUC 743

Re Cold Spring Resort/White Mountain Country Club

DE 90-113
Order No. 19,995

New Hampshire Public Utilities Commission

December 3, 1990

ORDER granting a continuance in a proceeding to determine whether a water company should be exempt from public service regulation. Commission temporarily waives statutory provisions that would make it unlawful for the company to collect charges from customers.

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1. PUBLIC UTILITIES, § 121 — Water — Exemption from regulation — Continuance.

[N.H.] The commission granted a continuance in a proceeding to determine whether a water company should be exempt from public service regulation where associations representing "customers" of the company requested time to review previously unavailable information pertinent to whether the customers would require the protection of regulation; however, in response to the associations' claim that the request for waiver from regulation should be based on

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the public good rather that a statutory exemption available to water companies that serve less than 10 customers, the commission noted that the record before it did not indicate whether service to a townhouse development containing 109 residential units would render the company ineligible for the statutory exemption; moreover, the commission noted that if the company followed through on its plan to convey its water system to residential unit owners, the system would become a private rather than public utility and would no longer be subject to the jurisdiction of the commission. p. 744.

2. RATES, § 247 — Legality pending commission action — Petition for exemption from regulation — Water service.

[N.H.] Where the commission granted a continuance in a proceeding to determine whether a water company should be exempt from public service regulation, the company was granted a temporary waiver from statutory provisions that would make it unlawful for it to collect charges from customers. p. 744.

APPEARANCES: Joseph L. Hyde for Cold Spring Resort/White Mountain Country Club; Stebbins, Bradley, Wood and Harvey by Blair C. Wood, for Cold Spring Properties Townhouse Association; Wadleigh, Starr, Peters, Dunn and Chelsea by Anne R. Clarke, for the Ropewalk West Townhouse Association; and Eugene F. Sullivan III for the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On July 6, 1990, Cold Spring Resort/White Mountain Country Club (Cold Spring) petitioned for an exemption from the provisions of RSA 362:4 for service provided to five customers in the Town of Ashland, New Hampshire. On July 30, 1990 by Order No. 19,896 (75 NH PUC 491), the commission granted *NISI* Cold Spring exemption from public utility statutes. Ropewalk West Townhouse Association and Cold Spring Properties Townhouse Association (the Associations) requested to be heard on the exemption on August 17, 1990 and August 27, 1990 respectively. The commission scheduled a

hearing by order of notice issued September 26, 1990 for November 1, 1990 and subsequently continued the hearing to November 26, 1990.

At the hearing, the parties requested an extension of four weeks from the date of the commission order during which the Associations would review information on Cold Spring's facilities and projected operating and maintenance expenses in order to assess whether in their view the granting of a waiver from commission regulation would be in the public good. Staff did not object to the four week extension.

II. *Commission Analysis*

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[1] The Associations have requested a four week delay in order to review information not available to them previously on Cold Spring's existing facilities and on its projected operating and maintenance expenses. Their intent is to determine whether Cold Spring will be able to continue to provide adequate service at the rates that are currently being charged, or whether customers will require the protection of regulation. We find this delay to be reasonable and will grant the request of the parties.

We note that the Associations now argue that the final determination on the request for a waiver from regulation by the commission should be based on the public good and do not argue, as set forth in their request for hearing, that Cold Spring is ineligible for a waiver under RSA 362:4, due to the number of ultimate customers it serves. Currently, Cold Spring serves five customers of record, but two of those customers contain multiple units (*e.g.*, Cold Spring Properties Townhouse Association includes 109 residential units). However, the record currently before us does not indicate whether these residential units are capable of being served as individual customers in terms of their plumbing and metering. Further, Cold Spring has stated its intention to convey the water system to the unit owners once the development is complete (in approximately five years). Should that conveyance actually occur, Cold Spring and its customers would become a private rather than a public utility and no longer subject to the jurisdiction of this commission.

[2] Finally, we note that Cold Spring is currently charging its five customers of record for water service. Such charges are illegal absent either the granting of a franchise and approval of rates by this commission, or the granting of an exemption from regulation. See *Re Southern New Hampshire Water Company, Inc.*, 74 NH PUC 304 (1989); *Re Quin-Let Trust* 74 NH PUC 415 (1989). As the request for further delay in this proceeding was initiated by the Association, we will grant Cold Spring a temporary waiver from the provisions of Title XXXIV pursuant to RSA 362:4 until further notice.

Our order will issue accordingly.

ORDER

Based on the foregoing report, which is made a part hereof, it is hereby

ORDERED, that the request for a four week continuance from the date of this order be, and hereby is, granted; and it is

FURTHER ORDERED, that Cold Spring be, and hereby is, granted a temporary waiver from the provisions of Title XXXIV pursuant to RSA 362:4.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1990.

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NH.PUC*12/03/90*[51123]*75 NH PUC 744*Shelly Nelkens v. Public Service Company of New Hampshire

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Shelly Nelkens
v.
Public Service Company of New Hampshire

DC 90-153
Order No. 19,996

New Hampshire Public Utilities Commission

December 3, 1990

ORDER dismissing a complaint requesting relief from payment of electric bills.

Page 744

1. PAYMENT, § 9 — Liability for payment — Complaint for relief — Safety concerns — Dismissal.

[N.H.] The commission dismissed a complaint for relief from payment of electric bills where the complainant failed to allege any reasonable basis for the grant of the requested relief; the complainant had based her claim for relief on allegations that rates were artificially low because Seabrook nuclear plant safety expenditures were inadequate. p. 745.

2. PAYMENT, § 9 — Liability for payment — Opposition to pricing policies.

[N.H.] Opposition to the pricing policies of a utility does not entitle a customer to withhold payment of bills. p. 745.

3. PAYMENT, § 33 — Enforcing payment — Denial of service — Nonpayment of bills — Electric utility.

[N.H.] An electric utility was authorized to disconnect a customer from service effective 7 days from the customer's receipt of a copy of a commission order dismissing her complaint for relief from payment of bills, unless payment is received by the utility. p. 745.

By the COMMISSION:

ORDER

WHEREAS, on or about August 12, 1990, Shelley Nelkens (Complainant) filed a complaint with the commission against Public Service Company of New Hampshire (PSNH); and

WHEREAS, in her complaint Ms. Nelkens alleged that PSNH's rates are artificially low because Seabrook safety expenditures are inadequate; and

WHEREAS, the complaint further alleges that because of these concerns Ms. Nelkens is withholding payment on her electric bill; and

WHEREAS, on September 14, 1990, PSNH filed a response to Ms. Nelkens' complaint; and

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WHEREAS, in its response PSNH alleged that none of the allegations contained in Ms. Nelkens' complaint entitled her to withhold payment on her electric bill; and

WHEREAS, on September 30, 1990, Ms. Nelkins filed a response to PSNH's motion; and

WHEREAS, Ms. Nelkins does not dispute she received electricity from PSNH, that PSNH billed her for that electricity at their tariff rates and that she failed to pay PSNH; and

[1-3] WHEREAS, in resolving Motions for Dismissal the commission accepts the facts alleged in the complaint in the favor of the party opposing the dismissal and considers whether or not on the basis of those facts there is a legitimate claim for relief. *ERA Pat Demarais Association v. Alex Eastman Foundation*, 129 N.H. 89 (1986); and

WHEREAS, the allegations contained in the complaint concern issues that are either outside the scope of this commission's jurisdiction or have been or should be resolved in other proceedings; and

WHEREAS, Complainant's opposition to the pricing policies of PSNH do not entitle her to withhold payment of her bills as a matter of law; it is hereby

ORDERED, that PSNH's Motion to Dismiss is granted; and it is

FURTHER ORDERED, that PSNH is entitled to disconnect Complainant from service for non-payment of her bill effective seven (7) days from the date of Complainant's receipt of a copy of this order, unless payment is received pursuant to the commission's rules and regulations.

By order of the Public Utilities Commission of New Hampshire this third day of December, 1990.

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NH.PUC*12/04/90*[51124]*75 NH PUC 746*Granite State Electric Company

[Go to End of 51124]

75 NH PUC 746

Re Granite State Electric Company

DR 90-194
Order No. 19,997

New Hampshire Public Utilities Commission

December 4, 1990

ORDER revising the purchased power cost adjustment rate of a retail electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Rate revision — Wholesale cost increase — Ocean State Power project.

[N.H.] The purchased power cost adjustment rate of a retail electric utility was revised to

reflect Ocean State Power (OSP) project costs passed through to it by its wholesale supplier under a rate rider approved by the Federal Energy Regulatory Commission; the revision was made effective for service rendered on or after the commercial operation date of OSP unit 1.

By the COMMISSION:

ORDER

WHEREAS, Granite State Electric company (Granite State) having filed a proposed Purchased Power Cost Adjustment (PPCA) W-12(a)(OSP) on November 1, 1990, in Docket No. DR 90-194 to become effective upon commercial operation of the Ocean State Power Unit 1 project (Project); and

WHEREAS, Granite State's PPCA filing reflects increased purchased power costs associated with the Project included as rider in New England Power Company's (NEP) Rate W-12(a) filing which was accepted by the Federal Energy Regulatory Commission (FERC) on September 28, 1990, in Docket No. ER90-525-000, and made effective upon commercial operation of the Project, subject to refund; and

WHEREAS, NEP will pass the costs associated with the Project to its wholesale customers, including Granite State, effective on the in-service date of the Project; and

WHEREAS, the Ocean State Power Unit 1 in-service date is anticipated to be in December, 1990; and

WHEREAS, the costs associated with the Project would increase Granite State's PPCA by $0.00079 per kWh over current levels and is designed to collect $468,852 on an annual basis, which is equal to the increase in Granite State's estimated purchased power expense associated with the Project; and

WHEREAS, the commission has intervened in FERC Docket No. ER90-525-000; it is hereby

ORDERED, that Granite State's proposed PPCA W-12(a)(OSP) is hereby approved effective for service rendered on or after the commercial operation of the Ocean State Power Unit 1 Project; and it is

FURTHER ORDERED, that the foregoing approval is conditioned upon notification to the commission by Granite State of the commercial operation date of the Project and the timely submission of tariff pages annotated with that effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1990.

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NH.PUC*12/04/90*[51125]*75 NH PUC 746*Granite State Electric Company

[Go to End of 51125]

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Re Granite State Electric Company

DR 90-146
Order No. 19,998

New Hampshire Public Utilities Commission

December 4, 1990

ORDER revising the Cooperative Interruptible Service (CIS) program of an electric utility to reduce the credit level paid to participating customers.

Page 746

1. RATES, § 322 — Electric rate design — Load management — Cooperative interruptible service program — Credit reduction.

[N.H.] The Cooperative Interruptible Service (CIS) program of an electric utility was revised to reduce the credit level paid to participating customers; the revision was based upon a reduction of the short-term avoided capacity costs of the utility's wholesale power supplier. p. 747.

2. RATES, § 322 — Electric rate design — Load management — Cooperative interruptible service program — Power cost changes — Credit level adjustments.

[N.H.] Cost-effective conservation and load management programs require that the credit in interruptible electric service programs reflect short-term market changes in the cost of power. p. 747.

By the COMMISSION:

ORDER

[1] On August 1, 1990, Granite State Electric Company (Granite State or Company) filed with this Commission proposed revisions to its currently effective Cooperative Interruptible Service (CIS) program terms and form agreements which were approved by this Commission in Order No. 19,675 (75 NH PUC 38) on January 23, 1990; and

WHEREAS, the current program consists of two types of contracts, a `committed' or CIS-1 type and a `non-committed' or CIS-2 type, each of which offers three customer options differentiated by the frequency, duration, and notification of interruption; and

WHEREAS, the Company in its August 1, 1990 filing has updated their CIS program as directed by the Commission; and

WHEREAS, Granite State has proposed to reduce the credit level paid to participants based primarily upon the reduction in short-term avoided capacity cost of New England Power Company (NEP), Granite State's wholesale power supplier, from a 1990 value of $157.18 per

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kW yr. to a 1991 value of $93.60 per kW-yr; and

WHEREAS, this Commission finds the change in credit level as described and calculated in the testimony of Company witness Joseph B. Wharton to be reasonable; and

WHEREAS, the Staff and the Company (parties) signed a Stipulation on October 26, 1990 in which they agreed on the change in credit level and other changes, such as the reduction in the maximum number of customer interruptions from 37 to 26 under options 1 and 3 of CIS-1 and CIS-2, and the decrease in the minimum Nominal Interruptible Load from the currently effective 200 kW to 100 kW and agreed to revisit the issue of customer charges at a later time; and

[2] WHEREAS, cost-effective conservation and load management programs require that the credit in interruptible programs reflect short-term market changes; it is hereby

ORDERED, that the Stipulation of the parties as attached hereto is approved; and it is

FURTHER ORDERED, that the three Service Agreements, one with an existing customer and two with new customers participating in the currently effective CIS-2 option become effective in accordance with their terms on November 1, 1990.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1990.

Stipulation between Granite State Electric Company and the Staff of the New Hampshire Public Utilities Commission

On August 1, 1990, Granite State Electric Company (Granite State or Company) filled with this Commission proposed revisions to its currently effective Cooperative Interruptible Service (CIS) program terms and form agreements. The purpose of the revisions is to update the credit level provided under the program to better reflect the avoided capacity cost upon which the credits are based. Granite State also proposes to reduce the maximum number of interruptions required under options 1 and 3 of

Page 747

CIS-1 and CIS-2, from 37 to 26. These revisions were supported by testimony and exhibits from Granite State's witness. Granite State requested that they be allowed to become effective November 1, 1990.

Also as a part of its filing, Granite State submitted three Service Agreements, one with an existing customer and two with new customers participating in the currently effective CIS-2 option. Granite State requested that these contracts be approved and allowed to become effective in accordance with their terms.

Pursuant to an Order of Notice issued by order dated October 2, 1990, a hearing was held at the Commission's offices on October 9, 1990 at which it was established that the Company and Staff would report to the Commission on or before October 25, 1990 their progress toward settlement of the case. This Stipulation serves as that report. The Parties have reached agreement on all issues except customer charges related to metering costs which is a reserved issue to be further reviewed and investigated by the Staff.

Staff and Granite State agree that the minimum Nominal Interruptible Load required under

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its CIS program shall be lowered from the currently effective 200 KW to 100 KW. With this adjustment, the parties agree that Granite State's proposed revisions to its CIS program terms and form agreements may become effective November 1, 1990, subject to further adjustment on a prospective basis with respect to the outcome of the Commission's review of the customer charges for the program.

The parties further agree, that the three Service Agreements should be approved as filed and be allowed to become effective in accordance with their terms as follows:

1. Twin State Sand and Gravel and Lebanon Crushed Stone (Group Load) for the Period June 1, 1990 through October 31, 1990;

2. Mary Hitchcock Hospital for the period May 24, 1990 through May 24, 1991; and

3. Gendron Salvage Company for the period May 15, 1990 through May 15, 1991.

The parties finally agree to reduce the maximum number of interruptions required under options one and three under CIS-1 and CIS-2 from thirty-seven to twenty-six to increase the number of participants, and, thereby, the benefit of the program.

With respect to the customer charge related to metering costs issue, the parties agree to submit to the Commission within 15 days of Commission approval of this Stipulation a Proposed Procedural Schedule for the resolution of this issue.

General Conditions.

This agreement is subject to the following conditions:

1. The making of this agreement shall not be deemed in any respect to constitute an admission by a party that any allegations in this proceeding other than those specifically agreed to herein, is true and valid.

2. The making of this agreement establishes no principles or precedents in any other proceeding before the commission.

3. The agreement constitutes an integrated writing and each of the provisions is in consideration and in support of every other provision.

This Stipulation is made this 26th day of October, 1990 by and among the parties who represent that they are fully authorized to enter into this Stipulation on behalf of their principals.

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

GRANITE STATE ELECTRIC COMPANY

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NH.PUC*12/04/90*[51126]*75 NH PUC 749*Victoria L. Turner v. Public Service Company of New Hampshire

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v.

Public Service Company of New Hampshire

DC 90-106
Order No. 19,999

New Hampshire Public Utilities Commission

December 4, 1990

ORDER denying reconsideration of an order that dismissed a complaint requesting relief from payment of electric bills.

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1. PAYMENT, § 9 — Liability for payment — Complaint for relief — Safety concerns — Dismissal.

[N.H.] In denying reconsideration of an order that dismissed a complaint for relief from payment of electric bills, the commission reaffirmed its conclusion that the complainant failed to allege any reasonable basis for the grant of the requested relief; the complainant had based her claim for relief on safety concerns in connection with the operation of the Seabrook nuclear plant and other concerns in connection with the proposed merger of Northeast Utilities and Public Service Company of New Hampshire. p. 750.

2. PAYMENT, § 9 — Liability for payment — Opposition to nuclear power — Objections to utility merger.

[N.H.] Opposition to nuclear power and objections to a proposed electric utility merger did not entitle a customer to withhold payment of electric bills. p. 750.

3. COMMISSIONS, § 51 — Prejudice or bias — Recusal — Complaint proceeding.

[N.H.] The participation of the chairman of the commission (in his former capacity as assistant state attorney general) in the negotiation of an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of an electric utility did not require the chairman to recuse himself from consideration of a complaint for relief from payment of bills for electric service provided by the utility. p. 750.

4. PROCEDURE, § 32 — Reconsideration — Factors considered — Notice.

[N.H.] Lack of specific notice to the complainant of commission deliberation on her complaint did not constitute grounds for reconsideration of its dismissal of the complaint where the commission had not scheduled oral argument on the matter and the complainant would not have been permitted to supplement her written submissions even if she had been present at the deliberations. p. 750.

By the COMMISSION:

REPORT

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I. *Procedural History*

By letter dated April 4, 1990, Victoria Turner notified Public Service Company of New Hampshire (PSNH) that she would not pay her overdue electric bill because of her opposition to the Seabrook Nuclear Power Plant. In a letter dated April 30, 1990, PSNH advised Ms. Turner that payment of her bill was necessary to avoid a disconnection of service pursuant to Puc Rule 303.08(e)(3). On May 7, 1990, Ms. Turner participated in a conference with PSNH concerning her dispute. During this conference PSNH informed Ms. Turner of her right to enter into a repayment agreement with PSNH and her opportunity for a further conference with the staff of the commission. On May 24, 1990, Ms. Turner participated in a conference with commission staff in accordance with Puc Rule 303.08(e)(4).

On June 4, 1990, Ms. Turner filed a

complaint against PSNH with the commission. In her complaint Ms. Turner alleged, *inter alia*, concerns over the operation of Seabrook and Northeast Utilities' (NU) proposed acquisition of PSNH. Ms. Turner then related her refusal to pay her electric bill to her concerns. On July 11, 1990, PSNH requested that the commission dismiss the complaint on the grounds that it failed to state a legitimate claim for relief. On August 17, 1990, Ms. Turner responded to PSNH's motion. In her response Ms. Turner reiterated her concerns over nuclear power and NU's planned merger with PSNH and requested that the commission take action to address her concerns.

On September 17, 1991, the commission dismissed Ms. Turner's complaint. Order No. 19,936 (75 NH PUC 643). The commission found that the allegations concerning nuclear power and the PSNH and NU merger were respectively outside of the commission's jurisdiction or the subject of a separate proceeding, DR 89-244. The commission further found that even if true, none of the allegations contained in the complaint excused Ms. Turner from paying her electric bills. On October 4, 1990, Ms. Turner requested rehearing of the commission's order.

II. *Commission Analysis*

[1-4] Pursuant to RSA 541:3 the commission may grant rehearing of its orders if it finds that good reason is set forth in the motion. The commission does not believe that the allegations contained in Ms. Turner's motion merit reconsideration of its order.

The primary issue before the commission is whether PSNH is entitled to disconnect Ms. Turner because she is refusing to pay her electric bill. For the purpose of PSNH's Motion to Dismiss, the commission assumed that each allegation contained in Ms. Turner's complaint was true and, if true, whether the allegations set forth a legitimate basis for relief. *ERA Pat Demarais Association v. Alex Eastman Foundation*, 129 N.H. 89 (1986). In her complaint Ms. Turner did not deny that she received service from PSNH or that PSNH charged her for the service at its tariffed rate; rather, she related her non-payment to her objections to nuclear power and the NU/PSNH merger. Even if true, these allegations did not entitle Ms. Turner to withhold payment of her electric bill. Accordingly, the commission found pursuant to RSA 363-B:1 and Puc Rule 303:08, PSNH was entitled to disconnect Ms. Turner as a matter of law.

The Motion for Rehearing fails to raise any reason for reversing the commission's order. The

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motion is directed at the commission's refusal to reconsider its approval of NU's proposed acquisition in DR 89-244. Ms. Turner never sought to intervene in that docket. Moreover, to the extent she is seeking reconsideration of the commission's July 20, 1990, order approving the merger her motion is untimely. RSA 541:3.

Ms. Turner also raised procedural questions in her motion. She requested that Chairman Smukler recuse himself from consideration of her complaint because he negotiated the NU plan on the behalf of the State. The issue before the commission in this proceeding is whether Ms. Turner has raised legitimate grounds for refusing to pay her electric bill. In determining that no legitimate grounds were raised, the commission notes its conclusion in DR 89-244 that the NU Rate Plan is in the public good;[1](95) however, even if the commission had not yet issued findings and conclusions on the matter, the withholding of payment for service rendered on those grounds is not an appropriate remedy as a matter of law. Under the circumstances Chairman Smukler's recusal is neither appropriate nor necessary. RSA 363:12 and :19.

Ms. Turner also claimed she had insufficient notice of the commission's deliberation of her complaint. The commission considered Ms. Turner's complaint at its weekly meeting on August 20, 1990. Pursuant to RSA 91-A:2, the commission's agenda, including the Turner petition, was posted in two public places more than 24 hours in advance of its meeting. Other than posting its agenda, as a general practice the commission does not notify individually parties in a docket that it will be deliberating on matters involved in the proceeding during its weekly meeting. The commission also does not permit substantive oral argument during its weekly meeting on matters under deliberation.

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In contrast when the commission finds that oral argument is appropriate, specific notice is given to the parties of the date and time of the hearing.

In this case, the commission did not permit oral argument on PSNH's motion. Thus, even if Ms. Turner had been present during the deliberations she would not have been given an opportunity to supplement her written submissions with oral statements. For these reasons, we find Ms. Turner's complaint of lack of specific notice fails to raise a sufficient ground for reconsideration to our decision.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1990.

FOOTNOTES

[1]Chairman Smukler *sua sponte* recused himself in *Re PSNH*, Docket No. DR 89-244 and, thus, did not participate in that decision.

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NH.PUC*12/10/90*[51127]*75 NH PUC 751*Manchester Water Works

[Go to End of 51127]

75 NH PUC 751

Re Manchester Water Works

DE 90-162
Order No. 20,000

New Hampshire Public Utilities Commission

December 10, 1990

ORDER nisi authorizing a water public utility to extend its mains and service.

SERVICE, § 210 — Extensions — Water service — Commission approval.

[N.H.] A water utility was authorized to extend its mains and service into a previously unserved area where no other water utility had franchise rights in the area sought, the town government of the area to be served was in accord with the extension, and the utility had obtained the approval of the New Hampshire Department of Environmental Services; authorization was conditioned on the public being afforded an opportunity to submit comments, and/or request a hearing, on the matter.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this commission in areas served outside the City of Manchester, by a petition filed September 26, 1990, seeks authority under RSA 347:22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett has stated that it is in accord with the petition; and

WHEREAS, Manchester Water Works has filed with the Commission, approvals pursuant to RSA 374:22 III from the New Hampshire Department of Environmental Services; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

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WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than January 4, 1991; and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by

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publication of an attested copy of this order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be not later than December 21, 1990 and designated in an affidavit filed with this office on or before January 11, 1991; and it is

FURTHER ORDERED, *NISI* that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Hooksett in an area herein described, and as shown on a map on file in the commission offices:

> All property abutting Morrill Road, Hooksett, New Hampshire, as shown on tax map 40, from the easterly limits of the existing franchise area on Morrill Road as approved under PUC Order No. 18,772, dated August 10, 1987 in docket DE 87-123, easterly along Morrill Road 1,864l/- feet.

and it is

FURTHER ORDERED, that such authority shall be effective on January 11, 1991, unless a request for hearing is filed with the commission as provided above or unless the commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1990.

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NH.PUC*12/10/90*[51128]*75 NH PUC 752*Southern New Hampshire Water Company, Inc.

[Go to End of 51128]

75 NH PUC 752

Re Southern New Hampshire Water Company, Inc.

DF 90-212
Order No. 20,001

New Hampshire Public Utilities Commission

December 10, 1990

ORDER authorizing a public water utility to increase its short-term debt limit.

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SECURITY ISSUES, § 44 — Authorization — Short-term debt — Temporary increase — Water utility.

[N.H.] The commission authorized a water public utility to increase its short-term debt limit where the utility was unable to issue long-term debt pending completion of its permanent rate case, had experienced a significant property tax increase, had a cash deficiency due to a customer's nonpayment of an authorized temporary rate surcharge, and required additional short-term debt to complete its 1990 construction and improvement program.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. pursuant to R.S.A. 369:7 filed with this commission on November 28, 1990 a Petition to Increase Short Term Debt Limit; and

WHEREAS, Southern New Hampshire Water Company, Inc. states that additional long term debt cannot be issued until a permanent rate increase is granted in Docket DR 89-224; and

WHEREAS, Southern New Hampshire Water Company has experienced significant property tax increases from the Town of Litchfield, a cash deficiency due to non-payment of the commission's authorized Temporary Rate Surcharge by the Town of Hudson, and the need for additional short-term debt to complete its 1990 construction and improvement programs; and

WHEREAS, Southern New Hampshire Water Company, Inc. was granted a short term debt limit of $5,850,000 until June 30, 1991 in Docket DF 90-132, Order No. 19,953 (75 NH PUC 668); and

WHEREAS, Southern New Hampshire Water Company, Inc. is seeking to increase the short term debt borrowing limit of $5,850,000 to $6,200,000 until June 30, 1991; it is hereby

ORDERED, that the New Hampshire

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Public Utilities Commission, pursuant to R.S.A. 369.7, finds that the increase in the short term debt limit of $5,850,000 to $6,200,000 as proposed in the petition is consistent with the public good; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall, on January first and July first of each year, file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of such notes; and it is

FURTHER ORDERED, that this Order shall be effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1990.

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NH.PUC*12/11/90*[51129]*75 NH PUC 753*New Hampshire Electric Cooperative, Inc.

[Go to End of 51129]

75 NH PUC 753

Re New Hampshire Electric Cooperative, Inc.

DR 90-205
Order No. 20,004

New Hampshire Public Utilities Commission

December 11, 1990

ORDER authorizing an electric cooperative to offer a winter interruptible rate program.

RATES, § 322 — Electric rate design — Demand and load — Winter interruptible program.

[N.H.] An electric cooperative was authorized to offer a winter interruptible rate program intended for temperature sensitive loads and for those customers with standby generation; it was found that the program conformed to principles previously adopted by the commission and would provide the cooperative with billing demand reductions without inconveniencing customers.

By the COMMISSION:

ORDER

On November 15, 1990, the New Hampshire Electric Cooperative, Inc. (NHEC or Company) filed an original and ten copies of testimony and exhibits supporting a winter interruptible rate program; and

WHEREAS, the NHEC will not be participating at the wholesale level in Public Service Company of New Hampshire's (PSNH) Rate WI program, a program PSNH is again offering to its customers this winter period (Docket No. DR 90-131, Order No. 19,973 [75 NH PUC 694]); and

WHEREAS, the NHEC proposes to offer its own Rate WI program, structured similarly to the 1989-1990 PSNH Rate WI program, with the goal of reducing its wholesale billing demands; and

WHEREAS; the NHEC proposal is intended for temperature sensitive loads and for those customers with stand-by generation; and

WHEREAS, the NHEC proposal provides for two levels of interruption for temperature sensitive customers under a "Full Peak Alert Period" and a "Partial Peak Alert Period" in order to provide the Company with more assurance of obtaining billing demand reductions without

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unduly inconveniencing customers; and

WHEREAS, the terms of the customer-owned generating interruptible load agreement and the temperature sensitive interruptible load agreement conform to principles previously adopted by the commission and are made a part hereof; it is hereby

ORDERED, that the NHEC proposal to offer a temperature sensitive winter interruptible program and a stand-by generation program is approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1990.

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NH.PUC*12/17/90*[51130]*75 NH PUC 754*Contel Corporation

[Go to End of 51130]

75 NH PUC 754

Re Contel Corporation

Additional petitioner: GTE Corporation

DF 90-154
Order No. 20,005

New Hampshire Public Utilities Commission

December 17, 1990

ORDER approving the proposed merger GTE Corporation and Contel Corporation and amending a prior order *nisi* that approved the merger proposal.

CONSOLIDATION, MERGER, AND SALE, § 42 — Telephone utility merger — Terms and consolidations — Service to affiliate.

[N.H.] The commission approved the proposed merger of GTE Corporation and Contel Corporation where the commission received no requests for hearing on a prior order nisi that approved the merger; however, the order was amended to clarify that Contel was required to continue to furnish service to a GTE Electrical Products facility under the applicable tariff, unless and until otherwise approved by the commission.

By the COMMISSION:

ORDER

WHEREAS, on October 11, 1990, the New Hampshire Public Utilities Commission issued Order No. 19,950 (75 NH PUC 664), approving NISI the merger of Contel corporation with GTE corporation; and

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WHEREAS, the Order provided *inter alia* that the merger transaction is approved and the Order effective on November 12, 1990, unless a request for hearing is filed with the commission before that date; and

WHEREAS, the Order further provided that the approval of the merger is conditional on service provided to GTE Electric Products by Contel of New Hampshire under the applicable tariff; and

WHEREAS, on October 10, 1990, Contel Corporation requested clarification of the Order to state that Contel Corporation is required to continue to furnish telephone service to GTE Electric Products under the applicable tariff, unless and until otherwise approved by the Commission; and

WHEREAS, the Commission did not receive any requests for a hearing on the merger before November 12, 1990, or thereafter; it is hereby

ORDERED, that Order No. 19,950 October 11, 1990, is hereby amended to delete the current paragraph addressing Contel's service obligations to GTE Electrical Products and to substitute for said paragraph the following paragraph:

Contel of New Hampshire, Inc. ("Contel") shall continue to furnish telephone service to GTE Electrical Products under the applicable tariff, unless Contel makes any and all necessary filings under RSA Chapter 366, 378:11 or 378:7 and other applicable provisions of RSA Title XXXV, as amended, and those conditions of those statutes and any other applicable regulations; and it is

FURTHER ORDERED, that the merger is approved retroactive to November 12, 1990.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1990.

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NH.PUC*12/17/90*[51131]*75 NH PUC 755*Northeast Hydrodevelopment Corporation

[Go to End of 51131]

75 NH PUC 755

Re Northeast Hydrodevelopment Corporation

DE 89-257
Order No. 20,007

New Hampshire Public Utilities Commission

December 17, 1990

ORDER granting proprietary treatment of financial projections disclosed to the commission and an electric utility by a qualifying small power producer.

PROCEDURE, § 16 — Production of information — Disclosure — Proprietary treatment.

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[N.H.] The commission granted proprietary treatment of financial projections disclosed to the commission and an electric utility by a qualifying small power producer; the grant of proprietary treatment was without prejudice to the rights of any person to challenge the confidentiality of the material granted proprietary status.

By the COMMISSION:

ORDER

On July 20, 1990, Public Service Company of New Hampshire (PSNH) filed data request set no. 2, no. 31 which requested "copies of any and all documents pertaining to economic analysis that have been performed" including year-by-year itemization of cost components such as initial capital costs, loan payments for any debt financing, operation and maintenance expenses, taxes, lease payments, administrative and general expenses, wheeling or transmission charges, insurance, or any other expenses that Northeast Hydrodevelopment Corporation (NHC) could incur, together with year-by-year revenue projections for the McLane Dam Project; and

WHEREAS, NHC objected to the disclosure of this information on the grounds that RSA 362-A:2 exempted qualifying small power producers from "all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation utilities"; and

WHEREAS, at the commission's request NHC and PSNH negotiated a resolution of this issue with respect to this docket under which NHC and PSNH agreed to provide proprietary financial projections to each other, with the understanding that they would be disclosed to the commission staff and to the commission for consideration as part of the record in this docket including an appellate review of these proceedings but would not otherwise be available to the public as part of any public record; and

WHEREAS, PSNH has agreed not to object to a request by NHC for a protective order reasonably designed to protect the confidentiality of NHC's financial projections disclosed to PSNH and to the commission or any appellate body reviewing this decision; it is hereby

ORDERED, that the commission will grant proprietary treatment to all information provided to PSNH, the staff of the commission, and the commission in response to PSNH's data request, set no. 2, number 31 without prejudice to the rights of any person to challenge the continued confidentiality of any of the materials granted said status, that is, NHC shall bear the burden in maintaining the continued confidentiality of these materials pursuant to the standards of RSA 91-A:5, IV; and it is

FURTHER ORDERED, that unless otherwise ordered all copies of this proprietary material and derivatives therefrom shall be returned to counsel for NHC at the conclusion of these proceedings or any appellate review thereof.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1990.

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[Go to End of 51132]

75 NH PUC 756

Re New England Telephone and Telegraph Company, Inc.

Additional petitioner: Concord Electric Company

DE 90-185
Order No. 20,008

New Hampshire Public Utilities Commission

December 17, 1990

ORDER nisi granting a license to construct and maintain utility facilities on state-owned property.

CERTIFICATES, § 76 — Construction of facilities — Factors considered — State-owned property — Service requirements — Telephone LEC — Electric utility.

[N.H.] The commission granted a joint petition by a telephone local exchange carrier (LEC) and an electric utility for a license to construct and maintain utility facilities on state-owned property where the facilities were necessary to meet the reasonable requirements for service and would not adversely effect public rights in the state-owned property.

By the COMMISSION:

ORDER

On October 30, 1990, the New England Telephone and Telegraph Company (`New England Telephone' or `NET') and Concord Electric Company (`Concord Electric') filed a joint petition pursuant to RSA 371:17 seeking a license to construct and maintain facilities on state property located at the State Prison on North Main Street, Concord, New Hampshire.

WHEREAS, the facilities consist of wires, cabinets and their necessary supporting concrete pads; and

WHEREAS, the facilities shall be constructed on state owned land in an approximate area of 20 feet by 40 feet as shown on NET work Order No. 901768 on file with the New Hampshire Public Utilities Commission (`Commission'); and

WHEREAS, New England Telephone and Concord Electric have obtained an easement signed by the Commissioner of the Department of Corrections, on file with this Commission; and

WHEREAS, petitioners state said construction proposals have been reviewed and approved by the State of New Hampshire Department of Corrections; and

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WHEREAS, the facilities will be primarily constructed for future telecommunications requirements of the Department of Corrections; and

WHEREAS, the Commission finds such facilities necessary for the petitioners to meet the reasonable requirements for service, and that granting of such license will not adversely effect public rights on said property, thus would be in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is hereby

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file written request for a hearing on the matter before this Commission no later than January 14, 1991, and it is

FURTHER ORDERED, that on behalf of both petitioners, New England Telephone effect such notification by publication of this order once in a statewide publication no later than January 7, 1991, and it is

FURTHER ORDERED, said facilities be constructed and maintained in accordance with established minimum safety standards, such as, but not limited to, the National Electrical Safety Code; and it is

FURTHER ORDERED, *NISI* that New England Telephone and Telegraph Company and Concord Electric Company hereby are granted said license pursuant to RSA 371:17 *et seq* to construct and maintain facilities as herein

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described; and it is

FURTHER ORDERED, that said authority shall become effective January 18, 1991, unless a hearing is requested as provided herein or the Commission otherwise directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 1990.

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NH.PUC*12/18/90*[51133]*75 NH PUC 757*New Hampshire Electric Cooperative, Inc.

[Go to End of 51133]

75 NH PUC 757

Re New Hampshire Electric Cooperative, Inc.

DR 90-198
Order No. 20,009

New Hampshire Public Utilities Commission

December 18, 1990

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ORDER nisi authorizing an electric cooperative to expand its electrical thermal storage space heating program to commercial customers and to implement a dual fuel rate.

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1. RATES, § 339 — Electric — Kinds and classes of service — Electrical thermal storage space heating.

[N.H.] An electric cooperative was authorized to to expand its electrical thermal storage space heating program to commercial customers where it was found that the proposed expansion would be consistent with past commission decisions that had found optional storage space heating to be in the public good. p. 757.

2. RATES, § 322 — Electric rate design — Demand and load — Dual fuel rate.

[N.H.] An electric cooperative was authorized to implement a dual fuel rate for customers with the ability to switch from electric heat to an alternative heat source during peaking conditions when the cooperative would need to interrupt service in order to avoid incurring higher billing demand charges. p. 757.

By the COMMISSION:

ORDER

On November 8, 1990, the New Hampshire Electric Cooperative (NHEC or Company) filed with the commission proposed tariff pages of N.H.P.U.C. No. 14 Electricity — 5th Revised Pages 25, 25A, and 31, 1st Revised Pages 26 and 32, and Original Page 32A, designed to expand the electric thermal storage space heating program that is currently available to residential customers to NHEC's commercial customers. The NHEC's proposal also includes a fuel strategy for those homes or businesses that have the ability to switch from electric heat to an alternate heat source during peaking conditions when the Company would need to interrupt service in order to avoid incurring higher billing demand charges; and

WHEREAS, the costs of metering equipment will continue to be recovered under the service charge component and all installation, wiring, and heating equipment will be paid for by the customer; and

[1, 2] WHEREAS, the commission has reviewed the filing and finds it consistent with past commission decisions that have found optional storage space heating to be in the public good; it is hereby

ORDERED NISI, that the New Hampshire Electric Cooperative's proposal to expand the electric thermal storage program to commercial customers and their proposal for a dual fuel rate is approved and that NHEC file appropriate tariff pages in accordance with Puc 1601.05; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the NHEC notify all persons desiring to be heard by causing an attested copy of this order to be published once in a newspaper having general circulation in that part of the State in which the NHEC operates,

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such publication to be no later

than December 31, 1990, said publication to be documented by affidavit filed with this office on or before January 7, 1991; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than 15 days after the date of publication of the Order; and it is

FURTHER ORDERED, that this Order *NISI* will be effective 20 days after the date of publication of this Order unless the Commission provides otherwise prior thereto.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1990.

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NH.PUC*12/18/90*[51134]*75 NH PUC 758*Granite State Electric Company

[Go to End of 51134]

75 NH PUC 758

Re Granite State Electric Company

DR 90-013
Order No. 20,010

New Hampshire Public Utilities Commission

December 18, 1990

ORDER approving a settlement agreement providing for an increase in rates for electric service.

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1. RATES, § 321 — Electric — Rate settlement — Commission approval.

[N.H.] The commission accepted an electric rate settlement providing for a $1.7 million increase in permanent rates; it was found that the increase would result in rates sufficient to yield not less than a reasonable return on the cost of utility property used and useful in the public service less accrued depreciation. p. 759.

2. RATES, § 260 — Surcharges — Recoupment of revenue deficiency under temporary rates — Electric utility.

[N.H.] The commission accepted an electric rate settlement that allows the utility to surcharge over a six-month period the difference between temporary rates made effective by prior order and the permanent rates provided for in the settlement. p. 759.

3. EXPENSES, § 114 — Income taxes — Investment tax credits — Interest synchronization —

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Electric rate settlement.

[N.H.] Approval of an electric rate settlement was conditioned on the utility agreeing to accept as precedent the principle of interest synchronization on post-1969 investment tax credits. p. 759.

4. RATES, § 321 — Electric rate design — Settlement — Marginal cost study.

[N.H.] Approval of an electric rate settlement providing for an increase in annual revenues was conditioned on the utility filing a marginal cost of service study for use in the rate design phase of the proceeding. p. 759.

APPEARANCES: Cynthia A. Arcate, Esq. and David Saggau, Esq. on behalf of Granite State Electric Company; Eugene F. Sullivan, III, Esq. and Audrey A. Zibelman, Esq. on behalf of the New Hampshire Public Utilities Commission.

REPORT

I. *Procedural History*

On March 15, 1990, Granite State Electric Company ("Granite State") filed a petition with this commission for a permanent rate increase of $2.17 million, a 4.9% increase over current revenue levels pursuant to RSA 378:28. On that same date Granite State filed a petition for temporary rates pursuant to RSA 378:27.

On May 28, 1990, the commission granted Granite State a temporary rate increase of $1.44 million and established a procedural schedule for the remainder of the case. See Report and Order No. 19,840 (75 NH PUC 300).

On August 27, 1990, the commission

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"bifurcated" the proceeding to allow Granite State to file a marginal cost of service study, after completion of this rate case for subsequent commission review.[1(96)] The staff of the commission believed that such a study was necessary because Granite State's wholesale power rate is based on marginal costs.

On September 27, 1990, staff and Granite State met for the purpose of settling all disputed issues in Granite State's filings and Staff's testimony in response thereto. After discussion staff and Granite State reached a comprehensive settlement of all issues in this docket.

II. *Settlement Agreement*

2(97)

Staff and Granite State agreed to the following:

[1-4] 1) Granite State shall be allowed a permanent rate increase in the amount of $1.7 million effective for service rendered on or after January 1, 1991;

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2) Pursuant to RSA 378:29 Granite State shall be allowed to recover the difference between the temporary rate level of $1.44 million and the permanent rate level of $1.7 million for the seven-month period beginning June 1, 1990 to January 1, 1991 with interest on this amount for the months of November and December, 1990 plus all rate case expenses through a surcharge, to be collected over six (6) months beginning January 1, 1990;

3) Granite State shall accept as precedent the principle of interest synchronization on post 1969 investment tax credits for all subsequent rate cases filed by Granite State before this commission;

4) Granite State will file a marginal cost of service study by March 1, 1991.

III. *Commission Analysis*

The commission accepts the stipulation of the parties and finds the $1.7 million or an increase in rates of 3.86% ensures rates that are "sufficient to yield not less than a reasonable return on the cost of property of the utility used and useful in the public service less accrued depreciation ... .". RSA 378:27.

The commission's acceptance of this stipulation is explicitly based on the fact that the rate of return to be earned by the company is determinable from the financial information contained in the exhibits to the stipulation as it is our general policy to set revenue levels based on rate of return regulation. [See Attachment A.]

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Stipulation Agreement appended hereto as Attachment A be, and hereby is, accepted; and it is

FURTHER ORDERED, that pursuant to said Stipulation Granite State Electric Company, be and hereby is, granted a 3.86% rate increase effective January 1, 1991; and it is

FURTHER ORDERED, that pursuant to said Stipulation Granite State Electric Company may collect its legal costs incurred by this rate case and recoup its losses during the temporary rate period, pursuant to RSA 378:29, with interest for the months of November and December over a six (6) month period beginning January 1, 1991.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1990.

ATTACHMENT A

Granite State Electric Company
Rate Case

Recommendations of the Parties for Resolution of this Proceeding

I. *INTRODUCTION*

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On March 15, 1990, Granite State Electric Company (Granite State) filed with this Commission an application for a permanent rate increase pursuant to NH RSA 378:28 and in accordance with Chapter 1600 of the New Hampshire Code of Administrative Rules. On the same day, Granite State also filed a petition for temporary rates pursuant to NH RSA

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378:27. By these filings, Granite State proposed to permanently increase its annual revenues by approximately $2.17 million, a 4.9% increase over current revenue levels, and to temporarily increase its annual revenues by $1.66 million pending Commission review of the permanent rate application.

Prior to this filing, Granite State had not sought a revenue increase since 1981. Since that time, Granite State filed for two rate reductions. In 1985, at Staff's request, Granite State filed a $300,000 annual rate reduction due to unusual sales growth experienced during that year (Order No. 17879 [70 NH PUC 831], issued October 2, 1985 in Docket No. DR 85-341). In September 1987, also at Staff's request, Granite State filed a rate decrease to reflect the reduction in the federal corporate income tax rate (Docket No. DR 87-91). Granite State's last allowed rate of return on equity was established in that proceeding at 13.00%.

Recently, however, Granite State's financial situation has deteriorated significantly. In 1989, the company earned only a 6% rate of return on common equity. Granite State's rate of return has dropped even further in 1990. The deterioration of Granite State's financial situation, caused primarily by increased operating expenses, precipitated the need for a permanent rate increase.

On May 28, 1990, the Commission granted Granite State's petition for temporary rates and established a procedural schedule for the permanent rate request (Order No. 19,840 [75 NH PUC 300], Docket No. DR 90-013). The Commission granted a temporary rate increase of $1.44 million annually, effective June 1, 1990. On August 27, 1990, the Commission bifurcated the proceeding to allow Granite State to file a marginal cost of service study, after completion of the established procedural schedule, for later Commission review.

In testimony dated September 12 and 20, 1990, Staff recommended approval of Granite State's rate design based on its fully allocated cost study, as well as certain rate classification and design changes. Staff Witness Planchet testified that Granite State's adjustments to rate design and allocation based on an allocated cost study were reasonable and positive steps toward marginal rates. Ms. Planchet further testified that the general direction of rate changes made as a result of the filed allocated cost study would likely be similar to that derived from a marginal cost study and, therefore, considered Granite State's approach reasonable. During settlement negotiations, the parties agreed that these design changes would not become effective until January 1, 1991, allowing Granite State time to put the appropriate mechanisms in place to implement these changes, as well as inform and educate its customers about the rate design changes prior to implementation.

In addition to its recommendation on rate design, Staff also recommended lowering the proposed permanent rate increase to approximately $1.66 million based on a 12.3% rate of return on common equity.[1(98)]

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II. *STAFF'S POSITION*

Staff Witness Planchet's recommendation that Granite State's proposed rate design be accepted was made in recognition that Granite State would file a marginal cost of service study in the near future. Ms. Planchet testified that, with Granite State's wholesale power rate based on marginal costs, it would be necessary to have marginal cost retail rates to send the proper price signals to Granite State's customers.[2(99)] During settlement negotiations, the parties agreed that Granite State would file a marginal cost of service study by March 1, 1991. The parties also agreed that Staff would provide information and direction to Granite State regarding the scope and format of this study by November 15, 1990.

Staff Witness Frantz supported Staff's recommended rate of return on equity of 12.3% based upon a discounted cash flow (DCF) analysis. However, Granite State's witness, John G. Cochrane, submitted testimony supporting a range of return from 13.15% to 13.7% and recommended a return of 13.5%. Mr. Cochrane also based his analysis on a DCF approach, as well as a risk premium analysis.

Staff Witnesses Sullivan and Cunningham (hereinafter "Witnesses") jointly testified as to the remaining issues in Granite State's cost of service. The Witnesses' adjustments to the cost

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of service are summarized as follows:

A. *Rate Base*

Witnesses took the position that Granite State's proposed rate base should be reduced by $167,000, from $26,147,000 to $25,980,000. This reduction was based on the following adjustments: transformer inventory levels ($137,000), construction work in progress ($28,000), and plant held for future use ($2,000).

B. *Salary and Wage Adjustments*

Witnesses proposed a $20,000 reduction in Granite State's calculation of salary and wage adjustments. Granite State included January and February, 1991 escalations in its calculation of known and measurable changes in salary and wage adjustments. This adjustment goes beyond the 12-month period following the 1989 test year during which time such adjustments are allowed. Witnesses further proposed a reduction of $2,000 for the Federal Insurance Contribution Act (FICA) taxes related to the salary and wage adjustments for January and February, 1991.

C. *Customer Accounting*

Witnesses recommended that Granite State's projected losses due to net charge-offs be reduced by $79,000, from $178,000 to $99,000. Although Granite State incurred charges for uncollectible accounts of $178,000 in 1989, Witnesses based their figure on an average of Granite State's net charge-offs for the last six years.

D. *Interest Synchronization*

Witnesses proposed to apply the principle of interest synchronization to Granite State's

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investment tax credit. Interest synchronization is a ratemaking methodology which imputes a hypothetical interest expense tax deduction into the cost of service relating to unamortized investment tax credits.

E. *Charitable Contributions*

Witnesses proposed that Granite State's charitable contributions of $19,000 be disallowed. Witnesses stated that these costs should be included in non-operating expense accounts (i.e., below the line). Witnesses asserted that such expenses are incurred to engender a positive company image and, therefore, should not be a ratepayer expense.

F. *Unfunded Tax Liability*

Witnesses took the position that Granite State's calculation of the unfunded tax liability should be eliminated. Witnesses asserted that such an adjustment does not take into account time value of money since Granite State would be currently collecting revenue for tax liabilities which would not come due for many years. Witnesses also stated that Granite State has erroneously included non-property related deferred taxes in its calculations. Further, Witnesses stated that deferred tax debits for Contributions in Aid-of-Construction (CIAC) should not have been included in the calculation because tax law allows a company to depreciate the full value of CIAC's even though they were included in income when they were received. Finally, Witnesses proposed that this calculation be eliminated because it includes all plant, regardless of the fact that only some plant was included in prior flow-through treatment of tax timing differences.

III. *SETTLEMENT*

On September 27, 1990, Commission Staff and Granite State met in the Commission's Concord Offices for the purpose of settling all issues relating to Granite State's filing. After much discussion, Staff and Granite State have reached a comprehensive settlement of all issues in this docket as follows:

(1) The parties agree that Granite State shall be allowed a permanent rate increase of $1.7 million, effective for service rendered on or after January 1, 1991. *See*, Exhibit No. 1 for summary cost of service;

(2) The parties agree that Granite State

shall collect an additional $40,000 for rate case expense to be recovered in the surcharge provided for in paragraph (3) below;

(3) As allowed by RSA 378:29, the parties agree that Granite State shall recover the difference between the temporary rate increase of $1.44 million and the permanent rate increase of $1.7 million for the seven (7) month period beginning June 1, 1990 to January 1, 1991, with interest on this amount for the months of November and December, 1990, plus the rate case expense specified in paragraph (2), through a surcharge to be collected over six (6) months beginning with service rendered on or after January 1, 1991. *See*, Exhibit No. 2 for estimated calculation of the surcharge;

(4) Granite State shall accept as precedent the Staff's position that interest synchronization

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should be applied in this and all subsequent rate cases filed by Granite State before the New Hampshire Public Utilities Commission as long as this treatment remains the established policy of the Commission;

(5) Staff and Granite State agree that the Staff's objections to the Company's accounting for tax timing differences is limited to Granite State's unfunded tax liability and that Staff has no objection to the Company's normalization of all other book/tax timing differences reflected in its filing;

(6) Proposed tariff sheets to implement the terms of this settlement are attached as Exhibit No. 5;

(7) Granite State agrees to file with the Commission a marginal cost study by March 1, 1991. Staff agrees to provide information and direction to Granite State regarding the scope and format of this study by November 15, 1990; and

(8) The parties agree that rate design changes and allocated revenue results proposed in this docket shall become effective January 1, 1991. *See*, Exhibit Nos. 3 and 4.

Staff and Granite State recommend that the Commission approve this settlement as a final disposition of all issues in this proceeding. Staff further requests that the Commission adopt the policy established under paragraph 4 above as the appropriate ratemaking treatment for interest expense associated with unamortized investment tax credits.

IV. *CONDITIONS*

A. This settlement is a full, complete and final agreement of the parties with respect to all the issues considered within the scope of this proceeding.

B. The parties' agreement to the terms of this settlement is subject to the approval and acceptance of the settlement by the Commission. Should the Commission modify or reject any of the terms herein, either Granite State or the Staff may withdraw from the Stipulation and no part thereof shall be offered or introduced as evidence or otherwise used in this or any other proceeding.

C. The discussions which have produced this settlement have been conducted on explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion, and are not to be used or disclosed in any manner in connection with this proceeding, any other proceeding, or otherwise.

D. All the agreements made herein were for the purposes of this settlement and shall have no binding or precedential effect in any other proceeding in this or any other jurisdiction for Granite State or its affiliates, except as established under Section III, (4).

E. This settlement is made on this 22nd day of October, 1990 by and among the parties who represent that they are fully authorized to do so on behalf of their principals.

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION STAFF
By:
Audrey Zibelman

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General Counsel

GRANITE STATE ELECTRIC COMPANY
By:
Cynthia A. Arcate
Counsel

SUMMARY OF SETTLEMENT
COST OF SERVICE

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[Graphic Not Displayed Here]

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[Graphic Not Displayed Here]

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FOOTNOTES

Report

[1]This "bifurcation" will not affect rate design until the end of the marginal cost rate design portion of this case at which point changes in rate design, if any, will be implemented on a forward looking basis.

[2]The entire settlement agreement is attached hereto as Exhibit A and will not be repeated verbatim herein.

Attachment A

[1]Staff originally recommended an increase of $1.51 million. However, due to a revised tax figure agreed to during settlement negotiations, that amount was increased to approximately $1.66 million.

[2]In her testimony, Ms. Planchet referenced Order No. 19,539 which directed Granite State to "... file by July 1, 1990 retail rate design changes to reflect the price signals of the wholesale rate in the retail tariff."

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NH.PUC*12/31/90*[51135]*75 NH PUC 765*Granite State Electric Company

[Go to End of 51135]

75 NH PUC 765

Re Granite State Electric Company

DR 90-142
Order No. 20,011

New Hampshire Public Utilities Commission

December 31, 1990

ORDER accepting a stipulation establishing the 1991 conservation and load management adjustment factor for an electric utility. Commission finds that the utility's 1991 C&LM program provides a cost effective resource option for the utility, and long-term benefits to ratepayers sufficient to warrant granting the utility the opportunity to earn a financial incentive on its program.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 34 — Conservation and load management adjustment factor — Financial incentive — Electric utility.

[N.H.] A conservation and load management adjustment factor of $0.00423 per kilowatt-hour was adopted as just and reasonable for an electric utility; in approving the adjustment factor, the commission found that utility's 1991 C&LM program would provide a cost-effective resource option for the utility and long-term benefits to ratepayers sufficient to warrant granting the utility the opportunity to earn a financial incentive on its program. p. 767.

2. CONSERVATION, § 1 — Program implementation — Financial incentives — Electric utility.

[N.H.] The 1991 conservation and load management program of an electric utility was found to provide a cost-effective resource option for the utility and long-term benefits to ratepayers sufficient to warrant granting the utility the opportunity to earn a financial incentive on its program. p. 767.

3. CONSERVATION, § 1 — Program implementation — Payments to customers — Cost-effectiveness.

[N.H.] Utility payments to customers to encourage them to invest in conservation and load management should not be made to subsidize customers but rather to acquire C&LM where it is a cost-effective resource from the utility's perspective. p. 767.

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i. CONSERVATION, § 1 — Program implementation — Unfair competition.

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[N.H.] Statement, by the commission, that while it encourages utilities to increase their conservation and load management activities, it does not wish to foster a situation where small, independent businesses are faced with unfair competition from regulated enterprises. p. 767.

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APPEARANCES: Cynthia A. Arcate. Esq. and David Saggau, Esq. on behalf of Granite State Electric Company; Eugene F. Sullivan, III, Esq. on behalf of the commission staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

By letters dated July 20, 1990 and August 21, 1990, Granite State Electric Company (GSEC) requested extensions in the filing date for its 1991 Conservation and Load Management (C&LM) Program and cost recovery factor from August 1, 1990 to September 1, 1990 and October 1, 1990, respectively. By secretarial letter dated August 24, 1990 the extension to October 1, 1990 was granted. To facilitate timely review of GSEC's C&LM program, an Order of Notice was issued August 29, 1990, setting a prehearing conference for October 9, 1990.

On October 1, 1990, GSEC filed its 1991 C&LM Program and cost recovery factor, including provisions for a financial incentive. A prehearing conference was held on October 9, 1990 at which the Conservation Law Foundation's (CLF) motion to intervene was granted and a procedural schedule proposed. A modified procedural schedule was approved by commission order no. 19,966 dated October 29, 1990.

A technical session between staff and the company was held on October 31, 1990 and the procedural schedule was further modified by secretarial letter dated November 8, 1990. A second technical session was held December 6, 1990 and staff and the company discussed settlement.

A hearing on the merits was held December 12, 1990 where GSEC and staff presented a comprehensive settlement agreement.

II. *PUBLIC COMMENT*

Maurice R. Lamy, President of RPL Energy Enterprises, a small energy consulting company, made a public statement at the hearing on December 12, 1990. He expressed concerns that GSEC's C&LM program activity was adversely affecting his and other local businesses because customers may be choosing direct installation of C&LM measures from the utility rather than independently contracting with local energy consultants like RPL. Tr. 7. Mr. Lamy also expressed concern about whether GSEC was subsidizing C&LM investments by customers. Tr. 14.

III. *SETTLEMENT AGREEMENT*

*(100)

The settlement agreement responds to several concerns raised by staff in the course of its

review of GSEC's C&LM filing. Staff and GSEC agreed to the following:

1) To respond to staff's concern about rate instability, GSEC agrees to revise its proposed 1991 C&LM factor to reflect its current estimate of the 1990 Efficiency Incentive to become effective January 1, 1991. The revised factor, reflecting this adjustment is $.00423 per kilowatthour (kWh) as calculated on Attachment 1 to Exhibit A to this report and order. The 1991 C&LM factor will increase the average 500 kWh residential bill by $0.50 over the 1990 factor, for a total C&LM adjustment of $2.12 per month. On or before June 1, 1991, GSEC shall file a reconciliation of actual 1990 C&LM program costs and incentives earned and propose a revised C&LM factor reflecting such reconciliation to become effective July 1, 1991.

2) GSEC shall be required to meet a minimum performance threshold of $2.34 million (50% of the projected value of its 1991 C&LM program) in order to earn an incentive on its 1991 C&LM program. This threshold represents a revision from GSEC's original filing and responds to staff concerns about the original proposal. GSEC shall earn the Maximizing and Efficiency Incentives on its entire program once the minimum performance threshold has been met. The C&LM factor shall include the Maximizing Incentive on an estimated basis as of January 1, 1991.

3) GSEC and staff agree that the minimum performance threshold agreed to in paragraph (2) above, is applicable only to GSEC's 1991 C&LM program and may not be appropriate for

Page 766

subsequent C&LM programs submitted by the company.

4) Staff agrees that GSEC's proposed level of 1991 C&LM activity is appropriate and should be approved by the commission, although GSEC acknowledges that such expenditures are subject to investigation at any time.

5) GSEC shall file quarterly reports with the commission about forty-five (45) days after the end of each quarter, informing the commission of the status of, and all significant changes in, its C&LM program.

6) GSEC shall file monthly variance reports with the commission about forty-five (45) days after the end of each month, indicating the actual C&LM factor revenues collected and C&LM funds expended for the given month, as well as estimates by month of the expected revenues and funds to be expended for the remainder of the calendar year.

7) The parties agree that the testimony, exhibits and data responses of GSEC filed with the commission should be made part of the record of this proceeding.

8) GSEC shall submit on or before September 1, 1991, its proposed C&LM program for calendar year 1992.

IV. *COMMISSION ANALYSIS*

[1-3] The commission is very interested in encouraging New Hampshire's electric utilities to expand their C&LM programs and activities where they represent cost-effective resource options for the companies. The commission concurs with staff (Tr. 85) that utility payments to customers to encourage them to invest in C&LM should not be made to subsidize these customers, but to

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acquire C&LM where it is cost-effective resource from the utility's perspective. One consequence of C&LM as a resource option is that customers who participate directly in C&LM programs benefit twice: once through direct participation and once as a result of the utility's choice of a lower cost resource option. To ensure that all customers have the opportunity to benefit equally, the commission has encouraged the utilities to offer a broad range of C&LM programs.

The commission finds that GSEC's 1991 C&LM program appears to be a cost-effective resource option for the utility. We are pleased to note that GSEC has increased the range of its 1991 C&LM programs to serve a broader cross-section of customers thereby providing more customers with the opportunity to benefit from direct participation in utility C&LM programs, as well as lower utility resource costs. GSEC's 1991 C&LM program also focuses on the long-term benefits and costs of C&LM as a resource option and that, along with its breadth, leads us to find, in concurrence with staff's view, that it offers extraordinary benefits to ratepayers over the long-term.

[i] While the commission has encouraged utilities to increase their C&LM activities, we do not want to foster a situation where small, independent businesses are faced with unfair competition from regulated enterprises. We take note of the concerns raised by Mr. Lamy, but do not find that they require commission action at this time. GSEC indicates that it has revised its 1991 C&LM program to respond to these concerns (Tr. 35) and that it has invited Mr. Lamy to bid to participate in the 1991 program (Tr. 39). The commission finds these actions to be sufficient at this time.

The commission accepts the stipulation of the parties and finds that GSEC's 1991 C&LM program provides a cost- effective resource option for the company and long-term benefits for ratepayers sufficient to warrant the opportunity for GSEC to earn a financial incentive on its C&LM program. We therefore find that GSEC's proposed 1991 C&LM adjustment factor of $.00423 per kWh is just and reasonable.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that the Stipulation Agreement appended hereto as Exhibit A be, and hereby is, accepted; and it is

FURTHER ORDERED, that pursuant to said Stipulation Granite State Electric Company's conservation and load management adjustment factor of $.00423 per kilowatthour be, and hereby is, approved effective January 1,

1991; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages in compliance with this order on or before January 1, 1991.

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

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December, 1990.

EXHIBIT A

Attachment to Report and Order

1991 Conservation and Load Management Program Stipulation and Report of Granite State Electric Company and the Commission Staff

I. *INTRODUCTION*

A. *Procedural Background*

On October 1, 1990, Granite State Electric Company (Granite State or Company) filed with this Commission its proposed Conservation and Load Management (C&LM) Program and financial incentive for calendar year 1991. This C&LM Program was jointly designed and sponsored by the Conservation Law Foundation of New England, Inc. (CLF) and Granite State. The CLF's motion to intervene in this proceeding was granted at the pre-hearing conference held on October 9, 1990 at the Commission's offices. The procedural schedule for the proceeding was also established at that conference. There are no other intervenors and no other parties have appeared in the case.

The Company has responded to 6% written data requests of the Staff as well as several oral inquiries. The Staff and Granite State have also had several technical conferences prior to the submission of this Stipulation. Based upon a settlement in principle reached between the Company and the Staff, the Staff did not file testimony on the established date under the procedural schedule.

B. *Granite State's Submittal*

Granite State's filing included detailed testimony and exhibits which support its proposed program budget of $2.49 million.[1(101)] Granite State submitted the testimony of five witnesses. Mr. Peter G. Flynn, Director of Conservation and Load Management Programs and Commercial and Industrial Services, updates the status of Granite State's 1990 C&LM program and describes the proposed 1991 programs. Granite State has added residential programs more comprehensive in 1991. Mr. Flynn also discusses the implementation of the programs such as the bidding of C&LM services, data tracking, payment authorization and C&LM cost accounting. Ms. Elizabeth G. Hicks, Director of Demand Planning, presents the calculation of the benefits of each of the demand-side programs for 1991 and discusses the Company's plans for the evaluation and monitoring of these programs. She also discusses the overall program planning process and the determination of cost-effectiveness.

Program evaluation and cost-effectiveness are also addressed by two witnesses presented jointly by Granite State and the CLF. Mr. Joseph M. Chaisson evaluated Granite State's 1991 programs and concludes that, although there are improvements that can be made in these programs, Granite State's 1991 program represents "substantial progress this year in refining and boltering the effectiveness of the programs, getting them into the field, and developing a state-of-the-art evaluation and monotoring system." Testimony at p. 3. Mr. Chaisson states that Granite State's 1991 program meets the Commission's standard of providing "extraordinary"

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benefits to customers, as required under Order No. 19,905 (75 NH PUC 527) in order for a utility to earn an incentive on its C&LM expenditures. Dr. Kenneth M. Keating describes the CLF collaborative effort with Granite State on comprehensive planning for evaluations of C&LM programs.

Finally, Dr. Joseph B. Wharton, Manager of Rate Economics, supports Granite State's proposed financial incentive and rate recovery approach for its 1991 program. The proposed incentive approach is the same as that approved by the Commission in Order No. 19,905. Dr. Whartton discusses the issues raised by the Commission in that order and specifically

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addresses the directives to Granite State to be included in its 1991 submittal, as well as matters raised by the Commission's earlier order on Granite State's 1990 program approved in Order No. 19,689 (75 NH PUC 55) (Docket No. DR 89-154). First, Dr. Whartton explains why Granite State continues to believe that recovery of C&LM costs on a cents per KWH basis across customer classes is appropriate. Second, Dr. Whartton describes and supports the minimum performance threshold proposed by Granite State in response to the Commission's directive in Order No. 19,905. Specifically, Granite State proposed that it be required to achieve in 1991 50% of the total value achieved in its 1990 program, excluding from this value calculation the 1990 Design 2000 program savings, before it can earn either the Maximizing or the Efficiency Incentive on its 1991 program. Once that threshold is achieved, Granite State would be permitted to earn these incentives on its entire 1991 program. Dr. Whartton also addressed the Commission's concerns about the earning of the Maximizing Incentive on a current basis rather than after the actual savings are known.

Lastly, Dr. Whartton describes the components of the proposed C&LM factor to become effective January 1, 1991. As explained by Dr. Whartton, if the 1991 C&LM program achieves its expected goals, the 1991 Maximizing Incentive will be $256,000, and the 1991 Efficiency Incentive will be $237,000.[2](102) Granite State did not include in its proposed 1991 C&LM factor any amount for the Efficiency Incentive to be earned for 1990 performance. Rather, the Company proposed that such amount be added to the factor once the actual 1990 results are know, at which time the Maximizing Incentive for 1990 and the cost recovery amounts would be reconciled as well. Granite State is not seeking recovery of any "lost revenue" in this filing but will continue to review the level of or potential for underrecovery in its rates as a result of its C&LM program.

C. *Staff Concerns*

During the technical discussions, the Commission Staff expressed some concerns about the Company's filing. These concerns, which became the focus of the settlement negotiations, are as follows:

1. Staff was concerned that a true-up of the factor to reflect actual costs some time in the first quarter of 1991 would cause undue rate instability for Granite State's customers since there are no other rate changes scheduled for that time. The Staff suggested that a more appropriate time for such changes would be July 1, 1991, when the second half of 1991 fuel clause changes would take effect. The Staff further suggested that the Company estimate the year-end actuals,

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including the Efficiency Incentive, and reflect that estimate in the C&LM factor as of January 1, 1991. This approach would reduce any interest costs to the customers from the C&LM account, as well as reduce the number of unnecessary rate changes.

2. Staff viewed the proposal for basing the minimum performance threshold on actual past results as providing some desirable concreteness. However, Staff felt that the threshold was potentially too low because the Company is still in the process of ramping up its resource commitment to C&LM to a sustainable level. Staff believes that a threshold based on the higher projected 1991 C&LM activity level is consistent with this dynamic situation and gives the Company an achievable but more demanding threshold.

Staff recognized that, in the future, basing the minimum performance threshold on past achievements rather that future projections may be warranted. For that reason, the Staff agrees that the stipulated threshold should apply only to the 1991 program and establish no precedent with respect to future threshold requirements.

3. Staff questioned why the C&LM expenditures were increasing in 1991 when the Company's sales were leveling off. The Staff recognized, however, that the Company's C&LM program promotes long-term cost savings to customers and that the recent drop-off in sales growth may be short lived. Moreover, the Company is counting on the C&LM programs to provide one-third of future resource plan can only be realized if the development of broad-based and comprehensive C&LM programs continues. The Company contends and Staff

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concurs that the increasing momentum which the Company and the participants have built should be maintained in 1991.

II. *STIPULATION*

A. *Settlement Terms*

Granite State and the Commission Staff agree to the following terms as full resolution of all issues in this proceeding:

1. Granite State agrees to revise its proposed 1991 C&LM factor to reflect its current estimate of the 1990 Efficiency Incentive to become effective January 1, 1991. Granite State's revised 1991 C&LM factor reflecting this adjustment is $.00423 as calculated on Attachment 1 to this Stipulation. The parties agree that this factor shall become effective for service rendered on or after January 1, 1991. This factor will increase the average 500 KWH residential bill by $0.50 for a total C&LM adjustment of $2.12. On or before June 1, 1991, Granite State shall file a reconciliation of its entire 1990 C&LM program costs and incentives earned and propose a revised C&LM factor reflecting such reconciliation to become effective July 1, 1991.

2. Granite State shall be required to meet a minimum performance threshold of $2.34 million (50% of the projected value of its 1991 program) in order to earn an incentive on its 1991 program. It is agreed that Granite State shall earn the Maximizing and the Efficiency Incentives on its entire program once that threshold has been met and that the C&LM factor shall include the Maximizing Incentive on an estimated basis as of January 1, 1991.

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3. The Company and Staff agree that the minimum performance threshold agreed to in paragraph (2) above, appropriate for subsequent C&LM programs submitted by the Company. Accordingly, this threshold establishes no precedent and either party may propose alternative threshold approaches in future proceedings without prejudice by the terms agreed to herein.

4. The Staff agrees that Granite State's proposed level of 1991 C&LM activity is appropriate and should be approved by the Commission, although Granite State acknowledges that such expenditures are subject to investigation at any time.

5. Granite State shall file quarterly reports with the Commission about forty-five (45) days after the end of each monthly quarter. These reports will inform the Commission of all significant changes in the programs, as well as the status of the programs.

6. Granite State shall file monthly variance reports with the Commission about forty-five (45) days after the end of each month. These reports will indicate the actual revenues collected and the conservation funds expended for a given month, as well as estimates of the expected revenues and conservation funds expended for the remainder of the calendar year.

7. The parties agree that the testimony, exhibits and data responses of Granite State filed with the Commission should be made a part of the record of this proceeding.

8. Granite State shall submit, on or before September 1, 1991, its proposed C&LM program for calendar year 1992.

B. *Conditions*

1. The settlement terms contained in this stipulation are a full, complete and final agreement of the parties with respect to all the issues in this proceeding.

2. The parties' agreement to the terms of this stipulation is subject to the approval and acceptance of the terms in their entirety and without change or condition by the Commission. Should the Commission reject these terms, no part thereof shall be offered or introduced as evidence or otherwise used in this or any other proceeding.

3. The discussions which have produced this stipulation have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion and are not to be used or disclosed in any manner in connection with this proceeding, any other proceeding or otherwise.

4. All the agreements made herein were for

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the purposes of this stipulation and shall have no binding or precedential effect in any other proceeding.

5. These recommendations are made this 12th day of December, 1990 by and among the parties who represent that they are fully authorized to do so on behalf of their principals.

NEW HAMPSHIRE PUBLIC

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GRANITE STATE ELECTRIC COMPANY
By _____

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FOOTNOTES

Report

*The settlement agreement is attached hereto as Exhibit A.

Exhibit A

[1]Granite proposed program budget has subsequently been lowered to $2.22 million to reflect changes in the Small Commercial and Industrial Program and allocation of program costs.

[2]The proposed Maximizing and Efficiency Incentives have been lowered to $234,000 and $222,000 respectively to reflect changes in the Small Commercial and Industrial Program and allocation of program costs.

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NH.PUC*12/31/90*[51136]*75 NH PUC 775*Granite State Electric Company

[Go to End of 51136]

75 NH PUC 775

Re Granite State Electric Company

DR 90-190, DR 90-194
Order No. 20,012

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New Hampshire Public Utilities Commission

December 31, 1990

ORDER setting the fuel adjustment clause, oil conservation adjustment, purchased power cost adjustment, and qualifying facility purchase power rates for an electric utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Cost elements — Electric utility.

[N.H.] A fuel adjustment clause surcharge of $0.00610 per kwh was approved for an electric utility; the following factors were considered in calculating the surcharge: projected oil costs; the commercial operation of two alternative energy suppliers; a prior period overcollection; and benefits associated with the commercial operation of Hydro-Quebec Phase II. p. 776.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Deferral of projected cost increase — Cost elements — Electric utility.

[N.H.] In establishing the fuel adjustment clause rate of an electric utility, the commission rejected a proposal to moderate increases to residential bills by deferring a projected fuel cost increase. p. 776.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fossil fuel — Oil conservation surcharge — Cost elements — Electric utility.

[N.H.] An oil conservation surcharge of $0.00116 per kwh was approved for an electric utility. p. 776.

4. COGENERATION, § 25 — Rates — Short-term capacity — Avoided costs — Electric utility.

[N.H.] A qualifying facility short-term avoided capacity rate of $0.00 was approved for an electric utility; the rate was justified by the surplus of capacity in the New England short-term market and the fact that the utility was not planning to enter any short-term contracts in the next six months. p. 777.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Wholesale cost increase — Electric utility.

[N.H.] An electric utility was authorized to recover in its purchased power cost adjustment rate two elements of its power supplier's wholesale rate filing: an Ocean State Power rate rider and a base rate increase. p. 777.

APPEARANCES: David J. Saggau, Esquire for Granite State Electric Company; Thomas C. Frantz, and James J. Cunningham, Jr. for the PUC Staff.

By the COMMISSION:

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REPORT

On November 30, 1990, Granite State Electric Company (Granite State or company) filed docket number DR 90-190 regarding the Fuel Adjustment Clause (FAC), Oil Conservation Adjustment (OCA) and Qualifying Facility Power Purchase Rate and docket number DR 90-194 regarding the Purchase Power Cost Adjustment W-12(a) (PPCA) for the first half of 1991. At the company's request, the New Hampshire Public Utilities Commission (commission) allowed both dockets to be combined into a single proceeding. An order of notice on November 7, 1990 and the duly noticed hearing was held on December 14, 1990.

Granite State Electric Company

In support of its filings, Granite State presented three witnesses, James V. Mahoney, Lawrence J. Reilly and Peter T. Zschokke and submitted the following Exhibits:

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

GS-1 Testimony of James V. Mahoney
GS-2 All Supporting Schedules
GS-3 Testimony of Lawrence J. Reilly
GS-4 Revised Schedule 3 (pg. 19 of 19)
GS-5 Testimony and Exhibits of Peter T. Zschokke
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At the hearing, the company revised Exhibit GS-2 to reduce the Conservation and Load Management Factor on Schedule 14 page 1 of 1 from $.57 to $.50 for Granite's typical residential bill and Exhibit GS-3 to reflect an increase in the number of short term sales or purchase contracts in effect with New England Power (NEP) from zero to one.

Mr. Mahoney testified that during December, 1990 and the first half of 1991, NEP projects that the delivered cost of 2.2% sulphur residual oil (excluding NEEI payments) will range from approximately $21 to $22 per barrel during the winter months of December through February and gradually decline to approximately $16 per barrel by June 1991. These estimates are predicated upon the assumption that the crisis in the Middle East remains at its current level of uncertainty.

FUEL ADJUSTMENT CLAUSE

[1, 2] In support of the company's filing, Mr. Reilly testified that the Fuel Adjustment Charge for January through June 1991 is $.00610 per kWh, which is an increase of $.00236 over the current charge of $.00374 per kWh. The requested increase over the current fuel adjustment clause is due primarily to two factors. First, Granite State is projecting higher oil costs will be incurred by the company's wholesale supplier, New England Power Company (NEP). In addition, Granite State's fuel factor for the first half of 1991 reflects the commercial operation of two new NEP alternative energy suppliers (Altresco-Pittsfield and Pawtucket Power).

In addition, Granite State's fuel adjustment clause includes a credit of $255,743 due to an overcollection during the second half of 1990. Including interest, the amount of the credit going into the first half of 1991 is $271,190.

Benefits associated with the commercial operation of Hydro-Quebec Phase II are received by Granite State both through lower fuel costs from NEP, and since Granite State is a New Hampshire utility, a bonus share of approximately $66,000.

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The company's fuel adjustment increase of $.00236 would add approximately $1.18 per month to the basic residential 500 kWh bill. Other factors unrelated to the fuel adjustment clause would add an additional amount of $3.04 per 500 kWh. Overall, the combined increases would add 8.8% to Granite's typical residential bill on January 1, 1991. Therefore, the company believes that it would be in the best interest of its customers to moderate such a sharp increase. Accordingly, Granite State is proposing to defer, until the second half of 1991, the $.00236 projected fuel cost increase.

Oil Conservation Adjustment (OCA)

[3] The Oil Conservation Adjustment (OCA) for the January through June 1991 period is $.00116, a reduction of $.0004 compared to the current OCA of $.00120. This decrease is equivalent to a $.02 reduction in the basic residential 500 kWh bill.

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Qualifying Facility Rate

[4] The company proposed the following Qualifying Facility (QF) short term avoided energy rates:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Subtransmission Distribution	*Primary Distribution*	*Secondary Distribution*
Peak	$.03768	$.04047	$.04190
Off-Peak	$.02999	$.03146	$.03220
Average	$.03353	$.03560	$.03666

In addition the company proposed a short term capacity rate of $0.00. The company justified the $0.00 capacity value based on the current surplus of capacity in the New England short term market and the fact that it is not planning on entering into any short term contracts in the next six month period. These rates have been calculated according to the accepted commission methodology.

Purchased Power Cost Adjustment W-12(a)

[5] Mr. Zschokke testified that Granite State is seeking to recover on this Purchase Power Cost Adjustment (PPCA) two elements of the NEP W-12 filing: the Ocean State Power (OSP) rider and the W-12(a) base rate increase. Granite State is proposing separate PPCA factors to correspond with each of NEP's rate increases. Regarding NEP's OSP1 rider, upon commercial operation, which is currently expected to occur in December 1990 or in the first quarter of 1991, NEP's rates will increase by $17.4 million annually. PPCA W-12(a)(OSP) is designed to become effective on the date of NEP's OSP1 rider, the in-service date of the project. This PPCA is an increment of $.00079 over either PPCA W-12(a)(HQ), or PPCA W-12(a). Granite State's purchased power costs will rise by $468,852 on an annual basis. The OSP1 factor is designed to collect these additional Granite costs and is equivalent to a $.40 increase in the typical Granite monthly residential bill.

The second PPCA factor is for NEP's W-12(a) rate increase of $72.7 million effective

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January 1, 1991. Granite State's purchased power costs will rise by $1,992,297 with the implementation of the W-12(a) rate. PPCA W-12(a)(HQ), or PPCA W-12(a)(OSP) if OSP 1 enters service before January 1991, is designed to collect these additional Granite costs and is equivalent to a $1.69 increase in the typical Granite monthly residential bill.

Staff

Through testimony and cross examination by Staff, the following issues were addressed:

1.) kWh Sales Forecast — January through June, 1991.

2.) Bonus Share of Hydro Quebec Phase II

3.) Deferral of the Fuel Clause until July, 1991.

During the hearing, Granite State agreed to submit further materials and data on these matters to the commission for its information and ongoing review of Granite State's fuel costs.

Regarding the sales forecast, staff pointed out that the January through June 1991 forecast is roughly 2.5% over the 1990 time period, roughly the same as the 1990 versus 1989 period. In view of the impact of the unfavorable economic conditions and ongoing implementation of conservation and load management (C&LM) programs, it appeared to staff that Granite's forecast might be overly optimistic. The company indicated that the forecast included estimated impacts for the economy and C&LM programs, but in addition it included estimated impacts of the new Rockingham Mall project in Salem and the Mary Hitchcock hospital in Lebanon. The company added that it continuously monitors its kWh forecast data. Its most recent study for calendar year 1991 is consistent with its forecast in this filing.

In response to staff questions about the calculation of Granite's bonus share of Hydro Quebec Phase II, the company outlined the background of the bonus share and agreed to provide the commission with a detailed calculation of the derivation of the Granite portion.

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Staff disagreed with the company's proposal to defer the recovery of the fuel clause until the second half of 1991. Staff argued that current costs should be recovered during the current period and to do otherwise would send the wrong price signals to the customer. Furthermore, the staff believes that unexpected price increases during the first half of 1991 would be added to the costs deferred with interest, and the resulting bundling of costs for the FAC for the second half of 1991 would create an unfavorable cost impact on ratepayers. An example of an unexpected price increase would be the failure to achieve the projected decrease in cost of fuel oil from $22 per $18 barrel.

Commission Analysis

Based on the evidence provided, the commission finds that the proposed FAC, OCA, the Qualifying Facility Power Purchase rate and the PPCA are just and reasonable. However, the commission will not accept the company's proposal to defer the increased cost of the FAC rate to the second half of 1991. Therefore, the commission will approve all rates, including the FAC rates, for recovery during the six month period beginning January 1991.

Our order will issue accordingly.

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ORDER

Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that Granite State Electric Company's fuel surcharge of $.00610 per kWh for the months of January through June 1991, be and hereby is, approved effective January 1, 1991; and it is

FURTHER ORDERED, that Granite's request to defer the fuel adjustment charge until after the January through June 1991 period is hereby denied; and it is

FURTHER ORDERED, that Granite State Electric Company's Oil Conservation Surcharge of $.00116 per kWh for the months of January through June 1991, be and hereby is, approved effective January 1, 1991; and it is

FURTHER ORDERED, that the short term avoided energy rates calculated consistent with accepted commission methodology be and hereby is approved, effective January 1, 1991; and it is

FURTHER ORDERED, that regardless if OSP1 enters service before or after January 1, 1991 an increment of $.00079 per kWh over either PPCA W-12(a)(HQ), or PPCA W-12(a) providing for NEP's W-12(a) OSP1 Rider be and hereby is approved, effective January 1, 1991; and it is

FURTHER ORDERED, that regardless if OSP1 enters service before or after January 1, 1991, an increment of $.00337 per kWh providing for NEP's W-12 (a) rate increase be and hereby is approved, effective January 1, 1991; and it is

FURTHER ORDERED, that Granite State Electric Company's Qualifying Facility Power Purchase Rates as described in the foregoing report be, and hereby is approved, effective January 1, 1991; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff sheets by January 1991 complying with the rates approved herein.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1990.

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NH.PUC*12/31/90*[51137]*75 NH PUC 778*EnergyNorth Natural Gas, Inc.

[Go to End of 51137]

75 NH PUC 778

Re EnergyNorth Natural Gas, Inc.

DR 90-166
Order No. 20,013

New Hampshire Public Utilities Commission

December 31, 1990

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ORDER granting a petition for confidential treatment of material filed by a gas distribution utility in response to a staff data request.

PROCEDURE, § 16 — Production of documents — Confidential treatment.

[N.H.] The commission granted a petition

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for confidential treatment of material filed by a gas distribution utility in response to a staff data request; however, if a request for disclosure were made, the commission would review of the confidentiality of the material.

By the COMMISSION:

ORDER

EnergyNorth Natural Gas, Inc., (ENI) having filed through its attorney on December 14, 1990, a Petition for Confidential Treatment of certain information; and

WHEREAS, this information was requested of ENI by the staff during the winter cost of gas adjustment hearing on November 25, 1990 and in subsequent data request number five; and

WHEREAS, the requested information includes privileged communications from ENI's attorneys prepared in anticipation of litigation; and

WHEREAS, confidentiality of documents filed with public agencies is governed by RSA Chapter 91-A; and

WHEREAS, 91-A:5 IV exempts from public disclosure, *inter alia*, "... confidential, commercial, or financial information ..."; and

WHEREAS, the confidentiality of this information may be reviewed by the commission at any time in the future if a request is made for disclosure; it is

ORDERED, that ENI's Petition for Confidential Treatment is hereby granted; and it is

FURTHER ORDERED, that ENI shall, upon receipt hereof, provide one copy each to the secretary of the commission, the Consumer Advocate, and counsel appearing for the parties who have intervened in this proceeding the information addressed in the company's Petition for Confidential Treatment consisting of privileged communications from ENI's attorneys; and it is

FURTHER ORDERED, that the privileged information shall not be copied and, unless otherwise ordered, all copies submitted to the commission, its staff and counsel for other parties shall be returned to ENI upon completion of this docket unless otherwise ordered; and it is

FURTHER ORDERED, that the commission, on review of the documents, or on motion by an interested party, may reconsider and amend this order after hearing.

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

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December, 1990.

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[Go to End of 51138]

75 NH PUC 779

Re Concord Electric Company

DR 90-191, DR 90-195
Order No. 20,014

Re Exeter & Hampton Electric Company

DR 90-192, DR 90-196
Order No. 20,014

New Hampshire Public Utilities Commission

December 31, 1990

ORDER setting the fuel adjustment clause, purchased power cost adjustment, and qualifying facility purchase power rates for two electric utilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Surcredit — Electric utility.

[N.H.] A fuel adjustment clause rate consisting of a surcredit of $0.00498 per kwh was approved for an electric utility. p. 780.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Surcredit — Electric utility.

[N.H.] A fuel adjustment clause rate consisting of a surcredit of $0.00532 per kwh was approved for an electric utility. p. 780.

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3. COGENERATION, § 28 — Rates — Avoided energy costs — Electric utility.

[N.H.] The qualifying facility short-term avoided energy rates for two electric utilities were based on the use of an average of a 5 megawatt increment and 5 megawatt decrement to load. p. 780.

4. COGENERATION, § 27 — Rates — Avoided capacity costs — Electric utility.

[N.H.] The qualifying facility short-term avoided capacity rates for two electric utilities were set at $0.00 to reflect a current surplus of capacity in the New England market and the fact that the utilities did not plan to make any short-term capacity purchases or sales within the next six

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months. p. 780.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power cost rate — Wholesale cost increase — Electric utilities.

[N.H.] Two electric utilities were authorized to recover, in their purchased power cost adjustment rates, increases in the wholesale rates of their power supplier. p. 781.

6. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power cost rate — Method of calculation — Electric utilities.

[N.H.] Two electric utilities were directed to revise their proposed purchased power cost adjustment (PPCA) rates to reflect projected kilowatt-hour sales for the period during which the PPCA rate would be in effect, rather than sales during an historic 12 month period; moreover, the commission directed the companies and commission staff to initiate consultations for the purpose of developing a new calculation methodology for use in future fillings. p. 781.

APPEARANCES: Paul P. Detex, Esquire for Concord Electric Company and Exeter & Hampton Electric Company; Eugene F. Sullivan, Jr. and Thomas C. Frantz for PUC Staff.

By the COMMISSION:

REPORT

[1, 2] On November 30, 1990 Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") filed revised Fuel Adjustment Clause (FAC) rates and Purchased Power Adjustment Clause (PPAC) rates for the period January through June 1991. The FAC rate request was $(0.00498) per kWh for Concord and $(0.00532) per kWh for Exeter & Hampton (including Franchise Tax effect). The PPAC rate request was $0.02497 per kWh for Concord and $0.02475 for Exeter & Hampton (including Franchise Tax effect). The companies filed testimony and exhibits which supported the proposed revisions to their respective FAC and PPAC.

On November 30, 1990 the companies also filed revised tariffs for Short-Term Power Purchase (short term avoided capacity and energy) Rates for Qualifying Facilities (QF) as follows:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates	On Peak	$ .0475 per kWh
	Off Peak	$ .0378 per kWh
	All-Hours	$ .0407 per kWh
Capacity Rate		$0.00 per kW-year

On December 11, 1990 the company filed revised tariffs for Short-Term Power Purchase Rates for QFs because of computation errors in the original filing of:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

Energy Rates	On Peak	$ .0433 per kWh
	Off Peak	$ .0388 per kWh

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	All-Hours $ .0407 per kWh
Capacity Rates	$0.00 per kW-year

[3, 4] The Public Utilities Commission held a duly noticed hearing at its office in Concord on December 13, 1990 to review the Fuel

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Adjustment Clause and Purchased Power Adjustment Clause and Short-Term Power Purchase (avoided capacity and energy) Rates filings of the companies.

Concord Electric Company and Exeter & Hampton Electric Company presented three witnesses, Paul Weiss, Karen M. Asbury and Vicky A. DeBlois.

The calculation of the companies, short term avoided energy rates was based on the use of an average of a 5 megawatt increment and a 5 megawatt decrement to load. This is in accordance with the methodology specified in the settlement agreement in DR 86-41, *et. al.*, Phase I, as revised in DR 89-225 and DR 89-227.

The short term avoided capacity rate, of $0.00/kW-year reflects the current surplus of capacity in the New England market and the companies, expectation that they will not be making any short-term purchases or sales in the next six-month period.

[5, 6] The FAC and PPAC filing cover the six month period from January through June, 1991. In testimony the witnesses for the companies provided information that the increase in purchased power is caused by an increase in wholesale rates from the companies, sole supplier of energy, UNITIL Power Corporation (UNITIL). UNITIL's increase in rates is caused by a change in its new wholesale rates filed for effect January 1, 1991 in which its demand cost increased from $14.42 per kw month to $15.16 per kw month and its demand energy charge decreased from $0.01821 per kWh to $0.02622 per kWh. The fuel charge increased from $0.01654 per kWh to $0.02849 per kWh.

At the hearing the staff questioned the reasons for the increase in wholesale rates. The company stated that there were three major reasons for the increase. The first was the increase due to forecasted increase in demand and transmission cost offset by an increase in prior period overcollections. The second reason was a decrease in forecasted fixed costs billed on $/kWh basis and an increase in the prior period overcollection. The third reason was an increase in the fuel charge due to an anticipated increase in production cost. This increase was offset by a decrease in the prior period undercollection.

During the hearing, staff addressed the following issues:

a) the cost of fuel
b) the reliance of oil in its generation mix
c) the calculation of the PPAC rate.

The staff inquired on the companies' estimate of oil costs. The company explained that its estimate of oil costs is prepared using data from NEPOOL as well as information received from each plant that UNITIL Power has an entitlement in. This data is then imputed into the companies forecast model to arrive at its fuel forecast costs.

The staff questioned the reliance of oil entitlements for 43% of its generating capacity. The

company testified that on an energy basis over the past two months oil dependence was approximately 20%. The company further testified that energy sources are from coal, wood refuse, gas and nuclear. The commission has reviewed the fuel mix and finds this mix appropriate for the upcoming six months.

Staff's next area of inquiry was the method in which the company calculated its PPCA. The company used billing information for 12 months ended October 1990, then computed the total cost for the period using UNITIL's rates for the period January to June 1991. The companies then compared the total costs arrived at above to the amount included in base rates to arrive at an increase in purchased power costs. This increase in PPCA costs was then adjusted for the deferred PPCA expense balance as of October 30, 1990 and power planning cost included in base rates to arrive at and adjusted PPCA costs. The adjusted PPCA costs were then divided by actual kWh sales for the 12 month period ended October 1990 to arrive at a PPCA rate for the next period, decreased by the PPCA rate in base rates. Staff questioned why the calculation was based on historic 12 month period and not a forward looking period during which the PPCA rate will be in effect. As a result of staff's questioning, the company submitted record request #2, which presented what the PPCA rate would be; using staff's methodology. The following is a comparison of the two methods.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

	Company Method	*Staff Method*
Concord Electric Company	$0.02499	$0.02451
Exeter & Hampton Electric Co.	$0.02475	$0.02447

The commission will accept the calculation methodology supported by staff. The commission finds that this method more appropriately matches revenues and expenses during the time period in which the rates are to be in effect. We will therefore order the company to file revised tariff pages using staff methodology. Although we have changed the methodology for calculating the purchased power adjustment for this filing, the commission expects the companies and the staff consult about a permanent change in the methodology to be implemented in the June 1, 1991 filing. The companies will initiate the consultations by filing its new proposed methodology by January 31, 1991.

Based on the evidence provided, the commission finds the FAC rates for Concord Electric Company and Exeter & Hampton Electric Company to be just and reasonable and will approve the rates for the six month period beginning January 1991 and ending June 1991.

The commission also finds the proposed short term avoided energy and capacity rates to be just and reasonable, and calculated in accordance with the methodologies outlined in previous commission orders. The rates will be effective January through June 1991.

Our order will issue accordingly.

ORDER

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Upon consideration of the foregoing report, which is made a part hereof; it is hereby

ORDERED, that the Sixteenth Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a Fuel Adjustment Clause of $(0.00498) per kWh (including Franchise Tax effect) for the months of January through June 1991, be, and hereby is permitted to go into effect for the month of January 1991; and it is

FURTHER ORDERED, that Forty-Second Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a Fuel Adjustment Clause of $(0.00532) per kwh (including Franchise Tax effect) for the months of January through June 1991, be, and, hereby is permitted to go into effect January 1991; and it is

FURTHER ORDERED, that Thirteenth Revised Page 19A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a Purchased Power Adjustment Clause of $0.02558 per kWh (including Franchise Tax effect) for the months of January through June 1991, be, and hereby is rejected; and it is

FURTHER ORDERED, that Thirteenth Revised Page 18 of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a Purchased Power Adjustment Clause of $0.02475 per kWh (including Franchise Tax effect) for the months of January through June 1991, be, and hereby is rejected; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised signed tariff pages reflecting purchase power charges, and fuel adjustment charges in accordance with the attached report for effect January 1, 1991; and it is

FURTHER ORDERED, that Fourth Revised Page 20E of Concord Electric Company's tariff, NHPUC 10 — Electricity, providing for Short-Term Power Purchase Rates for Qualifying Facilities for energy of $.0433/kWh on peak; $.0388 off-peak; and $.0407 all hours and for capacity of $0.00/kW-year, for the months of January through June 1991, be, and hereby is permitted to go into effect January 1, 1991; and it is

FURTHER ORDERED, that Fourth Revised Page 19F of Exeter & Hampton Electric Company's tariff NHPUC No. 15 — Electricity, providing for Short-Term Power Purchase Rates for Qualifying Facilities for energy of $.0433/kWh on peak; $.0388 off peak; and $.0407 all hours and for capacity of $0.00/kW-year, for the months of January through June 1991, be, and hereby is permitted to go into effect January 1, 1991.

The above noted FAC and PPAC rates have been adjusted by a factor of approximately

1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1990.

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75 NH PUC 783

Re New Hampshire Electric Cooperative, Inc.

DR 90-078
Order No. 20,015

New Hampshire Public Utilities Commission

December 31, 1990

ORDER denying reconsideration of a prior order that clarified the commission's authority to review the terms and conditions of a Seabrook nuclear plant capacity sellback agreement between an electric cooperative and an investor-owned electric utility. Commission rejects a request that it find that it does not have authority to establish a retroactive effective date for whatever sellback rate it may ultimately establish.

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1. RATES, § 86 — Jurisdiction and powers — State commissions — Retroactive rates — Capacity sellback agreement.

[N.H.] The commission rejected a request for a finding that it does not have authority to establish a retroactive effective date for whatever sellback rate it may establish in a proceeding to review a Seabrook nuclear plant capacity sellback agreement between an electric cooperative and an investor-owned electric utility; the commission reaffirmed its prior conclusion that the sellback rate may be retroactively enforced, provided that the facts adduced during the proceeding support such a result. p. 784.

2. RATES, § 250 — Effective date — Retroactive enforcement — Constitutional considerations — Capacity sellback agreement.

[N.H.] The commission reaffirmed its prior conclusion that it has the authority to establish a retroactive effective date for whatever sellback rate it may establish in a proceeding to review a Seabrook nuclear plant capacity sellback agreement between an electric cooperative and an investor-owned electric utility, notwithstanding the claim that the establishment of a retroactive effective date would unconstitutionally prevent the investor-owned utility from recovering its wholesale costs in retail rates; however, the commission explained that the investor-owned utility would be permitted to raise its constitutional arguments in a hearing on the merits of the sellback rate. p. 784.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. *INTRODUCTION*

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On October 1, 1990, the commission issued Report and Order No. 19,946 (75 NH PUC 649) (Order 19,946), finding in part that it will review the terms and conditions of the Seabrook sellback agreement between the New Hampshire Electric Cooperative, Inc. (NHEC or Cooperative) and Public Service Company of New Hampshire (PSNH). On October 16, 1990, the NHEC filed a Motion for Clarification of Order 19,946. The NHEC requested the commission to clarify the Order to state: (a), that the NHEC could continue to seek enforcement of the sellback agreement in other forums during the pendency of this proceeding; and (b), that the commission's final order concerning the sellback agreement shall be effective retroactively to July 1, 1990, the commercial operation date of the Seabrook Nuclear Power Plant. On October 31, 1990, PSNH and Northeast Utilities

(NU) filed a Joint Objection to the portion of NHEC's motion concerning the company's desire to continue its efforts to enforce the sellback agreement.

On November 26, 1990, the commission issued Order No. 19,989 (75 NH PUC 736), (Order 19,989), granting in part the NHEC's clarification motion. The commission found that consistent with the New Hampshire Supreme Court's decision in *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980), the sellback rate established in this proceeding may be made retroactive to July 1, 1990, provided that the facts adduced during the proceeding support such a result. As we observed therein, retroactive application of the sellback rate is consistent with the RSA 362-C legislative policy of providing timely relief. On November 29, 1990, PSNH/NU filed a Motion for Reconsideration of Order 19,989. PSNH/NU now are requesting that the commission find that it does not have the authority to establish a retroactive effective date for the sellback agreement.

II. *COMMISSION ANALYSIS*

[1, 2] PSNH/NU contend that a commission order setting a wholesale rate retroactive to July 1, 1990, violates federal and state constitutional prohibitions on retroactive laws. N.H. Const. pt.I, arts. 12 and 23; U.S. Const. amends. V and XIV. Relying on *Opinion of the Justices*, 123 N.H. 349 (1983), the companies argue that the commission may only set a prospective wholesale rate for the sellback agreement. They reason that a retroactive rate would be unconstitutional because PSNH will not have an opportunity to recover its wholesale costs in retail rates to its own customers.[1](103) PSNH/NU alternatively argue that *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980), is not applicable to the sellback rate since the NHEC's rate plan cannot be construed as a petition to establish wholesale rates. The companies further argue that the rate plan filed pursuant to RSA 362-C contemplates a temporary retail rate increase and does not authorize the commission to set a temporary wholesale rate.

With respect to PSNH/NU's initial argument, we note that the PSNH/NU argument is not that retroactive relief is unconstitutional on its face; rather the companies contend that such relief is unconstitutional as applied in this case. In Order No. 19,989, the commission only found that it had the authority to establish a retroactive wholesale rate if warranted by the facts. If introduced into the record, the relevant facts in this proceeding may include, *inter alia*, the impact of the wholesale rate on PSNH and the ability of the company to charge its customers costs it incurs as

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a consequence of commission enforcement of the sellback agreement. In short, until there is a hearing on the merits, the companies' constitutional concerns are premature.

We also find no merit to the companies' alternative arguments. The applicability of *Appeal of Pennichuck Water Works*, supra, to the rate plan was addressed in Order 19,989 and our discussion therein does not require repeating. It is worth noting, however, that there is an apparent inconsistency in the position taken by PSNH/NU in the current Motion and the September 10, 1990, Motion on Scope wherein the companies requested that the commission review the sellback agreement since it "it is a critical assumption of the NHEC Rate Plan Proposal ...". This statement and others of a similar nature in the September 10 Motion render suspect PSNH/NU's current argument that the rate plan cannot be treated as a petition to establish a sellback rate effective on the date of Seabrook's commercial operation. In any event, the commission finds no reason to alter its earlier finding that by filing the rate plan on June 8, 1990, the Cooperative became entitled to request that retroactive application of the sellback agreement to July 1, 1990, the commercial operation date of Seabrook.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby

ORDERED, that Public Service Company of New Hampshire and Northeast Utilities' Motion for Reconsideration is hereby denied; and it is

FURTHER ORDERED, that Public

Service Company of New Hampshire/Northeast Utilities' right to pursue their concerns regarding the New Hampshire Electric Cooperative's request for a retroactive effective date for the sellback agreement at the hearing on the merits is expressly reserved.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1990.

FOOTNOTES

[1]PSNH/NU failed to raise their concerns about a retroactive rate in their October 31 Objection to the NHEC's Motion for Clarification. For reasons of economy and efficiency of commission resources, we expect that in the future PSNH/NU will reduce their responses to discreet motions and other filings to which they are responding to one document.

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NH.PUC*12/31/90*[51140]*75 NH PUC 785*AT&T Communications of New Hampshire

[Go to End of 51140]

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Re AT&T Communications of New Hampshire

Additional petitioners: MCI Telecommunications Corporation; and U.S. Sprint Communications Company of New Hampshire

DE 90-002, DE 90-108, and DE 90-127
Order No. 20,016

New Hampshire Public Utilities Commission

December 31, 1990

ORDER granting proprietary treatment all information alleged to be proprietary by telecommunications companies in proceedings to review their petitions for authorization to provide custom network "add on" and similar services within the state.

PROCEDURE, § 16 — Production of information — Proprietary status — Confidential treatment.

[N.H.] The commission granted proprietary treatment all information alleged to be proprietary by telecommunications companies in proceedings to review their petitions for authorization to provide custom network "add on" and similar services within the state; any party may challenge the confidentiality of any material granted proprietary status and the company alleging that the materials are confidential or proprietary would bear the burden of maintaining continued confidentiality.

By the COMMISSION:

ORDER

WHEREAS, on January 4, 1990 the New Hampshire Public Utilities Commission (commission) received a petition by AT&T Communications of New Hampshire (AT&T) for authority to provide any telecommunications service as a public utility pursuant to RSA 362:2 within the State of New Hampshire; and

WHEREAS, In its petition AT&T specifically requested authority to offer custom network "add on" services in the form of AT&T Mega Com Wats, AT&T Mega Com 800, AT&T Readyline and AT&T MultiQuest; and

WHEREAS, MCI Telecommunications Corporation (MCI) has petitioned for authority to offer similar services, to wit, MCIU Vnet, MCI 800, MCI Prism 1 and MCI 900; and

WHEREAS, U.S. Sprint Communications Company of New Hampshire (Sprint) has also petitioned for authority to offer similar services, to wit, ULTRA WATTS, ULTRA 800, FONLINE 800, and VPN sm; and

WHEREAS, in Report and Order No. 19,853 (75 NH PUC 316) issued on June 7, 1990, the commission bifurcated DE 90-002 to deal with the "add on" services of AT&T on a separate track from the generic issue of intrastate competition in the State of New Hampshire; and

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WHEREAS, in order no. 19,981 the commission established a procedural schedule for an investigation of those proposed "add on" services proposed by AT&T, MCI and Sprint in a

consolidated proceeding and set a procedural schedule for said investigation; and

WHEREAS, Order No. 19,981 stated that the parties agreed to the use of a generic order governing confidential and proprietary information; and

WHEREAS, AT&T has alleged that certain information it would be providing in its testimony is of a confidential and proprietary nature; and

WHEREAS, the commission assumes that MCI and Sprint will be making similar assertions; it is hereby

ORDERED, that the commission will grant proprietary treatment to all information alleged to be proprietary by AT&T, MCI or SPRINT without prejudice, i.e., any party to this proceeding may challenge the continued confidentiality of any of the materials granted said status and the company alleging that any materials are of a confidential or proprietary nature shall bear the burden in maintaining its continued confidentiality pursuant to the standards of RSA 91-A:5, IV; and it is

FURTHER ORDERED, that AT&T, MCI and SPRINT shall provide one copy of all matters alleged to be proprietary or confidential to the commission's executive director and secretary, the executive director and secretary shall allow access to said responses only to those parties to this docket who have executed an acknowledgment of Confidentiality Form appended hereto as Appendix A; and it is

FURTHER ORDERED, that unless otherwise ordered, all copies of proprietary documents and derivatives therefrom shall be returned to counsel for the respective companies at the conclusion of these proceedings.

By order of the Public Utilities Commission of the State of New Hampshire this thirty-first day of December, 1990.

APPENDIX A

ACKNOWLEDGMENT OF CONFIDENTIALITY

The undersigned party to cases DE 90-002, DE 90-108 and DE 90-127 has read Order No. —, — and requests a copy of the information subject to the above referenced protective order. The undersigned party acknowledges that it is PROPRIETARY AND CONFIDENTIAL INFORMATION within the meaning of the above referenced order and that the undersigned individual and the party represented by that individual will not divulge or use any of said information in any way, manner or form other than the adjudication of the above referenced cases. The undersigned party further acknowledges that any other use of said information may result in criminal prosecution or fines pursuant to, *inter alia*, RSA 365:41 or RSA 365:42 or civil litigation by any effected party for all damages incurred by use of said data other than in the adjudication of the above referenced cases.

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[Graphic(s) below may extend beyond size of screen or contain distortions.]

Data Request #	Information Requested
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated:

_____
Name of Party:

by: _____
Name of Agent:

_____
Signature of Agent:

==========

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Endnotes

1 (Popup)

[1] "Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the State of New Hampshire, acting on behalf of the State of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities. RSA 362-C:2 II.

2 (Popup)

[1]Although Mr. Lanning testified that he spent considerable time correcting the Company's books and that said expenditures were not included in rate case expenses, (T.p. 45) the testimony of Mr. Deres indicates the books were still in poor condition after Mr. Lanning's work.

3 (Popup)

[2]The commission further notes from Docket DR 81-203 that similar problems have occurred in previous rate cases regarding the books of the Company.

4 (Popup)

[1]Additionally, *sua sponte*, we revise page 6, paragraph a. of our scope order to refer to a fixed rate period of seven years.

5 (Popup)

[1]The depreciation study was part of a stipulation adopted by the Commission.

6 (Popup)

[1]See attachment 4 to the nuclear decommissioning financing committee's 15th supplemental order, master trust agreement at 1 where NHY is designated "Managing Agent" for the "Seabrook participants".

7 (Popup)

[1]*Re PSNH*, 74 NH PUC 345 (1989); *Re Concord Electric Company and Exeter & Hampton Electric Company*, 74 NH PUC 357 (1989); *Re New Hampshire Electric Cooperative, Inc.*, 74 NH PUC 375 (1989); and *Re Connecticut Valley Electric Company*, 74 NH PUC 334 (1989).

8 (Popup)

[2]Granite State Electric Company ("GSEC") was not made a party to this docket due to the comprehensive CLM program already in place for this company.

9 (Popup)

[1]The broader staff inquiry will be permitted for the purposes of discovery. At the evidentiary phase of this proceeding, facts adduced as a result of this inquiry will be admitted into evidence only to the extent that they are relevant or material to the DR 89-181 period.

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10 (Popup)

[1]The Trust had not paid the $500 fine or filed for a franchise. Subsequent to December 21, 1989 the commission did receive a check for $500 from the Trust.

11 (Popup)

[1]Order No. 19,153 ordered Southern to file a depreciation study prior to filing its next rate case.

12 (Popup)

[2]This result is not inconsistent with the stipulation term that allows any party to withdraw from the agreement if it is not adopted in its entirety by the commission.

13 (Popup)

[1]Information about SNHW's financial situation was received over the Consumer Advocate's objection that "... any testimony or arguments concerning the company's rates are really irrelevant to this hearing." April 3, 1990 Transcript at 8. The commission also has information about Southern's financial condition in the form of *inter alia* the pre-filed testimony, exhibits and work papers, which are pleadings in the instant docket.

14 (Popup)

[2]Since we assume that the Consumer Advocate was not interjecting his objection for the purpose of delay, *see* Rule 3.2 of the N.H. Rules of Professional Conduct, it follows that the Consumer Advocate believes he has a substantive need for a SNHW depreciation study prior to the commencement of this rate proceeding. Unfortunately, the Consumer Advocate declined to provide the commission with the basis of such a substantive need. Instead, he elected to rest his need solely on the fact that the precondition of a depreciation study was a part of a stipulation accepted by the commission. *See e.g.* April 3, 1990 Transcript at 79-81. We do not mean to imply that such a position was inappropriate. The fact that the parties stipulated to the depreciation study requirement in an agreement accepted by the commission is sufficient to entitle that term to serious weight.

15 (Popup)

[3]At its March 5, 1990 commission meeting the commission was not aware that the OCA wished to file an objection to the SNHW Motion. There is no commission rule providing for the filing of objections to motions for rehearing and, in any event, such objections must be expeditiously filed given the statutory requirement that the commission rule on such motions within 10 days. RSA 541:5. The OCA's March 7, 1990 objection was fully considered in all commission deliberations which took place subsequent to its filing.

16 (Popup)

[4]The commission's public meetings of March, 5, 1990 and March 12, 1990 were noticed in the commission's hearing lists of January 10, 1990; February 1, 1990; and March 2, 1990. The March 19, 1990 public meeting was noticed in the January 10, 1990 hearing list and on a notice posted on the bulletin boards at the commission's office and the Consumer Advocate's office on March 15, 1990. The April 23, 1990 public meeting was noticed in the hearing lists of March 2,

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1990; March 16, 1990; March 30, 1990; and April 13, 1990. The hearing lists are posted and served on a number of persons including the OCA. The agendas for the commission meetings are posted at least 24 hours in advance of the meetings.

17 (Popup)

[1]Macbeth V, v, 17.

18 (Popup)

[1]In this context, EUA did assign priorities to certain data responses, adding that lower priority items could be served on the later due date requested by UNITIL.

19 (Popup)

[1]The first effective date is the date upon which the Northeast Utilities Plan of Reorganization for PSNH takes effect.

20 (Popup)

[1]The first effective date is the date upon which the Northeast Utilities Plan of Reorganization for PSNH takes effect.

21 (Popup)

[1]For each service offered to New Hampshire customers by ACL, please provide the following:

a. A rate schedule and customer description.

b. A copy of all customer promotional information describing these services.

c. The number of customers subscribing to each of these services, as of the end of each year, for each year since ACL commenced resale.

d. Identify each service that has the capability to complete calls which both originate and terminate in the State of New Hampshire.

e. Annual intrastate minutes of use for each year since ACL commenced resale.

f. Annual interstate minutes of use for each year since ACL commenced resale.

22 (Popup)

[1]For each service offered to New Hampshire customers by ACL, please provide the following:

a. A rate schedule and customer description.

b. A copy of all customer promotional information describing these services.

c. The number of customers subscribing to each of these services, as of the end of each year, for each year since ACL commenced resale.

d. Identify each service that has the capability to complete calls which both originate and terminate in the State of New Hampshire.

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e. Annual intrastate minutes of use for each year since ACL commenced resale.

f. Annual interstate minutes of use for each year since ACL commenced resale.

23 (Popup)

[2]Please provide a copy of all bills ACL has received from NET and any interexchange carrier since ACL commenced resale.

24 (Popup)

[3]What facilities do you have and where are they located in New Hampshire?

25 (Popup)

[4]Please provide the name and addresses of all your customers.

26 (Popup)

[5]Please provide all revenues for the last twelve (12) months.

a. What percentage of your revenues are interstate?

b. What percentage of your revenues are intrastate?

27 (Popup)

[5]Please provide all revenues for the last twelve (12) months.

a. What percentage of your revenues are interstate?

b. What percentage of your revenues are intrastate?

28 (Popup)

[6]Please provide copies of the "Statement of Charges" page of each bill for each of your customers from the first bill forward.

29 (Popup)

[1]Since this is a FERC approved wholesale rate passed through to ratepayers through the PPCA, the FERC definition of "commercial operation" is applicable. *See Appeal of Sinclair Machine Products,* 126 N.H. 822 (1985). This order should not be construed as reflecting any conclusion on the part of this commission as to the appropriate definition of that term.

30 (Popup)

[1]Pursuant to RSA 374-A:7 II (c) the Connecticut Department of Public Utility Control ("DPUC") has filed with this Commission a certification that the DPUC has general regulatory jurisdiction over the financing of UI and that the DPUC has general supervision over UI in the conduct of its electric business. Therefore, UI is exempt from the requirements of RSA Chapter 369 and other New Hampshire regulatory laws with respect to the financing of UI's interest in the Seabrook plant.

31 (Popup)

[1]We previously ruled that we will not permit our investigational process to produce a *de*

facto result in a financing petition. *In Re Public Service of New Hampshire*, 69 NH PUC 412, 413 (1984). We similarly will not allow this proceeding to be the vehicle by which the takeover may be accomplished without a *de jure* finding by the commission in accordance with the statutory standards.

32 (Popup)

[2]The information, sought may also be arguably relevant to the adequacy of EUA's tender offer. However, our perspective on this issue is the impact of the tender offer on the public. RSA 374:33. UNITIL's internal evaluation from a shareholder perspective is less relevant and does not outweigh the burden to UNITIL supplying this information to EUA.

33 (Popup)

[1]"Agreement" means the agreement dated as of November 22, 1989, as amended through December 14, 1989, executed by and between the governor and attorney general of the State of New Hampshire, acting on behalf of the State of New Hampshire, and Northeast Utilities Service Company, acting on behalf of its parent Northeast Utilities. RSA 362-C:2 II.

34 (Popup)

[2]In its report and order 19,775 issued March 13, 1990, the Commission audited the Nuclear Decommissioning Finance Committee's (NDFC) Decommissioning Fund as the basis for the Nuclear Decommissioning Charge to be assessed against the applicable utilities. If the N.H. Supreme Court's decision, currently pending, requires revision of the Nuclear Decommissioning Charge, the Commission's order in Docket No. DR-90-019 will be appropriately modified and a final order relating to the Decommissioning Charge will be issued.

35 (Popup)

[3]Ex. NU-23, Joint Recommendation for Commission order between the State of New Hampshire and NU filed June 22, 1990 at 1-2. Said Joint Recommendation and its companion "Second Joint Recommendation to the Commission" (filed by the State and NU with the original Joint Recommendation) and the Staff response and concurrence thereto dated June 27, 1990, are attached to this report as Appendix A.

36 (Popup)

[4]The commission is constrained by RSA 362-C:8 which provides: Notwithstanding any law or rule to the contrary, during the fixed rate term of the approved agreement or plan the commission shall not cause the allocation of base rate revenue responsibility among residential, commercial, industrial and municipal customers in effect on September 15, 1989, for the electric customers, serviced by Public Service Company of New Hampshire or its successor, to change without legislative approval of the commission's finding that such revenue responsibility allocation is unjust or unreasonable.

37 (Popup)

[5]Connecticut Light and Power, an NU subsidiary, owns approximately 4% of the Seabrook Nuclear Power Plant, with the balance of the ownership distributed among 10 other joint owners.

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38 (Popup)

[6]The unit contract between PSNH and NAEC is in the record as part of Exhibit NU 1-E beginning at page D-29. The Schedule I, cost-of-service and termination costs, commences in the same exhibit at page D-62. Between the first effective date and consummation of the merger, PSNH can recover under the plan from its ratepayers the same amounts that PSNH would have had to pay to NAEC if the Seabrook Power Contract were in place. This was presented by NU as being an essential part of the financing arrangements. Ex. NU 1-E, at 24.

39 (Popup)

[7]Paragraph 7 of the Rate Agreement, Ex. NU 1-E at D-16 and D-17 provides that FPPAC shall expire at the end of 10 years, and, at the end of such 10 year period, the "cost of... purchased power shall be recovered in the manner established by the NHPUC."

40 (Popup)

[8]Ex. C to the Rate Agreement, Exh. NU 1-E at D-98 and D-99. Prudence is not defined elsewhere in the Agreement and the commission is not bound to apply this definition except as it pertains to costs incurred under the Seabrook Power Contract.

41 (Popup)

[9]NU, in its trial brief at page 49, indicated, regarding a staff request that PSNH waive any claim of preemption that it may have concerning review of replacement power expenses attributable to Seabrook outages that are determined to be imprudent, that this "question was specifically addressed during negotiations with the State of New Hampshire and deliberately excluded from the waiver provisions of the FPPAC. Tr. May 23 at 72. In a recent filing with the commission, NUSCO discussed existing case law on this complex and unsettled question, and reserved the right, if the issue ever arises, to argue for an interpretation of law that would preclude disallowance of replacement power costs.... However, no provision in the Seabrook Power Contract or the Rate Agreement, including the FPPAC, diminishes in any way the commission's existing powers with respect to such costs — whatever authority the commission would have absent these agreements, it will continue to have." NU went on to ask that the commission not "rewrite the Rate Agreement to resolve a contentious legal issue that may never arise in fact." *Id.* In determining now that the commission has the authority under the Seabrook Power Contract to disallow costs resulting from Seabrook outages that were caused by imprudent acts, we are not rewriting the Agreement but interpreting how it may be implemented in the public good in subsequent rate proceedings.

42 (Popup)

[10]Another alternative shield for ratepayers, would be for the commission, in subsequent proceedings, to consider, when appropriate, removing from rates a portion of the up to $900 million initial investment in Seabrook, (considered prudent under the Agreement) under the used and useful principle

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(pursuant to *inter alia*, RSA 378:27, 28) in the event that imprudence at Seabrook should render Seabrook unusable and useless for an extended period of time.

43 (Popup)

[11]Ex. B to the Rate Agreement, NU 1-E at D-86. The Investment Adder for PSNH is calculated under the formula set out in schedule 1 to Exhibit B found at page D-90 of Ex. NU 1-E.

44 (Popup)

[12]Second Joint Recommendation of the Parties at 2. NU's projected Seabrook budget was increased from $95 million to $113 million to accommodate various differences between Seabrook and Millstone 3, including emergency planning costs, environmental monitoring costs, and costs of radiological monitoring, nuclear licensing, training and nuclear records. NU Trial Brief at 57-58.

45 (Popup)

[13]The Joint Plan defines warranty run as follows: "Warranty Run" means a period of 100 continuous hours during which the Seabrook Unit No. 1 nuclear steam supply system and turbine successfully operate, in accordance with the warranty provisions of the respective contracts under which the nuclear steam supply system and the turbine were constructed, at least at the capability rating determined for the Unit by the New England Power Pool for the first year of operation. NU 1-E at A-9.

46 (Popup)

[13]The Joint Plan defines warranty run as follows: "Warranty Run" means a period of 100 continuous hours during which the Seabrook Unit No. 1 nuclear steam supply system and turbine successfully operate, in accordance with the warranty provisions of the respective contracts under which the nuclear steam supply system and the turbine were constructed, at least at the capability rating determined for the Unit by the New England Power Pool for the first year of operation. NU 1-E at A-9.

47 (Popup)

[1]The Hydro Intervenors' First Request for Finding was: "in effect, implementation of the Rate Agreement will result in recovery of $1.5,billion, or slightly more than fifty percent, of PSNH's Seabrook investment of approximately $2.9 billion.

48 (Popup)

[2]The Hydro Intervenors' First Request for a Ruling of Law is that the "commission is required to employ some rational method and to identify fully and accurately its method for determining reasonable rates, including its calculation of rate base and rate of return.

49 (Popup)

[3]The Hydro Intervenors' Second Request for a Ruling of Law is: "... the statutory basis for calculation of rate base is `the cost of the property of the utility used and useful so in the public service less accrued depreciation.' RSA 378:27, 28; *Appeal of Public Service Company*, 130 N.H. 748, 751, 96 PUR4th 536, 547 A.2d 269 (1988)."

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Joint Recommendation

50 (Popup)

[3]The Hydro Intervenors' Second Request for a Ruling of Law is: "... the statutory basis for calculation of rate base is `the cost of the property of the utility used and useful so in the public service less accrued depreciation.' RSA 378:27, 28; *Appeal of Public Service Company*, 130 N.H. 748, 751, 96 PUR4th 536, 547 A.2d 269 (1988)."

Joint Recommendation

51 (Popup)

[1]The Rate Agreement was signed by NU and the State on November 22, 1989 and is the subject of this docket. Hereinafter, the Agreement, including exhibits and schedules, will be referred to as "the Rate Agreement."

52 (Popup)

[1]See attachment 4 to the nuclear decommissioning financing committee's 15th supplemental order, master trust agreement at 1 where NHY is designated "Managing Agent" for the Seabrook participants".

53 (Popup)

[2]*See* Exh. PSNH-6 at 4

54 (Popup)

[3]This finding should not be construed as a precedent or otherwise prejudicing in any way any commission ruling or finding under RSA 378:30-a.

55 (Popup)

[1]Energy Cost Recovery Mechanism, Fuel and Purchased Power Cost Adjustment, and Fuel Adjustment Charge.

56 (Popup)

[2]Least cost integrated resource planning refers to an approach to utility resource planning that considers all resource options, both demand- and supply-side, evaluating them consistently and according to equivalent criteria. These criteria may include reliability, diversity, flexibility, and environmental, safety and economic factors *inter alia*, in addition to cost. *Re Public Service Company of New Hampshire et al.*, 73 NH PUC 117 (1988); *N.H. Law Ch. 226*.

57 (Popup)

[1]The commission recognizes the existence of a dispute over how far earnings are below the authorized rate of return and whether the company is entitled to relief notwithstanding its low book earnings.

58 (Popup)

[1]The commission recognizes the existence of a dispute over how far earnings are below

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the authorized rate of return and whether the company is entitled to relief notwithstanding its low book earnings.

59 (Popup)
2

[Graphic(s) below may extend beyond size of screen or contain distortions.]

SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.
RATE OF RETURN ON RATE BASE

Plant in Service		28,479,872
Less: Accumulated Depreciation		1,187,235
Less: CIAC		6,806,255
		20,486,382
Less: Property Held for Future Use		173,615
Less: Utility Acquisition Adjustment		416,404
		19,896,363
Working Capital:		
Deferred Taxes		(549,024)
Customer Advances		(87,607)
Customer Deposits		(13,243)
Operation & Maintenance	1,472,681	
Less: Purchased Water	120,284	
	1,352,397	
Monthly Billings 45/365=12.33%		166,751
Rate Base		19,413,240
Operating Income		1,328,475
Rate of Return		6.84%

60 (Popup)
3

[Graphic(s) below may extend beyond size of screen or contain distortions.]

SOUTHERN NEW HAMPSHIRE WATER, INC.
RATE OF RETURN ON RATE BASE

Plant in Service	28,479,872
Less: Accumulated Depreciation	1,187,235
Less: CIAC	6,806,255
	20,486,382
Less: Property Held for Future Use	173,615
Less: Utility Acquisition Adjustment	416,404

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		19,896,363
Working Capital:		
Deferred Taxes		(549,024)
Customer Advances		(87,607)
Customer Deposits		(13,243)
Operation & Maintenance	1,472,681	
Less: Purchased Water	120,284	
	1,352,397	
Monthly Billings 45/365=12.33%		166,751
Rate Base		19,413,240
Operating Income 1,328,475 + 455,400		1,783,875
Rate of Return		9.19%

61 (Popup)

[1]As noted above, local support costs have already been assessed in Section 1 of Order 19,676. This previous assessment is being incorporated in this order. Accordingly, this order should not be construed as imposing an additional assessment for local support.

62 (Popup)

[2]References in this and subsequent items are to the New Hampshire Radiological Response Plan (NHRERP).

63 (Popup)

[1]RSA 38:2 defines municipality as "any city, town, or *village district* within the state." (Emphasis added).

64 (Popup)

[1]The legislation also required the commission to adjudicate whether the PSNH rate plan is consistent with the public good. RSA 362-C:3. Pursuant to that requirement, the PSNH rate plan approved in *Re PSNH*, 75 NH PUC 396 (1990).

65 (Popup)

[2]While the constitutional mandate for a "bright line" was overruled in *Arkansas*, the statutory "bright line" established by the Federal Power Act (FPA) continues to exist. This statutory standard does not apply to wholesale sales of electricity by a cooperative. *Salt River Agricultural Improv. & Power Dist. v. Federal Power Commission*, 391 F.2d 470, 73 PUR3d 321 (D.C. Cir 1968); *Re Dairyland Power Co-op*, 37 F.P.C. 12, 67 PUR3d 340 (D.C. Cir 1967).

66 (Popup)

[3]*See, also*, RSA 362-C:2,I which defines the term "agreement". We recognize that PSNH/NUSCO and the State cite RSA 362-C:3 as the appropriate enabling authority. We differ with PSNH/NUSCO and the State to the extent that we conclude that RSA 362-C:7 provides the primary authority for commission adjudication in this docket. However, we also construe the

RSA 362-C:7 limitation of risks and costs as referring back to RSA 362-C:3.

67 (Popup)

[4]This function of fairly allocating costs must be accomplished by the commission at any time the NHEC seeks to reflect Seabrook investment in rates, whether or not we proceed under RSA 362-C. This function cannot be circumvented by the filing of a petition under Chapter 11 of the bankruptcy code, 11 U.S.C. Sec. 1129(a)(6), or by other actions that may be taken by the parties, *see e.g., Wabash Valley Power Association Inc. v. Rural Electrification Administration, supra*.

68 (Popup)

[5]We construe changes to include either an incorrect interpretation of the sellback agreement by the NHEC or a modification of the terms of that agreement by the commission or other appropriate regulatory authority.

69 (Popup)

[6]*See, also,* 1989 Special Session Ch. 1:2 which amends RSA 374 to insert RSA 374:57. That provision requires electric utilities to file certain agreements for the purchase of wholesale capacity or energy with the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission (FERC) or, if no such federal

filing is required, at the time the agreement is executed. The commission is authorized to disallow the amounts paid under such agreements under specified circumstances. We express no opinion as to the applicability of RSA 374:57 to the possible bilateral obligations of PSNH to purchase NHEC Seabrook output and of the NHEC to purchase requirements power from PSNH as those obligations may exist under the sellback agreement.

70 (Popup)

[7]In this context, it is important to recognize that the terms and conditions of the sellback agreement *inter alia* govern rates. As discussed more fully *infra*, utilities cannot by contract circumvent the ratemaking jurisdiction of the commission.

71 (Popup)

[8]CWIP is an acronym for Construction Work In Progress.

72 (Popup)

[9]The lack of opportunity to set wholesale rates is perhaps the best explanation of why we have not heretofore promulgated rules specifying filing requirements for such rates. We disagree with the NHEC's argument that the absence of such rules alters either the commission's or the NHEC's obligations under the statute. It is settled law that administrative agencies cannot by rule add to, detract from, or in any way modify statutory law. *Kimball v. New Hampshire Board of Accountancy*, 118 N.H. 567 (1978).

73 (Popup)

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[10]Of course, if we accepted the NHEC's assertion that the terms of the more specific RSA 378:20 do not apply to the instant situation, we would then be left to exercise the more general grant of plenary ratemaking authority set forth at RSA 378:1 and RSA 378:7.

74 (Popup)

[11]The NHEC did not and could not argue that our original order approving the transfer of a portion of PSNH's ownership interest to the NHEC constituted an approval of the sellback agreement. *Re PSNH*, 64 NH PUC 485 (1979). It would have been inappropriate to undertake any RSA Chapter 378 review in that proceeding. Moreover, the exchange of letters which constitute the sellback agreement was not completed until well after the date of that order.

75 (Popup)

[12]The NHEC's argument on the Contract Clause assumes that the commission will interpret the sellback agreement in a manner different than the NHEC's interpretation and, hence, goes to the merits of the matter. For the purpose of determining whether we have jurisdiction over the sellback agreement, it is not necessary for us to reach this issue. However, we believe it appropriate here to address all matters raised in the NHEC's Objection.

76 (Popup)

[1]AT&T presently has authority to offer discreet services *inter alia* to the federal government (FTS 2000). This is the first opportunity presented to us to consider whether the grant of requested authority would foreclose our ability to grant similar authorization to competing carriers.

77 (Popup)

[2]We note that in the last several months the commission has received a number of formal requests and informal petitions from toll carriers interested in

Page 676

operating in New Hampshire. In view of this interest the need for a generic inquiry has become even more apparent.

78 (Popup)

[3]For the purposes of this order, we construe the threshold issues raised in Union's memorandum as a motion to dismiss in that Union is contending that, regardless of the facts, we cannot as a matter of law grant the requested relief. We shall also construe as a motion Union's request that we reserve, certify and transfer the threshold question of law to the New Hampshire Supreme Court pursuant to RSA 365:20.

79 (Popup)

[4]In its brief Contel raised additional issues for the commission to consider, including *inter alia* the proper interpretation of the definition of a "public utility" as used in RSA 362:2. While we believe that the issues raised by Contel are important and require our review, they do not concern our statutory jurisdiction and we will therefore address them in the course of the

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evidentiary hearings. We note also that the precise issue of what is a "public utility" is being considered in *Re ACL*, Docket No. DE 90-042 (provision of Intra-Lata toll service).

80 (Popup)

[5]It is also noteworthy, that the grant of an exclusive monopoly franchise was never used by the United States Supreme Court as a litmus test for state regulation of public utilities. *See, e.g., Munn v Illinois*, 94 U.S. 113 (1876), (holding that the state of Illinois did not violate the due process clause of the fourteenth amendment by regulating nine competing grain warehouses since the business was "affected with a public interest"). Indeed, since the Court decided *Nebbia v State of New York*, 291 U.S. 502 (1934), due process analysis has required only that the state show that its regulation of a particular enterprise, regardless of its competitive or monopolistic nature, is rationally related to a legitimate state concern.

81 (Popup)

[6]The distinction drawn by the North Carolina Supreme Court is also dispositive of Union's arguments relative to the applicability of RSA 374:22-e and 374:22-f (commission to establish telephone company service areas) and RSA 374:28 (withdrawal of franchise authority). These statutes address the procedures to be followed when the commission has made a finding that it is in the public good to have a single company supply particular services within a given franchise area. They are not applicable to the current docket in which the commission will be examining the threshold issue of whether it is in the public good to have several carriers compete to furnish select telephone services to the same customer.

82 (Popup)

[7]Heller, Joseph, *Catch 22* (1961).

83 (Popup)

[1]The NHEC also is not challenging the commission's denial of the request to issue an order that the NHEC cease and desist from any judicial action to enforce the sellback agreement.

84 (Popup)

[2]The NHEC also argues that the commission erred in concluding that in the absence of review under RSA 378:20, RSA 378:1 and 7 grant us jurisdictional authority to review the sellback agreement. The NHEC claims that our authority under the latter statutes is contingent upon our promulgation of rules for wholesale rates. As is more fully explained in the order, our statutory authority to establish wholesale rates for the NHEC is not negated by the absence of rules specifying what the NHEC must file. *Kimball v New Hampshire Board of Accounting*, 118 N.H. 567 (1978).

85 (Popup)

[3]As we note in our October 1 order, the sellback

agreement is a substitute for a wholesale rate between the NHEC and PSNH.

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86 (Popup)

[4]The NHEC's motion ignores the due process notice problems inherent in a ruling that *Re NHEC* estops PSNH from requesting commission review and approval of the sellback agreement. Because *Re NHEC* was noticed as a RSA Chapter 369 financing proceeding the commission could not engage in a RSA 378 review of the wholesale rate contemplated by the sellback agreement as part of that docket. *DeWees v N.H. Board of Pharmacy*, 130 N.H. 396 (1988).

87 (Popup)

[1]We also note that there may be a regional benefit obtained from the financing. For the present, the commission continues to believe that a regional outlook is appropriate.

88 (Popup)

[1]PSNH provides approximately 90 percent of the NHEC's purchased power through its wholesale power contract.

89 (Popup)

[2]In *Re NHEC*, 75 NH PUC 649 (1990) the commission ruled that it would be considering the terms and conditions of the sellback agreement between, PSNH and the NHEC as part of its examination of the NHEC's rate plan filed pursuant to RSA Chapter 362-C. One of the contract terms the commission anticipates that it will address in that docket is the wholesale rate which the NHEC may charge PSNH for Seabrook power.

90 (Popup)

[3]The FERC regulations governing power adjustment clauses require PSNH to obtain a waiver from the FERC in order to amend its tariff to include SPP costs in its fuel adjustment clause. 18 C.F.R. § 35.14 (1989)

91 (Popup)

[1]PSNH and NUSCO are intervenors in this proceeding, along with the State of New Hampshire (State), the Office of the Consumer Advocate (OCA) and the United States Rural Electrification Administration (REA).

92 (Popup)

[2]The October 17, 1990 letter to the Attorney General was served on all parties.

93 (Popup)

[3]For a discussion on the nature of the sellback agreement and the commission's jurisdiction over the terms and conditions of the sellback agreement, *see generally*, Order 19,946 and Order 19,969.

94 (Popup)

[4]It was for this reason that I sought the opinion of the Attorney General pursuant to RSA 7:8. Such a step would not have been necessary had the substantive outcome been clear.

95 (Popup)

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[5]The commission which issued Order 19,889 consisted of Special Commissioner John N. Nassikas, Commissioner Bruce B. Ellsworth and Commissioner Linda G. Bisson. Because that proceeding clearly involved the same case and issues in which I participated as an attorney, I recused myself *sua sponte* pursuant to RSA 363:12, VII. Thus, I did not contribute to the commission's interpretation of the rate agreement in Order 19,889, (75 NH PUC 396).

96 (Popup)

[6]It is interesting that Rule 38, Canon 3 D allows waivers for the same grounds specified in the federal provision at 28 U.S.C. Sec. 455 (b). As noted previously, section 455 (e) prohibits judges from accepting waivers when disqualification is based on those grounds.

97 (Popup)

[7]It is appropriate to emphasize again that the closeness of the substantive recusal issue contributes to my ability to base this decision on a waiver standard in the face of the possibility of conflicting standards.

98 (Popup)

[8]I have discussed the withdrawal of the opinion request, as well as the substance of this order with a representative of the Office of the Attorney General.

99 (Popup)

[1]We recognize that such retroactive rates would be consistent with the RSA 362-C legislative policy of providing timely relief.

100 (Popup)

[1]Chairman Smukler *sua sponte* recused himself in *Re PSNH*, Docket No. DR 89-244 and, thus, did not participate in that decision.

101 (Popup)

[1]This "bifurcation" will not affect rate design until the end of the marginal cost rate design portion of this case at which point changes in rate design, if any, will be implemented on a forward looking basis.

102 (Popup)

[2]The entire settlement agreement is attached hereto as Exhibit A and will not be repeated verbatim herein.

103 (Popup)

[2]The entire settlement agreement is attached hereto as Exhibit A and will not be repeated verbatim herein.

104 (Popup)

[1]Staff originally recommended an increase of $1.51 million. However, due to a revised tax figure agreed to during settlement negotiations, that amount was increased to approximately $1.66 million.

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105 (Popup)

[2]In her testimony, Ms. Planchet referenced Order No. 19,539 which directed Granite State to "... file by July 1, 1990 retail rate design changes to reflect the price signals of the wholesale rate in the retail tariff."

106 (Popup)

[*]The settlement agreement is attached hereto as Exhibit A.

Exhibit A

107 (Popup)

[*]The settlement agreement is attached hereto as Exhibit A.

Exhibit A

108 (Popup)

[1]Granite proposed program budget has subsequently been lowered to $2.22 million to reflect changes in the Small Commercial and Industrial Program and allocation of program costs.

109 (Popup)

[2]The proposed Maximizing and Efficiency Incentives have been lowered to $234,000 and $222,000 respectively to reflect changes in the Small Commercial and Industrial Program and allocation of program costs.

110 (Popup)

[1]PSNH/NU failed to raise their concerns about a retroactive rate in their October 31 Objection to the NHEC's Motion for Clarification. For reasons of economy and efficiency of commission resources, we expect that in the future PSNH/NU will reduce their responses to discreet motions and other filings to which they are responding to one document.

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