

NH.PUC*01/03/85*[60951]*70 NH PUC 1*Pittsfield Aqueduct Company, Inc.

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70 NH PUC 1

Re Pittsfield Aqueduct Company, Inc.

DR 80-125, 12th Supplemental Order No. 17,377

New Hampshire Public Utilities Commission

January 3, 1985

ORDER authorizing a step rate increase for a water utility.

Rates, § 604 — Water — Meter charges — Increase upon meter installation.

A water utility was granted a rate increase based upon the actual costs associated with the installation of 50 additional meters that had been ordered installed in a previous hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, earlier in this Docket, the Commission issued Order No. 15,556 (67 NH PUC 250) providing in pertinent part, that Pittsfield Aqueduct Company, Inc. "must immediately proceed with the annual addition of 50 new meters until all customers are metered ...," and that "(a)t the completion of the installation of the 50 meters, we will accept a filing by Pittsfield for the purpose of making a step increase based on actual costs"; and

WHEREAS, Pittsfield Aqueduct Company has submitted that the capital cost of the meters is \$7,215.25 and the increased operating costs incurred with these installations is at \$238, resulting in increased operating revenues required at \$1,829; it is hereby

ORDERED, that Pittsfield Aqueduct Company, Inc. may increase its revenues, effective with its January 1, 1985 billing, by \$1,829.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/03/85*[60952]*70 NH PUC 2*Fuel Adjustment Clause

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70 NH PUC 2

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, New Hampshire Electric Cooperative, Inc., Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 84-353, Order No. 17,378

New Hampshire Public Utilities Commission

January 3, 1985

INVESTIGATION into the fuel adjustment clause practices of electric utilities.

Automatic Adjustment Clauses, § 28 — Credits — Fuel savings — Ratepayer benefits.

The fuel adjustment clauses proposed by two electric utilities were accepted where the clauses would employ surcharge credits reflecting lower fuel rates and flowing through to ratepayers the fuel savings associated with conversion of a generating unit from oil to coal. [1] p.2.

Automatic Adjustment Clauses, § 54 — Over- and undercollections — Interest.

To assure consistency in rate making, electric utilities were ordered to apply interest at a rate of 10% to the average monthly balance of their fuel adjustment clause rate accounts, whether the balance represented an over- or an undercollection. [2] p.4.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Warren Nighswander, Esquire; for Granite State Electric Company, Philip Cahill, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed public hearing at its office in Concord on December 20, 1984 to review the fuel adjustment clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, for the first quarter of 1985.

I. CONCORD ELECTRIC CO. AND EXETER & HAMPTON ELECTRIC CO.

[1] Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") were represented by one witness, William H. Steff. Concord had a FAC rate of \$0.489 per 100 KWH in effect during the month of October, 1984 while

Exeter & Hampton had a rate of \$0.624 per 100 KWH for the same period.

These two companies filed revisions to their November and December, 1984 FAC reflecting a reduction in estimated fuel costs for that period. The revised rates for Concord and Exeter & Hampton were \$.012 per 100 KWH and \$.307 per 100 KWH respectively. Reestimates of fuel costs were provided by Public Service Company of New Hampshire ("PSNH") the sole supplier of energy for both companies.

On December 17, 1984 Concord filed its tariff page 22 Revised 19A with an FAC rate of \$0.297 per 100 KWH for the period of January, February, and March, 1985. Exeter & Hampton simultaneously filed its FAC rate of \$0.227 per 100 KWH for the same period. The rates for both companies were based on estimates supplied by PSNH adjusted for an overcollection from the prior FAC period.

The filings also included a cost item from PSNH entitled "Fuel Savings". This represents the reduced cost of fuel due to the conversion of Schiller Unit #4 from an oil to a coal fired facility. PSNH and both companies collectively are negotiating a method to offset PSNH's cost to convert Schiller Unit #4 and two other units (#5 & #6). The method is intended to correspond with the "Schiller Agreement" ratified by this Commission in Order No. 15,943 of DE 79-141 (67 NH PUC 741).

Absent a negotiated settlement PSNH has suggested that they should retain the fuel savings in advance. In the December 17, 1984 filing both companies concurred with this suggestion and filed their tariff pages accordingly.

During the December 20, 1984 hearings Mr. Steff indicated that both Concord and Exeter & Hampton will be revising the December 17, 1984 filed FAC rate. The revision is due to the fact that PSNH has subsequently revised its fuel cost estimates downward, predominately reflecting a lower cost of oil. As part of the revised filing the companies are offering three tariff pages which will 1) flow through fuel savings from the Schiller conversion to rate payers; 2) reflect the fuel savings as an extra cost to offset the cost of converting Schiller; or 3) split the fuel savings 50/50 as an interim agreement.

On December 31, 1984 Concord filed its tariff page 23rd revised 19A with a FAC surcharge credit of \$(0.115) per 100 KWH for the first quarter of 1985. Exeter & Hampton also filed its tariff page 23rd revised 19A with a FAC surcharge credit of \$(0.185) per 100 KWH for the same period. These rates flow through fuel savings from the conversion of Schiller Unit #4 to the ratepayer. We find this is the proper rate for the following reasons:

a) PSNH, Concord, and Exeter & Hampton have not reached a formal agreement on this issue. We will not at this time base rates on a cost that is tentative, and subject to approval by the Federal Energy Regulatory Commission;

b) Concord and Exeter & Hampton have both notified PSNH of their intent to terminate power supply contracts which are currently in effect. The amount of contribution to the conversion costs the two utilities and their ratepayers need to supply may be substantially lower than the retail customers of PSNH, who stand to receive long term benefits from the conversion; and

c) The Federal Energy Regulatory Commission (FERC) has not as of yet approved this cost

as a component of the FAC for PSNH wholesale rates. This

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FAC charge is the basis of Concord's and Exeter & Hampton's retail FAC rate. This Commission further considers it inappropriate to include only a portion of the companies who are subject to the FERC fuel clause. It is contingent upon PSNH to file for revisions to the FERC fuel clause. It should further be pointed out that the wholesale customers of PSNH were not parties to the settlement agreement entered into on the Schiller conversion.

The Commission will be addressing a number of issues related to the Schiller conversion agreement prior to the implementation of the July through December ECRM rate. At that time, it will determine whether appropriate action has been taken to include the Schiller fuel savings in the FERC fuel clause. In addition, it will be necessary to determine the extent that the Schiller conversion savings impact upon the NEPOOL rates.

II. GRANITE STATE ELECTRIC COMPANY

Granite State Electric Company ("Granite State") made its first quarter 1985 filing for a FAC, an Oil Conservation Adjustment rate (OCA), and a Qualifying Facility Power Purchased rate (QF) on December 13, 1984. Granite State had a FAC rate of \$1.209 per 100 KWH in effect for October, November, and December, 1984, and an OCA rate of \$0.145 per 100 KWH during the same period. QF rates of \$0.05694 and \$0.05746 per KWH were in effect during the period of July through December, 1984.

The rates requested are \$0.864 per 100 KWH for FAC, \$0.241 per 100 KWH for OCA, and \$0.05818 and \$0.05871 per KWH for QF rates.

The decrease in the FAC rate from the prior period is due to improved generation mix, lower priced primary fuel, a reduced undercollection, and a reduction in unaccounted for KWH. The increase in the OCA rate is primarily due to the impact of Salem Harbor units burning coal during the upcoming three months.

During the course of the hearing the Staff brought up subjects which the Company witness, Mr. Robert D. Obeiter, responded to concerning coal pricing, oil inventory, generating facility capacity factors, and planned outages. Based on these lines of cross, the Commission believes the rates as filed by Granite State are in the public good and our order will issue accordingly.

III. INTEREST ON OVER AND UNDER COLLECTIONS

[2] The issue of interest on over and under collection of the FAC rate was discussed at length during the hearings. The Commission finance staff submitted a position paper (Staff exhibit #1) in favor of interest charged at a rate of 10% on the average monthly balance of the over and under collections. It is staff's opinion that this charge is necessary 1) to keep both ratepayers and the utility whole and 2) for consistency in Commission policy compared to other adjustment clauses utilized in its jurisdiction (PSNH's ECRM, and Gas Companies CGA).

Concord, Exeter & Hampton, and Granite State Electric Company ("Granite State") all opposed interest charges on over or under collections.

Granite State believes that the interest should not be added because:

a. The amount of interest which

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would be earned on the Company's undercollection would be insignificant when applied to their FAC rates;

b. although it is insignificant, the interest cost for Granite State would increase the FAC charged to their customers; and

c. the FAC mechanism has a 10% cap which would prevent the Company from grossly over or under collecting on the FAC rate.¹⁽¹⁾

Mr. Steff also indicated that the Companies he represents believe interest is not necessary. His reasoning is:

a. The interest amount serves to exaggerate an under or over collection;

b. the FAC mechanism has a 10% cap on over and under collections; and

c. Concord and Exeter & Hampton do not have any control over the estimate fuel cost that are supplied by PSNH, therefore, if interest is mandated with the intent of imposing some form of incentive it will be lost on both companies.

The Commission in implementing other adjustment clauses has applied interest on over and under collections. Concord and Exeter & Hampton are currently overcollecting a substantial amount, as is PSNH, from whom they receive estimates. PSNH is currently paying its customers interest for those over collections and, like Concord and Exeter & Hampton, PSNH also has a cap or "trigger mechanism". The Commission feels Concord and Exeter & Hampton ratepayers deserve the same consideration and therefore will require both companies to begin accruing interest at 10% (indexed to the rate this Commission has determined proper for customer deposits). We will require this of Granite State also, and for the same reasons. This Company is currently undercollecting and it could become as substantial as Concord and Exeter & Hampton's overcollection but to the companies detriment. For consistency in rate making, and to keep the company whole, interest on the undercollection is essential.

The interest is to accrue at 10% on the average monthly over/under collected balance beginning January 1, 1985. The interest rate will be applied to the average of the beginning and ending balances in each month. Any interest accumulated in any month will become a part of the beginning balance for the next month. The companies will include the interest from both the reconciliation (prior) period and the estimated period in the next FAC filing, i.e. six months of interest, three prior and three forward looking.

IV. OTHER ISSUES

In DR 84-130, this Commission approved increased replacement power costs needed during Brayton III's outage which were part of Granite State's FAC. This was done with the caveat that upon conclusion of a FERC investigation, if negligence or company error is determined, the increased replacement power approved will be subject to refund. The Company is to report to this Commission the results of this investigation through the FAC following its conclusion.

During the hearing on December 20, 1984 the Commission raised the subject of the FAC period and whether it

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is appropriate to extend it. Concord, Exeter & Hampton, and Granite State should be prepared to address the issue in their second quarter 1985 FAC.

Our Order will issue accordingly.

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, this is not one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189), pertaining to the New Hampshire Electric Cooperative, Inc. maintained the rolled in rate of \$0.2822/KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of (\$0.115) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to become effective for the month of January, 1985; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of (\$0.185) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to become effective for the month of January, 1985; and it is

FURTHER ORDERED, that 12th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of \$0.241 per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to become effective for January, 1985; and it is

FURTHER ORDERED, that 14th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of January, February, and March, 1985, of \$0.864 per 100 KWH, be, and hereby is, permitted to become effective for January, 1985; and it is

FURTHER ORDERED, that 3rd Revised page 11-C of Granite State Electric Company tariff, NHPUC No 10 — Electricity, providing for a Qualifying Facility Power Purchase Rate for January through June be, and hereby is, accepted for effect during January, February, April, May, and June, 1985; and it is

FURTHER ORDERED, that 49th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.44 per 100 KWH for the month of January, 1985, be, and hereby is, permitted to

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become effective January 1, 1985; and it is

FURTHER ORDERED, that 100th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$1.08) per 100 KWH for the month of January, 1985, be, and hereby is, permitted to become effective January 1, 1985; and it is

FURTHER ORDERED, that 97th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.60) per 100 KWH for the month of January, 1985; be, and hereby is, permitted to become effective January 1, 1985;

The above noted rates may be 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 January, 1985.

FOOTNOTE

¹We note that in recent history Granite State estimates are accurate and the Company has not utilized the cap.

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NH.PUC*01/03/85*[60953]*70 NH PUC 7*Concord Natural Gas Corporation

[Go to End of 60953]

70 NH PUC 7

Re Concord Natural Gas Corporation

DF 85-7, Order No. 17,379

New Hampshire Public Utilities Commission

January 3, 1985

ORDER extending the period during which a natural gas utility could issue short-term debt and notes payable.

By the COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Corporation is presently authorized to issue until December 31, 1984 its shortterm notes and notes payable in the amount of \$1,000,000 by Order No. 16,819, issued in Docket NO. DR 83-383 (68 NH PUC 335); and

WHEREAS, Concord Natural Gas Corporation, by letter dated December 26, 1984, requested authority to issue its short-term debt and notes payable in the amount of \$1,000,000 until December 31, 1985; it is

ORDERED, that Concord Natural Gas Corporation be, and hereby is, authorized to issue and sell for cash its notes and notes payable in an aggregate amount of \$1,000,000 until December 31, 1985; and it is

FURTHER ORDERED, that the Company on or before February 28, 1985 present a cash flow analysis for 1985 to this Commission; and it is

FURTHER ORDERED, that on or before January 1st and July 1st of each year, Concord Natural Gas Corporation shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of the notes or notes payable herein authorized, until the whole of said proceeds have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/03/85*[60954]*70 NH PUC 8*New England Telephone and Telegraph Company

[Go to End of 60954]

70 NH PUC 8

Re New England Telephone and Telegraph Company

DR 84-383, Order No. 17,381

New Hampshire Public Utilities Commission

January 3, 1985

ORDER approving a local exchange telephone carrier's tariff revisions on the interest to be paid on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission a revised tariff page which will serve to update the interest rate paid on customer deposits; and

WHEREAS, the proposed rate conforms to that specified in the rules of this Commission, and, accordingly, is in the public interest; it is

ORDERED, that Part A, Section 1, 2nd Revised Page 3, New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby is, approved for effect on December 24, 1984.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/03/85*[60955]*70 NH PUC 9*New England Telephone and Telegraph Company

[Go to End of 60955]

70 NH PUC 9

Re New England Telephone and Telegraph Company

DR 84-384, Order No. 17,382

New Hampshire Public Utilities Commission

January 3, 1985

PETITION by a local exchange telephone carrier for approval of an optional toll restriction plan; granted.

Service, § 470 — Telephone — Toll service — Restrictions.

A local exchange telephone carrier was permitted to institute its "Curb-a-Call" program to give customers a choice in selecting optional toll calling restrictions. p.xxx.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company has filed with this Commission certain revisions to its tariff NHPUC No. 75 by which it proposes to offer the so-called Curb-A-Call Service; and

WHEREAS, such service provides a variety of optional toll restrictions which appear beneficial to those customers selecting such options; and

WHEREAS, this Commission has previously approved for other telephone utilities similar services which have customer acceptance; and

WHEREAS, it then appears that these services are in the public interest; it is

ORDERED, that Part A, Section 6, Table of Contents, 3rd Rev. Pg. 1 and Part A, Section 6, Original Pg. 9, of New England Telephone and Telegraph Company tariff, NHPUC No. 75 — Telephone be, and hereby are, approved for effect on January 13, 1985; and it is

FURTHER ORDERED, that notice of the availability of these approved services be given to subscribers in a manner selected by the Company.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/03/85*[60956]*70 NH PUC 10*New England Telephone and Telegraph Company

[Go to End of 60956]

70 NH PUC 10

Re New England Telephone and Telegraph Company

DE 84-337, Order No. 17,384

New Hampshire Public Utilities Commission

January 3, 1985

PETITION by a local exchange telephone carrier for permission to install submarine plant; granted.

Telephones, § 2 — Construction and equipment — Underwater lines.

A local exchange telephone carrier was authorized to install an underwater plant in state-owned waters in order to serve a lakeshore customer with no other means of service and to replace existing telephone lines that were in a deteriorating condition and had been placed without formal authority.

APPEARANCES: Sam Smith, Outside Plant Supervisor of Right of Way.

By the COMMISSION:

REPORT

On November 8, 1984 the New England Telephone Company filed with this Commission a petition seeking authority to place and maintain submarine plant crossing state-owned public waters in Albany, New Hampshire under Whitten Pond.

The Commission issued an Order of Notice on November 14, 1984 directing all interested parties to appear at a public hearing at 10:00 a.m. on December 6, 1984 at the Concord offices of the Commission. The Petitioner was directed to publish a public notice in a newspaper having general circulation in the area served. In addition to the publication of said notice copies of the hearing notice were directed to the Department of Public Works and Highways; the Department of Resources and Economic Development; Robert X. Danos, Director Safety Services; and the Office of Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on November 20, 1984 was received in the Commission's office at Concord, New Hampshire on November 27, 1984.

Mr. Sam Smith, Outside Plant Supervisor of Right of Way explained that the petition results from a customer

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request for service to his lake shore property on Whitten Pond. There is, in fact, service to the property along the route presently requested. No authorization exists for the present line. The present line has deteriorated and requires replacement.

No adequate alternatives exist to providing this service. The nearest customer is approximately 2,000 feet from the Speer property at the opposite end of Whitten Pond.

Installation will be in accordance with the National Electric Safety Code.

The Commission noted that no objections were filed or expressed at the hearing; in fact, no intervenors or interested parties were in attendance.

The petition was properly publicized and proper notification was given to the public as to the proposed installation.

The Commission finds this petition for a license to place and maintain telephone submarine plant under Whitten Pond in Albany, New Hampshire to be in the public interest. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that authority be granted to the New England Telephone and Telegraph Company to place and maintain telephone submarine plant under Whitten Pond in Albany, New Hampshire to the property currently identified as the Mark Speer property as defined in petitioner's exhibits in this docket.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/03/85*[60957]*70 NH PUC 11*New England Telephone and Telegraph Company

[Go to End of 60957]

70 NH PUC 11

Re New England Telephone and Telegraph Company

Additional party: Public Service Company of New Hampshire

DE 84-336, Order No. 17,385

New Hampshire Public Utilities Commission

January 3, 1985

ORDER approving an extension of telephone service through underground lines.

Page 11

Telephones, § 2 — Construction and equipment — Underground lines.

To extend service to a rural residential customer, a local exchange telephone carrier was allowed to place connecting lines underground where no objections to underground lines were made and where both telephone and electric lines were buried nearby already.

APPEARANCES: For the Petitioner, Sam Smith, Outside Plant Supervisor of Right of Way.

By the COMMISSION:

REPORT

On November 8, 1984 the New England Telephone Company filed with this Commission a petition for authority to place and maintain underground facilities crossing Belknap State Reservation off Carriage Road in Gilford, New Hampshire.

The Commission issued an Order of Notice on November 14, 1984 directing all interested parties to appear at a public hearing at 10:00 a.m. on December 6, 1984 at the Concord offices of the Commission. The Petitioner was directed to publish a public notice in a newspaper having general circulation in the area served. In addition to the publication of said notice copies of the hearing notice were directed to Pierre O. Caron, Esquire, Public Service Company of New Hampshire; the Department of Public Works and Highways; the Department of Resources and Economic Development; Robert X. Danos, Director of Safety Services; and the Office of Attorney General.

An affidavit of publication indicating that publication was made in the Union Leader on November 20, 1984 was received at the Commission's office at Concord, New Hampshire on November 27, 1984.

Sam Smith, Outside Plant Supervisor of Right of Way, explained that the petition responds to a customer's request for residential service for a newly constructed residence in Belknap, New Hampshire. The customer, Mr. Eric Ginter has property which is separated from Carriage Road by a strip of state owned property of the Belknap State Reservation. Electric and telephone utility lines extend underground on Carriage Road. Approval of this petition will allow electric and telephone underground service lines to extend to the Ginter property.

No costs will be assessed for telephone service. PSNH will assess a cost of \$202.30 for the installation of conduit.

There are no viable alternatives to provide service. The Ginter property is bounded on the

north by private property and on the south by the Belknap State Forest. The northerly property is also separated from Carriage Road by a strip of state land.

All installations will be in accordance with the National Electric Safety Code.

The Commission noted that no objections were filed or expressed at the hearing; in fact, no intervenors or interested parties were in attendance.

The petition was properly publicized and proper notification was given to the public as to the proposed installation.

The Commission finds this petition for a license to place and maintain underground facilities crossing Belknap State Reservation off Carriage Road in Gilford, New Hampshire to be in the public interest. Our Order will issue accordingly.

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ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that authority be granted to the New England Telephone and Telegraph Company and to Public Service Company of New Hampshire to place and maintain underground facilities across Belknap State Reservation off Carriage Road in Gilford, New Hampshire to provide residential service to property as defined in petitioners exhibits.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1985.

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NH.PUC*01/07/85*[60958]*70 NH PUC 13*Connecticut Valley Electric Company, Inc.

[Go to End of 60958]

70 NH PUC 13

Re Connecticut Valley Electric Company, Inc.

DR 84-357, Order No. 17,387

New Hampshire Public Utilities Commission

January 7, 1985

ORDER accepting an electric utility's purchased power adjustment reduction.

Automatic Adjustment Clauses, § 13 — Purchased power — Cost elements.

Although an electric utility's proposed purchased power adjustment reduction included components for construction work in progress and the Seabrook 1 nuclear power plant, the adjustment was approved because it had already been accepted by the Federal Energy

Regulatory Commission and it did not contain any amounts for Seabrook 2.

APPEARANCES: C.J. Frankiewicz for Connecticut Valley Electric Company; Daniel Lanning and James Lenihan for staff.

By the COMMISSION:

REPORT

On November 30, 1984, Connecticut Valley Electric Company, Inc. ("Company") filed a revision to the Purchase Power Adjustment ("PPCA") rate in their tariff. The proposed revision reduces the 1984 rate of \$0.024828 per KWH to \$0.024070 per KWH, or a reduction of \$0.000758 per KWH.

A duly noticed hearing was held on January 2, 1985, with no intervenors present. A prehearing conference was held between staff and the Company. After all issues were resolved the two parties agreed to the rate as filed.

Staff pointed out that the rate proposed is approved by the Federal Energy Regulatory Commission and contains a certain amount of Construction Work in Progress. While the Company had told them that the filing did include a portion of Seabrook Unit I, Seabrook Unit II was not included either as a rate base item or amortized.

The Commission will accept the Company's filed rate of \$0.024070 per KWH. 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 Connecticut Valley Electric Company's tariff No. 4, 10th Revised page 17 be, and hereby is, approved for all service rendered on or after January 1, 1985.

By Order of the Public Utilities Commission of New Hampshire this seventh day of January, 1985.

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NH.PUC*01/08/85*[60962]*70 NH PUC 25*Watson Associates

[Go to End of 60962]

70 NH PUC 25

Re Watson Associates

DR 84-331, Order No. 17,398

New Hampshire Public Utilities Commission

January 8, 1985

ORDER suspending a hydroelectric plant operator's long term rate filing pending revision of its buy out provisions.

Water, § 29 — State hydroelectric power control — Rate filings — Buy out provisions.

Where a hydroelectric plant's long term rate filing did not specify that the plant could only buy out of certain of its obligations upon 60 days notice, the rate filing was held not to be in conformance with commission rules, and the plant's 30 year rate order was suspended pending modification of the buy out provisions and retention of a surety bond or junior lien to cover any buy out value. p.xxx.

By the COMMISSION:

ORDER

WHEREAS, on November 2, 1984, Watson Associates ("Watson") filed a long term rate filing; and

WHEREAS, Watson filed amendments to its filing on November 30, 1984, and twice on December 3, 1984; and

WHEREAS, the Petition requested inter alia a thirty-year rate order; and

WHEREAS, on December 10, 1984, the Commission issued Order No. 17,344 (69 NH PUC 683) which ordered nisi that Watson Associates' Petition be approved and allowed PSNH an opportunity to file a response to the Petition no later than 20 days from that date; and

WHEREAS, the Commission therein also ordered that said Order nisi would become effective 30 days from its date unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and

WHEREAS, on December 28, 1984, Public Service Company of New Hampshire (PSNH) filed certain comments and exceptions (response) regarding the long term rate filings of Watson Associates Hydroelectric Project; and

WHEREAS, having considered PSNH's comments and exceptions, the

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Commission has determined that paragraph II.5 of the long term rate filing does not conform to Report and Eighth Supplemental Order No. 17,104, in Re Small Power Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), and that said paragraph should state that Watson Associates may only "buy out" of certain of its obligations on 60 days notice in accordance with the provisions of Report and Eighth Supplemental Order No. 17,104 (69 NH PUC at p. 367, 61 PUR4th at p. 146); and

WHEREAS, in regard to PSNH's concern that the ownership and leasing arrangements of

Watson Dam may complicate the negotiations of the junior lien or surety bond, the Commission notes that its Order No. 17,344 granting the 30 year rate is conditional upon the provision of a satisfactory surety bond or junior lien on the project to cover the "buy out" value at the side; and

WHEREAS, the Commission finds the remainder of Watson Associates filing to be consistent with the requirements set forth in Re Small Energy Producers and Cogenerators, supra, in all respects other than said paragraph II.5; it is hereby

ORDERED, that Order No. 17,344 be, and hereby is, suspended pending the submission by Watson Associates of an amendment to its long term rate filing to reflect Commission Order No. 17,104 concerning the "buy out" provisions.

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1985.

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NH.PUC*01/09/85*[60959]*70 NH PUC 14*Public Service Company of New Hampshire

[Go to End of 60959]

70 NH PUC 14

Re Public Service Company of New Hampshire

Intervenor: Community Action Program

DR 84-354, Order No. 17,388

New Hampshire Public Utilities Commission

January 9, 1985

APPLICATION by an electric utility for approval of its revised energy cost recovery mechanism; granted as modified.

Automatic Adjustment Clauses, § 52 — Collections — Forecasts — Long term versus monthly trends.

To avoid overcollections through its fuel adjustment clause, an electric utility was required to forecast its costs of fuel oil based on federal forecasts of long term trends rather than on its own estimates of month to month oil price fluctuations. [1] p.15.

Expenses, § 122 — Electric — Cost of coal — Transportation costs.

It was appropriate for an electric utility to pay two different prices for coal delivered to two generating stations where the geographic locations of the stations made transportation costs for the coal significantly different. [2] p.16.

Automatic Adjustment Clauses, § 48 — Managerial performance incentive adjustments — Basis for reward — Avoidance of outages.

Although an electric utility's energy cost recovery mechanism provided for incentive rewards to the utility for avoidance of unplanned outages, the utility was not granted a reward for postponing planned maintenance outages where the commission found that the postponed outages were triggered by a cash flow crisis, not by outstanding management or superior plant performance. [3] p.17.

Automatic Adjustment Clauses, § 46 — Plant based adjustments — Plant conversions — Benefit of fuel savings.

Issues relating to an agreement entered into by an electric utility while converting a generating unit from oil to coal were deferred so that more information could be obtained on conversion interruptions and the financing aspects of the agreement, but in the interim, fuel savings associated with the switch to coal as a fuel source were ordered passed on to ratepayers. [4] p.18.

APPEARANCES: for the Company, Eaton W. Tarbell, Jr., Esquire; for the New Hampshire Public Utilities Commission, Larry Smukler, Esquire; for the Community Action Program (CAP), Gerald Eaton, Esquire.

By the COMMISSION:

REPORT

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This docket was initiated by a petition filed on November 21, 1984 by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the November through December, 1984 rate of \$3.501/100 KWH to a rate of \$3.527/100 KWH for January through June, 1985. On December 19, 1985 PSNH revised the proposed rate to \$3.397/100 KWH.

Following the duly noticed public hearing at the Commission's offices in Concord on December 19, 1984, the Commission set an additional hearing date for December 27, 1984.

On November 21, 1984, PSNH prefiled twelve exhibits and requested an ECRM rate of \$3.527/100 KWH for January through June, 1985. On December 19, 1984, PSNH updated a number of those exhibits due to revised fuel cost estimates, inclusion of actual November, 1984 results, and inclusion of Schiller Units #5 and #6 as coal fired facilities.

During the course of the hearings thirty exhibits and revisions were submitted into evidence, and numerous witnesses testified on behalf of the Company. In addition, post-hearing information was provided as required during the proceedings.

Prior to the hearings, the Commission's staff submitted twelve data requests. The Company's responses were submitted in writing on December 19, 1984 and were marked as Exhibit 14 and 15.¹⁽²⁾

During the course of the hearing, several aspects of the filing were explored, some of which

were:

1. Oil price estimates, trends, contracts, payments status;
2. Coal price estimates, contracts, inventory policy;
3. Natural gas purchases;
4. Historic unavailability factors;
5. Sales growth estimate of 4.9%;
6. Schiller conversion agreement;
7. Test power from conversion of Schiller Unit #4;
8. Reward for postponement of planned outages for Merrimack Unit 1 and Schiller #5 and #6;
9. A \$7.7 million estimated overcollection as of 12/31/84; and
10. Interest rate applied to the over/ undercollection of ECRM.

Several of the items merit additional discussion:

I. Oil price estimates, trends, contracts

[1] PSNH's projected oil prices for the ECRM period ending June, 1985 show a slight increase in the cost of oil from the December price of approximately \$28.00 a barrel to approximately \$28.50 a barrel by February, 1985. From February through June the Company estimates a slight decrease to approximately \$27.00 a barrel by the end of June 1985. In calculating their oil prices the Company examined a Department of Energy short term oil forecast, a forecast from Data Resources, Inc. and conducted a survey in which the Company talked to twelve industry oil buyers and sellers. The Department of Energy's short term forecast for residual oil show the prices remain constant for the first quarter of 1985 and a decrease of about \$1.50 in the second quarter. The DRI forecast showed a decrease of \$.50 in January and rise of \$.50 in February and a decrease of

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\$1.00 by mid-April and remained at that level through June.

With the exception of PSNH's estimate for increase of oil in the first quarter of 1985 their estimate is consistent with the overall estimates of both DRI and the Department of Energy. The results of the survey conducted by the Company showed an increase in oil prices of about \$.50 by mid-January. It remained at that level through midFebruary and then decreased by approximately \$1.75 by mid-June before leveling off. We will not accept the estimates as filed.

For this ECRM period we will adopt the DOE estimates. This will be \$28.00 for the first quarter of 1985 and decreasing \$1.50 per barrel to \$26.50 in the second quarter (April — June 1985).

The reason for accepting this is what appears to be a long term trend of decreasing oil prices.

DOE seems to have the most accurate estimates in light of the long term trend. This approach

satisfies the goals of the Commission in estimating oil prices over a longer period of time versus the Company's approach of estimating monthly fluctuations.

PSNH will refile the ECRM component utilizing the above mentioned oil prices.

The Company witness, Ray A. Hinds, was asked if the Company tracks its own estimates of fuel prices to determine the accuracy of their fuel projections. The Commission was informed that no comparative analysis between the projected fuel costs and actual fuel costs had been prepared. The Commission strongly suggests, due to the concern of continued overcollection that a comparison of fuel price projections with the actual cost of the fuel should be evaluated to determine the accuracy of the fuel cost projections. Fuel price forecasting may have a significant impact on potential overcollections.

II. Coal price estimates and contracts

[2] The estimated coal price is based on a fixed price per ton of coal which is added to the variable costs of transporting, storing, and handling the coal. The estimate for the cost of coal for the Merrimack Station is expected to remain in the \$55.00 per ton range in 1985. The cost of coal for Unit 4 at Schiller is estimated to be in the range of \$60.00 a ton through June 1985. When asked to explain the difference between the price of coal for the Merrimack and Schiller Station, a witness for PSNH stated that a significant part of the difference is due to the transportation costs. Coal for the Merrimack plant is transported directly from the mine by train. Coal for the Schiller Station is transported by rail to the port of Norfolk and then it's transported by barge to Portsmouth. The Schiller coal also has to be transported a greater distance then [sic] the coal delivered to Merrimack Station. The Commission will accept these estimates as filed.

III. Historic unavailability factors

Through cross examination and in response to staff data request number 10 (hearing exhibit No. 14) a substantial decrease in the unplanned outages of PSNH's generating facilities from the target set in June of 1984 was disclosed (a decrease in the unavailability one factor). The ECRM contains an incentive feature which rewards the Company for reducing outages from the targeted 5 year historic average of unplanned outages.

The Company attributes this reduction in part to the "superior"

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management in recent years.²⁽³⁾ The Company witnesses state that this reduction is not temporary, resulting from some fluke, but is a designed reduction reflecting the Company's efforts and expenditures in the maintenance and preventive maintenance area. A reduction in unplanned outages as significant as those reported by the Company during the reconciliation period of this ECRM (June — December, 1984) is commendable. This supports the incentive mechanism established in ECRM.

We are, however, concerned with the magnitude and timing of the reductions. As an example PSNH targeted Merrimack Unit II's unavailability one factor at 23.33%, the actual reported on data response #10 of Exhibit 14 was 13.33%. Schiller Unit #6 was targeted at 7.42% and the actual was 2.41%. Most of the remaining plants were also reduced from the targeted estimate. The concern this brings is how can such reductions be possible now, after — in Merrimack II's

case — fifteen (15) years of operation, and with Schiller #6 twentyfive (25) years of operation?

The Company is to respond to this question in prefiled testimony in the next ECRM filing. Pursuant to inter alia RSA 370:2 and 374:2.

IV. Test power from Schiller Unit #4

During the hearings staff raised an issue about the cost of generation for test power from Schiller #4. For most of December, 1984 the plant burned coal which, according to PSNH, accumulated a reported retail "fuel savings" of \$437,104. "Fuel savings" is the difference in the Company's energy cost of Schiller burning oil versus the unit burning coal after conversion. PSNH proposes to collect "fuel savings" from the Schiller plant as a cost of energy in the ECRM's December, 1984 reconciliation.

It is the Company's opinion that this is the "value" of the energy generated by Schiller while it is being tested. This is their interpretation of the Federal Regulatory Energy Commission's accounting policy on test generation.

Staff's concern relates to the propriety of this cost as a component of ECRM and the company's interpretation of Federal Energy Regulatory Commission (FERC) accounting rules, as adopted by this Commission.

The parties agreed to postpone this issue for litigation in docket DR 84-131. This docket was established to review the cost of converting Schiller Units 4, 5, and 6. The parties agreed that the costs, as filed, would be part of this period's ECRM (January through June, 1985), subject to reconciliation upon resolution of the issue. This issue is distinct from the Schiller issues addressed in the Schiller Agreement. For this reason, and because all parties agree on this point, we will accept the Company's request in this regard.

V. Reward for postponement of planned outages, Merrimack Unit I and Schiller 5 and 6

[3] In DR 84-128, PSNH had planned outage targets for Merrimack Unit I and Schiller 5 and 6 for three weeks, two weeks, and three weeks, respectively during the second half of 1984. During the period July — December 1984 the Company deferred or canceled these outages. As a result the increased cost of energy, which would be used to replace these units while they were

Page 17

down, was avoided. This decreased the cost of ECRM and, through the mechanism as it currently exists rewards the Company (DR 82-342, Order No. 16,121 [67 NH PUC 993]).

CAP objected to rewarding the Company for the cancellation or postponement of the planned maintenance for those units. Mr. Eaton stated that the postponement was a direct result of "crisis management" which occurred during a period of cash shortages. He further states that the Company includes in its base rates a certain amount of maintenance costs which are necessary to cover the planned outages that occur on a routine basis. When PSNH canceled the outages for cash conservation purposes, the Company obtained a reward by avoiding costs which are included in base rates.

The Company believes that although the outages were originally canceled due to the cash problems they were having at the time, the Units maintained good availability without any

performance problems as a result of the postponement. It is their opinion that this is a result of superior management practices: the outages were planned under good management but could be postponed for an extended period of time because superior management had been utilized by the Company in maintaining the units.

PSNH also states that this reward is in accordance with the ECRM calculations, as approved by the Commission.

The Commission finds that the planned outages were deferred because of PSNH's cash situation not due to superior management. It is not appropriate to reward a company for being in a position in which its cash flow, and not its management, dictates the maintenance schedule. We do not attempt to analyze the reasons for the cash crisis. That is reserved for other proceedings at this Commission. However, we will not put aside the effects the crisis has on the instant proceedings.

As mentioned earlier the superior management which kept these units performing during a period that PSNH had a self imposed cash conservation plan is commendable. The Commission does not feel, however, that ratepayers should pay a reward for this. The company was in part pressured to postpone because of a reluctance of vendors to deliver parts, and in part required to delay the outages because PSNH simply could not afford to go ahead with the outages as planned.

The reward for reducing planned outages is not meant to encourage postponement of regularly scheduled maintenance, which is a necessary preventative measure to assure adequate future performance of generating facilities. Rather, the reward is designed to encourage efficiency during an outage, thereby reducing the length of the maintenance outages.

We support CAP's position and will reduce ECRM by \$100,000. As CAP points out, the Company will receive a reward in 1984 as a result of the canceled planned outages through the cost of maintenance included in the base rates, which PSNH is now collecting.

VI. The Schiller Conversion Agreement

[4] Commission has approved in DE 79-141 an agreement entitled Recommendations of the Parties Concerning the Schiller Coal Conversion. This agreement proposed a method of recovering the costs to convert Schiller Station 4, 5, and 6 from oil to coal fired units. Put simply, the costs were to be amortized

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through ECRM starting after each unit was completed.

Schiller Unit #4 has been burning coal during the month of December. This means that the agreement, as approved, should be in effect as of this ECRM period (January — June 1985). However, there are many outstanding issues which would prevent this agreement from becoming effective at this time.

CAP has made a motion to suspend this agreement and pass onto ratepayers the fuel savings which result from Schiller units burning coal. It is their opinion that the agreement was needed to attract financing. The components of the agreement, such as a fixed adder, were designed to

provide a fixed stream of revenue which would convince a potential lender that these costs were separate from Seabrook. CAP's understanding is that PSNH has not obtained, nor has CAP been informed of any attempt to obtain, financing tied directly to this agreement. Therefore, CAP contends that the Company has not made a reasonable attempt to fulfill their financing obligations under the agreement.

CAP alleges that the interruption of Schiller work may not have happened had the financing been obtained. CAP further alleges that PSNH is not willing to accept its late conversion penalty under the Schiller agreement.

CAP believes these issues should be reviewed in a full investigation of the Schiller conversion conducted by the Commission. This should be accomplished by an audit and hearings. CAP avers that, without this investigation, the fuel savings must be passed on to customers, pursuant to RSA 378:3-9, 378:27, and 374:2.

The Company's position is that they have unsuccessfully attempted to present evidence on issues of cost recovery under the Schiller Agreement in both June and October at ECRM proceed- ings. In November they initiated two informal meetings with all parties on the subject. Therefore, they have made every effort to fulfill their burden under the agreement and were prepared to litigate a permanent resolution of the agreement in the instant proceedings.

The Company states that the estimated savings between coal and oil have narrowed since the agreement was ratified. They presented exhibits which demonstrate that the cost of converting the Schiller plants now exceed the savings.

The Company feels the agreement was entered into for a variety of reasons which include favorable financing. Despite CAP's allegations the agreement "was specifically not conditioned" (DR 84-354, exhibit 27, page 2) on the Company obtaining specific project financing. However they do state that they were not successful in obtaining this financing, therefore used the general credit of the Company.

Finally, the Company states that the Force Majeure issue (Schiller work interruption) presented by CAP is a separate and independent issue which is under advisement in DR 84-131 and should not be combined with the issues in these proceedings.

The staff takes no specific position on this issue. Their request is that no evidence be presented on the agreement during these proceedings because they have not had a proper opportunity to review the Schiller conversion costs, in the form of an audit. It is staff's opinion that this agreement should be addressed in a separate hearing which would look at all issues concerning the conversion of Schiller.

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The only immediate request they would make on the Company is that if the "fuel savings" is flowed through to ratepayers or retained by PSNH the Company should record the fuel savings in a deferred account for future reconciliation.

The Commission analysis concerning the agreement will not be complex. It is not proper to look at one part of an agreement and ignore the remainder. If the agreement is to be accepted in whole, Force Majeure must be addressed also. As the Company has stated, this issue has been set

aside. Therefore, it is necessary at this time to suspend the agreement, without prejudice, pending final determination of the merits of the issues involving Schiller Conversion costs. These costs will be investigated in DR 84-131. Absent an agreement the fuel savings must at this time be passed onto ratepayers. To the extent outlined above, we accept CAP's motion to suspend the agreement.

This will reduce the costs subject to adjustment (Exhibit 1-A, page 2 of 2) by \$3,515,208.

In DR 84-131, the following issues, among others, are to be investigated:

1. The proper value of test power from the Schiller Units to be passed through ECRM;
2. Force Majeure and a late conversion penalty;
3. the proper ratemaking treatment for Schiller conversion costs;
4. the cost components of the Schiller conversion; and
5. financing obtained which is specifically tied to the Schiller Agreement.

The Commission recognizes the Company's good intentions to "stand ready to meet and negotiate in good faith with the staff and all parties" (Exhibit 27, page 3). The issues are deferred until it can be considered through a process that is equitable to all parties. The issues will be subject to hearings when Schiller Units 5 and 6 are completed. This will allow us to review the entire cost of conversion and act on a fair method of recovering all these costs with expediency.

VII. The \$7.7 million overcollection

The Commission is concerned with the large overcollection estimated as of December 31, 1984. This concern is amplified by two items:

1. The Commission in an interim ECRM proceeding initiated through the "trigger mechanism", had reduced the ECRM filing in DR 84-128 by \$1,500,000 in November and December. At that time the Company had estimated the overcollection to be \$5.5 million at December 31, 1984; and

2. During the proceedings the Company did not display any real knowledge of what caused the overcollection. This does not instill any confidence in their estimates. How can a company know if their estimates are proper without comparing them to actual costs³⁽⁴⁾ so they may find where improvements can be made?

The Commission will require the Company to present a breakdown of the individual items which, in aggregate, amount to the \$7.7 million over estimate. This will be a requirement in each ECRM filing, both in the monthly

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reconciliation and for the semi-annual filings.

VIII. Interest on over/under collection of the ECRM

During the hearings all parties agreed to increase the rate charged on over and under collections to 10%. This corresponds to the interest required on customer deposits in the Commissions' recently revised Rules and Regulations.

As all parties agree to this, we will accept the Company supplied interest amount and decrease ECRM by \$22,413 (Exhibit 11-A \$86,634 at 8% - \$109,047 at 10%).

IX. Short term rate for Small Energy Producers and Cogenerators

In DE 83-62 the Commission approved a method of calculating a short term energy component for Small Power Producers which uses the same assumptions and PROSIM scenario used to calculate the ECRM rate. The short term energy component is forward looking and is not subject to reconciliation. Report and Order No. 17,104 in DR 83-62 (69 NH PUC 352, 61 PUR4th 132) directed PSNH to monitor and report to the Commission the actual energy costs. This directive will continue.

The Commission finds that the Small Power Producer rates filed in this docket (DR 84-354, Exhibit 12A) have been calculated in accordance with the requirements set forth in DE 83-62. However, the Commission has made certain revisions to the ECRM rate, and therefore will require a corresponding revision in the Small Power Producers rate.

X. Conclusion

The total adjustment to the ECRM filing is as follows:

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

Reduction in Reward Applicable to planned outages	\$100,000
Flow through of Schiller Fuel Savings	3,515,208
Increase of interest on overcollection	22,413
	-
Total Reduction	\$3,637,621
	=====

In addition to the above, the Commission has reduced the companies oil price estimates to reflect a more accurate trend in pricing. The company will refile the ECRM component, and its short term Small Power Producers rate, as soon as possible for final approval by 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 PSNH shall file revised tariff pages setting an ECRM rate in accordance with the foregoing report for January through June, 1985.

By Order of the Public Utilities Commission of New Hampshire this ninth day of January, 1985.

FOOTNOTES

¹Exhibit 15 was issued under a Commission Protective Order and will not become a part of the Commission files.

²See discussion under caption "Reward for postponement of Planned outages. ..."

³See the discussion under the caption "Oil Price Estimates. ..."

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NH.PUC*01/09/85*[60960]*70 NH PUC 22*Southern New Hampshire Water Company, Inc.

[Go to End of 60960]

70 NH PUC 22

Re Southern New Hampshire Water Company, Inc.

Intervenor: Town of Londonderry

DR 84-203, Supplemental Order No. 17,389

New Hampshire Public Utilities Commission

January 9, 1985

PETITION by a water utility for authority to recoup previously unbilled revenues; granted.

Rates, § 250 — Schedules — Retroactive application — Previously unbilled service.

Although application of new rates retroactively is generally not permitted, a water utility was allowed to recoup previously unbilled revenues through its new rate schedule because it would not be applying changed rates retroactively but would instead be applying its rates for the first time to service that had been rendered but unbilled and which consumers expected to pay for at some point in time.

APPEARANCES: For Southern New Hampshire Water Company, Edmund J. Boutin, Esquire; for the Town of Londonderry, David B. Wright, Town Administrator; for the New Hampshire Public Utilities Commission Staff, Eugene F. Sullivan, Finance Director and Robert B. Lessels, Water Engineer.

By the COMMISSION:

REPORT

Southern New Hampshire Water Company, Inc. (Southern) was granted authority to operate as a public utility in a limited area in the southern part of the Town of Londonderry (DE 83-221) and a limited area in the Town of Derry (DE 84-251). The supply source to serve these areas is a direct purchase from the Town of Derry water system, at wholesale rates.

In this instant docket, Southern now seeks to establish rates for its service in Londonderry and Derry and to recoup certain revenues retroactive to March 1, 1984, the effective date of its wholesale contract with the Town of Derry water system.

Southern has requested total revenues of \$67,107 to be recovered through its general metered

and public fire protection rate schedules. Through testimony, exhibits, and subsequent discovery, it has been established that there are presently 243 residential customers with an estimated 52 additional to be added during 1985. It is also estimated that 20 municipal hydrants will be installed on the system by December 15, 17 in Londonderry and 3 in Derry.

Water company records show that 208 residential customers reside in

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apartments with an average consumption, established from Southern meter records accumulated since service began, of 1400 cubic feet per quarter, 53 single family homes at 2300 cubic feet and 34 customers residing in duplex homes estimated at 2000 cubic feet per quarter.

Applying the minimum charge of \$31.20 for the first 900 cubic feet and \$2.05 per 100 cubic feet for all additional consumption produces annual revenues of \$54558. The additional revenue required of \$12374 would be recovered under the municipal fire protection rate for 20 hydrants, which equates to \$643 per hydrant.

As stated previously in this Report, Southern's source of supply for the Londonderry-Derry area is from a wholesale or bulk purchase from the Town of Derry water system. The rate under which Southern pays Derry was made effective for service rendered on or after March 1, 1984. In this docket, Southern is requesting that it be allowed to recoup unbilled revenues retroactive to the March 1 billing date from Derry. Since the initial service was provided in November 1983 there has been no charge rendered to Southern customers. In establishing the date from which rates will become effective, the New Hampshire Supreme Court has stated (120 N.H. 155, 419 A.2d 1080) that "... customers of a utility have a right to rely on the rates which are in effect at the time that they consume the services provided by the utility. ..." In the instant case there has been no charge, however, it is reasonable to assume that the customer expects to pay some amount for the service provided.

On May 31 a petition was filed by Southern requesting temporary rates for service in Londonderry (NHPUC DR 84-143). At that time, no hearings had been held regarding Derry's petition (DR 84-5) to set wholesale rates. Docket DR 84-5 was concluded and Order No. 17,071 issued on June 14, 1984 (69 NH PUC 309). By letter dated June 29, 1984, Southern withdrew its petition for temporary rates stating, "... the petition for a permanent rate filing will be completed within the next several weeks."

In allowing the Derry wholesale rate to become effective as of March 1, 1984, the Commission Report recognized the language of a contract entered into by Derry and Southern which states in part that "... the parties agree that Derry's tariff application to the Commission will contain provisions for retroactive application, to the time when relevant charges commence, such tariff application to be filed on or before January 15, 1985. In such event, the Company agrees not to contest any charges authorized by the Commission to be applied retroactively." That retroactivity was established in Order 17,071 (DR 84-5) as commencing on March 1, 1984.

It is our judgement that Southern should also be allowed rates effective at March 1, 1984 and that the revenues to be recouped from that date to the effective date for permanent rates, which we shall make January 1, 1985, shall be derived as in petitioners exhibit IV-2, i.e.:

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

Total Revenue Requested	\$67107
Shortfall 3/1/84-1/1/85 (%)	82.7
Shortfall Revenues (Recoupment)	\$55497

The shortfall revenue/recoupment shall be collected as a surcharge over the next four quarterly billings. The revenues so billed shall be adjusted to reflect only that time that each customer has been served since March 1, 1984.

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Our order shall issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Southern New Hampshire Water Company, Inc. is authorized to recover annual revenues of \$67,107 in its Londonderry Division by means of permanent rates as set forth in this Report; and it is

FURTHER ORDERED, that such permanent rates shall be effective with all service rendered on or after January 1, 1985; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. is authorized to surcharge its customers in Londonderry over the next four billing periods for that unbilled service received since March 1, 1984, in the total amount of \$55,497.

By Order of the Public Utilities Commission of New Hampshire this ninth day of January, 1985.

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NH.PUC*01/10/85*[60961]*70 NH PUC 24*Public Service Company of New Hampshire

[Go to End of 60961]

70 NH PUC 24

Re Public Service Company of New Hampshire

DR 84-354, Supplemental Order No. 17,397

New Hampshire Public Utilities Commission

January 10, 1985

APPROVAL of an electric utility's decreased energy cost recovery mechanism rate made in compliance with a previous commission order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on January 9, 1985 the Commission in its order No. 17,388 (70 NH PUC 14)

ordered Public Service Company of New Hampshire (PSNH) to refile its proposed ECRM component, and Small Power Producer rates filed on December 19, 1984, because of certain changes required; and

WHEREAS, on January 10, 1985 PSNH refiled the ECRM component and Small Power Producer rates for January through June 1985 in compliance with said Commission order; and

WHEREAS, the revision decreases PSNH's currently effective ECRM component by \$0.00263 per KWH, or \$1.32 per month for residential customers using 500 KWH; after reviewing the refiled ECRM component calculation the refiled ECRM component is approved and found to be in the public good; it is hereby

ORDERED, that PSNH's revised ECRM component of \$3.238/100 KWH for January through June 1985 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised Small Power Producer rates for the hourly period categories of: "OnPeak" at \$0.0702/KWH; "Off-Peak" at

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\$0.0523/KWH; and "All" at \$0.0601/ KWH for January through June 1985, 41be, and hereby are, approved; and it is

FURTHER ORDERED, that PSNH shall file revised tariff pages reflecting the ECRM rate approved herein for January through June 1985.

By Order of the Public Utilities Commission of New Hampshire this tenth day of January, 1985.

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NH.PUC*01/24/85*[60963]*70 NH PUC 26*New Hampshire Electric Cooperative, Inc.

[Go to End of 60963]

70 NH PUC 26

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate and Seacoast AntiPollution League et al.

DF 83-360, Eighth Supplemental Order No. 17,411

New Hampshire Public Utilities Commission

January 24, 1985

PETITION by an electric cooperative for emergency financing authority relating to its Seabrook participation; granted as modified.

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Security Issues, § 115 — Financing methods — Federal loans — Emergency grants — Reasonableness of amount.

Where an electric cooperative had been authorized to borrow significant funds from a federal lending agency pursuant to its participation in a nuclear power plant construction project, but that financing authority had been appealed to the state supreme court and remanded back to the commission, the cooperative was granted emergency borrowing power for a greatly reduced amount of money, with that amount based upon the minimum funds necessary to avoid default, maintain the status quo on the project's expenditure level, and insulate ratepayers from risk during the time it would take the commission to adjudicate the issues remanded back to it.

Commissions, § 55 — Membership — Removal of commissioners — Motions for recusal.

Statement, in a concurring opinion, that when the commission is faced with complex, controversial issues, such as a utility's financing for a troubled nuclear plant construction project, it is important for all three commissioners to hear the case in order to avoid deadlock, and it is therefore imperative for any commissioner asked to recuse himself in such a proceeding to rule on the recusal motion at the earliest possible time. p. 30.

(AESCHLIMAN, commissioner, concurs, p. 30.)

APPEARANCES: Hall, Morse, Gallagher & Anderson by Mayland H. Morse, Jr., Esquire for the New Hampshire Electric Cooperative, Inc.; Michael Holmes, Esquire for the Consumer Advocate; Gary McCool, pro se; Representative Roger Easton, pro se; Jane Doughty for the Seacoast Anti-Pollution League; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On November 18, 1983, the New Hampshire Electric Cooperative, Inc. ("Co-op" or "Company") filed a Petition for authority to borrow \$111,000,000 from federal lenders including the Rural Electrification Administration ("REA"). By Report and Supplemental Order No. 16,915 (69 NH PUC 137), the Commission granted the requested financing authority. After Motions for Rehearing were denied, Second Supplemental Order No. 16,965 (69 NH PUC 201), the matter was appealed to the Supreme Court. On June 27, 1984 the Commission, upon the petition of the Co-op, issued Report and Fifth Supplemental Order No. 17,096 (69 NH PUC 339) which granted the Co-op emergency authority to borrow \$9,000,000 out of the previously authorized \$111,000,000. The rationale of that Order was that the emergency borrowing authority would allow the Co-op to meet its responsibilities until December 31, 1984; a date by which it was reasonably believed that the adjudication could be completed. Thereafter, the Court issued *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984) ("Easton") which held that the Commission had unduly narrowed the scope of the proceeding and, accordingly, remanded the matter for further adjudication. Subsequently, the Co-op advised the Commission that it was not prepared to proceed with a hearing. Accordingly, the Commission indefinitely postponed the hearing

which had been scheduled for July 30, 1984. Report and Fourth Supplemental Order No. 17,132 (69 NH PUC 384).

As events have developed, the

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Commission has not been presented with the opportunity to adjudicate the issues articulated by the Court in Easton by December 31, 1984. Accordingly, on November 30, 1984, the Co-op filed a Petition for emergency authority to engage in \$8,700,000 of further financing. After due notice, a hearing was held on January 3, 1985 at which time the Commission heard the testimony of Frederick Anderson, the Co-op's Assistant Director, Budget & Finance and John Pillsbury, the Co-op's General Manager. The Commission also heard public statements by Ms. Lynn Chong, Mr. Daniel Fletcher and Representative Hollingsworth.

The Co-op's position was that it needed authority to engage in \$8,700,000 of additional financing so that it could continue to meet its obligations to the Seabrook Joint Owners and the Federal Financing Bank ("FFB") until June 30, 1985. The Co-op claimed that without additional financing authority, it will be forced to default on those obligations. The funds would be borrowed from the FFB acting through and guaranteed by the REA. The interest rate on the borrowed funds would be determined in the same manner as the interest rate on the \$9,000,000 emergency financing previously approved in Report and Fifth Supplemental Order No. 17,096 (June 27, 1984).

The Consumer Advocate did not oppose the granting of some type of emergency financing. However, the Consumer Advocate stated that such emergency financing must be restricted to only an amount necessary to carry the Co-op until the Easton merits could be adjudicated. The Consumer Advocate noted that the Co-op had not done all that it could to prepare for the forthcoming Easton proceeding. Accordingly, the Consumer Advocate recommended that any emergency financing approval be conditioned on the establishment of a specific procedural schedule to resolve the merits.

Gary McCool and the Seacoast AntiPollution League ("SAPL") opposed the Co-op's Petition. They rested their opposition on the argument that the Co-op did not prove the existence of an unavoidable emergency. Since the Co-op itself was responsible for the delay in bringing the Easton issues before the Commission, it should be the Co-op and the Seabrook Joint Owners who shoulder the Seabrook risk and the possible consequences of default, rather than the ratepayers.

Representative Easton also opposed the Co-op's Petition. His argument was that the Co-op failed to meet its burden of proving that the emergency authority would be in the public good in accordance with the requirements of RSA Chapter 369 and the Court's Easton decision.

After a full review of the record, we find the Consumer Advocate's argument to be persuasive. Accordingly, we will grant the Co-op's Petition in part and deny the Co-op's Petition in part. In addition, we will provide for the establishment of a procedural schedule which will ensure that the Easton issues are adjudicated in a timely fashion.

Our starting point is that we believe that the Co-op should be granted sufficient emergency

financing authority to avoid default. While the record is not yet complete on this point, nor could it be complete until we undertake the Easton review, it is sufficient to satisfy us that the risk of adverse consequences resulting from default to all interested parties, including the ratepayer/members, outweighs the risk of

Page 28

additional incremental Seabrook expenditures to maintain the status quo. See also, Report and Supplemental Order No. 16,915 in this docket. Of course, this finding is only proper if we provide a realistic and timely opportunity for all parties to address the Easton issues. This was exactly the situation faced in *Re Public Service Co. of New Hampshire*, Docket No. DF 84-167, ("PSNH") and, in that case, the Commission granted financing authority on the basis of a narrow scope of review while concurrently opening *Re PSNH*, Docket No. DF 84-200 to address the broader Seabrook related issues. See *Re Public Service Co. of New Hampshire*, 69 NH PUC 522 (1984), The Court approved that course of action in *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984) ("SAPL I"); See also, *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 484 A.2d 1196 (1984) ("SAPL II").

The above analysis is dispositive of the arguments advanced by Gary McCool, SAPL and Representative Easton. In balancing the risks associated with the granting and denying of the instant emergency Petition, we have concluded, on the basis of the current record, that the risks to ratepayers arising from a default outweigh the risks to ratepayers arising from the maintenance of the status quo. We believe that the concerns expressed by Gary McCool, SAPL and Representative Easton must be addressed. However, given the consequences of delay, we must address those concerns in a timely fashion in the course of the hearing on the merits. See, SAPL II; SAPL I.

Since we have decided that the maintenance of the status quo at the current reduced Seabrook expenditure level is the only means of avoiding the consequences of immediate default, it remains to determine how much financing authority to grant and how to assure a realistic opportunity to adjudicate the Easton issues in a timely manner.

The record reveals that the proposed financing is sufficient to carry the Co-op through June 30, 1985; a period estimated to include complete Commission adjudication and the appellate process. We believe that under the circumstances, the time period is excessive. Financing authority should be approved for only the time period necessary to carry the Co-op through the Commission adjudicative process. When that process is complete, the Commission will presumably have an adequate record to decide how much, if any, additional financing authority to grant. Thus, if additional financing authority is determined to be warranted, appropriate Orders can be issued at that time.

As noted above, a timely adjudication of the Easton issues is essential. Given the current demands on Commission time, we believe it is reasonable to base a schedule on the assumption that a Commission Order on the merits will be issued on or before May 14, 1985. According to Exhibit 13 (Exhibit B attached thereto), the Co-op needs \$5,290,484 in order to avoid default before that date. Accordingly we will in this order authorize the Co-op to borrow an additional \$5,290,484. To the extent that the Co-op's Petition seeks additional authority, it will be denied.

A May 14, 1985 date for an Order requires that preparation for hearings commence immediately. Thus, it is imperative that we act expeditiously to establish a procedural schedule which targets a May 14, 1985 date for the issuance of a Commission Order. We cannot impose such a schedule in the

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absence of input from the parties. Accordingly, we shall schedule a prehearing conference forthwith pursuant to Puc Rule No. 203.05 for the purpose of resolving, to the extent possible, the remaining procedural issues in this docket.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the request of the New Hampshire Electric Cooperative, Inc. for emergency authority to borrow an additional \$8,700,000 out of the previously approved and remanded \$111,000,000 be, and hereby is, denied; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, granted the emergency authority to borrow an additional \$5,290,484 out of the previously approved and remanded \$111,000,000; and it is

FURTHER ORDERED, that pursuant to Puc Rule No. 203.05, a prehearing conference be scheduled in this docket on January 30, 1985 at 10:00 a.m. at the Commission's offices, 8 Old Suncook Road, Concord, New Hampshire, for the purpose of, inter alia, establishing a schedule for adjudicating the remaining issues in this docket which schedule will provide for the issuance of a Commission Order no later than May 14, 1985.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of January, 1985.

CONCURRING OPINION OF COMMISSIONER AESCHLIMAN

I concur in the foregoing Report and Order to the extent that it pertains to the emergency financing authority and the establishment of a procedural schedule for adjudication of the Easton issues. My concern is directed at an action the Commission did not take: a ruling on the January 2, 1985 Motion by Gary McCool for the recusal of Chairman McQuade.

As we noted on the record, the two sitting Commissioners took the position that they do not have the authority to rule on which Commissioners shall sit. (Tr. of January 3, 1985 at 9). That authority resides in the Commissioner to whom the Motion to Recuse is directed. Thus, it is not my intent here to indicate whether I believe it is or is not appropriate for the Motion to be granted. Rather, my concern is directed at the need to have a ruling on the Motion before we commence hearings on the merits.

This is an important case. It has been an open docket since November of 1983. It has traveled up to the Supreme Court and, in *Re Roger Easton*, 125 N.H. 205, 480 A.2d 88 (1984), it was remanded so that the Commission could consider additional issues which are of central concern

to the members and ratepayers of the Co-op. Under these circumstances, I believe that three Commissioners must sit on the case and be present during the time testimony is taken so that if two of the Commissioners disagree, an Order could still be issued expeditiously. If Chairman McQuade is going to deny the Motion, no further action is necessary because three Commissioners will be available. However, if Chairman McQuade is going to grant the Motion, it is essential that he do so in a timely manner so that a Special Commissioner may be appointed pursuant to RSA 363:20 to take his place in this proceeding.

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NH.PUC*01/28/85*[60964]*70 NH PUC 31*Merrimack County Telephone Company

[Go to End of 60964]

70 NH PUC 31

Re Merrimack County Telephone Company

DR 85-3, Order No. 17,414

New Hampshire Public Utilities Commission

January 28, 1985

ORDER approving a local exchange telephone carrier's tariff revision on the interest to be paid on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, PUC 403.04 of the New Hampshire Code of Administrative Rules was revised to reflect an interest rate of 10% payable on customer deposits; and

WHEREAS, Merrimack County Telephone Company has filed with this Commission revisions of its Tariff No. 7 incorporating such change; and

WHEREAS, the Commission finds such update of the Company's tariff in the public good; it is

ORDERED, that Part I - General Regulations, 2nd Revised Page 8 of Merrimack County Telephone Company tariff NHPUC No. 7 - Telephone, be, and hereby is, approved for effect November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of January, 1985.

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NH.PUC*01/28/85*[60965]*70 NH PUC 32*Meriden Telephone Company

[Go to End of 60965]

70 NH PUC 32

Re Meriden Telephone Company

DR 84-396, Order No. 17,415

New Hampshire Public Utilities Commission

January 28, 1985

ORDER accepting a local exchange telephone carrier's provisions on interest to be paid on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, PUC 403.04 of the New Hampshire Code of Administrative Rules was revised to reflect an interest rate of 10% payable on customer deposits; and

WHEREAS, Meriden Telephone Company has filed with this Commission revisions to its Tariff No. 4 incorporating such change; and

WHEREAS, the Commission finds such update of the Company's tariff in the public good; it is

ORDERED, that Section 1, First Revised Sheet 4 of Meriden Telephone Company tariff NHPUC No. 4 - Telephone, be, and hereby is, approved for effect on November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of January, 1985.

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NH.PUC*01/28/85*[60966]*70 NH PUC 33*Wilton Telephone Company

[Go to End of 60966]

70 NH PUC 33

Re Wilton Telephone Company

DR 84-397, Order No. 17,416

New Hampshire Public Utilities Commission

January 28, 1985

ORDER approving a local exchange telephone carrier's tariff changes incorporating state code provisions on the interest to be paid on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, PUC 403.04 of the New Hampshire Code of Administrative Rules was revised to reflect an interest rate of 10% payable on customer deposits; and

WHEREAS, Wilton Telephone Company has filed with this Commission revisions to its Tariff No. 5 incorporating such change; and

WHEREAS, the Commission finds such update of the Company's tariff in the public good; it is

ORDERED, that Part I - General Regulations, 1st Revised Page 6 of Wilton Telephone Company tariff NHPUC No. 5 - Telephone, be, and hereby is, approved for effect on November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of January, 1985.

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NH.PUC*01/28/85*[60967]*70 NH PUC 34*Kearsarge Telephone Company

[Go to End of 60967]

70 NH PUC 34

Re Kearsarge Telephone Company

DR 84-399, Order No. 17,417

New Hampshire Public Utilities Commission

January 28, 1985

ORDER accepting a local exchange telephone carrier's tariff revisions on interest to be paid on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, PUC 403.04 of the New Hampshire Code of Administrative Rules was revised to reflect an interest rate of 10% payable on customer deposits; and

WHEREAS, Kearsarge Telephone Company has filed with this Commission revisions of its Tariff No. 5 incorporating such change; and

WHEREAS, the Commission finds such update of the Company's tariff in the public good; it is

ORDERED, that Section 1, 4th Revised Sheet 4 of Kearsarge Telephone Company, Inc. tariff NHPUC No. 5 — Telephone, be, and hereby is, approved for effect on November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of January, 1985.

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NH.PUC*01/29/85*[60968]*70 NH PUC 35*Fuel Adjustment Clause

[Go to End of 60968]

70 NH PUC 35

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 84-393, Order No. 17,419

New Hampshire Public Utilities Commission

January 29, 1985

ORDER permitting fuel surcharges to remain in effect without hearing.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; and

WHEREAS, this is one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189), pertaining to the New Hampshire Electric Cooperative, Inc. maintained the rolled in rate of \$0.2822/KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge of \$0.115 per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for the month of February, 1985; and it is

FURTHER ORDERED, that 23rd

Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of (\$0.185) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for the month of February, 1985; and it is

FURTHER ORDERED, that 12th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of \$0.241 per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for February, 1985; and it is

FURTHER ORDERED, that 14th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of January, February, and March, 1985 of \$0.864 per 100 KWH, be, and hereby is, permitted to remain in effect for February, 1985; and it is

FURTHER ORDERED, that 50th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 -Electricity, providing for a fuel surcharge of \$3.24 per 100 KWH for the month of February, 1985, be, and hereby is, permitted to become effective February 1, 1985; and it is

FURTHER ORDERED, that 101st Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 -Electricity, providing for a fuel surcharge credit of (\$1.05) per 100 KWH for the month of February, 1985, be, and hereby is, permitted to become effective February 1, 1985; and it is

FURTHER ORDERED, that 98th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 -Electricity, providing for an energy surcharge credit of (\$.39) per 100 KWH for the month of February, 1985; be, and hereby is, permitted to become effective February 1, 1985.

The above noted rates may be 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 twentieth day of January, 1985.

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NH.PUC*01/30/85*[60969]*70 NH PUC 37*New Hampshire Electric Cooperative, Inc.

[Go to End of 60969]

70 NH PUC 37

Re New Hampshire Electric Cooperative, Inc.

DR 85-6, Order No. 17,421

New Hampshire Public Utilities Commission

January 30, 1985

ORDER approving revision to electric utility tariff to reflect increased interest on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, effective November 26, 1984, Commission Rule 303.04(b) was changed such that interest on deposits by electric utility customers was increased to 10% from the existing 8%; and

WHEREAS, on January 3, 1985, New Hampshire Electric Cooperative, Inc. filed with this Commission revised pages of Tariff NHPUC No. 11, said pages incorporating this latest rule change; and

WHEREAS, this Commission finds such tariff revision in the public good; it is

ORDERED, that 1st Revised Pages 4 and 5, New Hampshire Electric Cooperative, Inc. tariff NHPUC No 11 Electricity, be, and hereby are, approved for effect on November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1985.

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NH.PUC*01/30/85*[60970]*70 NH PUC 38*Manchester Water Works

[Go to End of 60970]

70 NH PUC 38

Re Manchester Water Works

DE 84-378, Order No. 17,424

New Hampshire Public Utilities Commission

January 30, 1985

ORDER nisi granting petition for extension of water mains.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission by a petition filed December 12, 1984, seeks authority under RSA 374:22 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, after investigation and consideration, this 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 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 February 13, 1985; and it is

FURTHER ORDERED, that Manchester Water Works 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 February 6, 1985, and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to further 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:

Beginning at a point along the center line of Londonderry Turnpike (Bypass 28) where said point

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intersects with the east-west boundary line between Hooksett and Manchester, and being 770 feet ± northerly of the intersection of Londonderry Turnpike with Wellington Road; from this point continuing northwesterly following the path and contour of the center line of Londonderry Turnpike 2290 feet;

and it is

FURTHER ORDERED, that such authority shall be effective on February 19, 1985 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 thirtieth day of January, 1985.

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NH.PUC*02/01/85*[60971]*70 NH PUC 39*New Hampshire Electric Cooperative, Inc.

[Go to End of 60971]

70 NH PUC 39

Re New Hampshire Electric Cooperative, Inc.

DR 85-17, Order No. 17,426

New Hampshire Public Utilities Commission

February 1, 1985

ORDER approving special contract rates for electric service.

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By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc., a utility selling electricity under the jurisdiction of this Commission, has filed with this Commission a copy of its Special Contract No. 75 with Black Mountain Development Corporation, effective December 18, 1984, for electric service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective as of December 18, 1984.

By order of the Public Utilities Commission of New Hampshire this first day of February, 1985.

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NH.PUC*02/01/85*[60972]*70 NH PUC 40*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 60972]

70 NH PUC 40

Re Continental Telephone Company of New Hampshire, Inc.

DR 85-14, Order No. 17,429

New Hampshire Public Utilities Commission

February 1, 1985

ORDER suspending proposed changes in rates for directory listing services.

Rates, § 533 — Telephone company — Directory charges — Costs of administration.

Statement, in dissenting opinion, that suspension of tariffs pricing directory services pending further investigation was unnecessary and unreasonable where (1) directory rate levels had already been exhaustively investigated, and (2) it would have been more efficient to simply apply the rates of one company to another. p. 41.

(MCQUADE, chairman, dissents, p. 41.)

By the COMMISSION:

ORDER

Continental Telephone Company of New Hampshire having filed with this Commission on January 15, 1985 certain revisions to its Tariff No. 11 by which it proposed to change the pricing of certain directory listing services; and

WHEREAS, the public good required that the commission investigate the proposal thoroughly before acceptance; and

WHEREAS, it appears that Commission schedules preclude finalization of said investigation before the proposed February 15, 1985 effective date; it is

ORDERED, that Section 7, 1st Revised Contents and 2nd Revised Sheets 2 and 3 of cited Tariff No. 11 be, and hereby are, suspended pending investigation and decision thereon.

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By order of the Public Utilities Commission of New Hampshire this first day of February, 1985.

DISSENTING OPINION OF CHAIRMAN PAUL R. McQUADE

My review of the Commission's Order No. 17,429 relative to the suspension of Continental Telephone Company's filing in which it proposes to change the pricing of certain directory listing services causes me to dissent.

Continental has requested the opportunity to revise their tariff sheets in order to allow their monthly directory listing rates to be set at the same level as those of the New England Telephone Company. The NET rates have already been approved by this Commission based on cost supported data submitted in appropriate filings.

Continental presently generates \$9,360 in annual revenues for directory listings which represents a 0.21% contribution to the Company's 1983 annual operating revenues of \$4,427,105.

It is not the minimal amount of the contribution which causes my dissent, however. Any amount which contributes to customers utility bills should be challenged if there is reason to believe that they are excessive. My concern in this case rests with the fact that we have already exhaustively investigated the directory listing rate levels of New England Telephone. The costs generally associated with directory listings are so customer-specific that I am willing to accept that what is applicable for one company may be reasonably considered applicable to another.

The Commission's docket is heavy, and the administrative costs of pursuing any single issue is substantial. In my view the administrative costs of pursuing this issue could easily approach the revenue increase itself. In my judgment that would not be proper utilization of ratepayers' monies.

I find my fellow Commissioners' decision to suspend this docket unnecessary and unreasonable.

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NH.PUC*02/04/85*[60973]*70 NH PUC 42*Public Service Company of New Hampshire

[Go to End of 60973]

70 NH PUC 42

Re Public Service Company of New Hampshire

Intervenors: Seacoast Anti-Pollution League, Conservation Law Foundation of New England, Inc., and Campaign for Ratepayers' Rights

DF 84-200, Fifth Supplemental Order No. 17,430

New Hampshire Public Utilities Commission

February 4, 1985

ORDER denying motion to dismiss an electric utility's application for financing authorization for Seabrook Unit 1 nuclear plant.

Procedure, § 29 — Disposal of issues — Denial of motion — Due process — Utility construction financing — Nuclear plant.

A motion to require an electric utility, that had presented a new financing proposal for completion of Seabrook Unit 1, to initiate a new financing proceeding in connection with its new proposal was denied; the commission found that there was sufficient evidence on the previous record to satisfy procedural due process and that granting the motion would cause needless delay; the utility consented to file an amended petition to conform to the evidence in the previous record. [1] p.44.

Procedure, § 29 — Disposal of issues — Denial of motion — Intervenor compensation — Public Utility Regulatory Policies Act.

A request for compensation by intervenors for participation in an electric utility's nuclear plant financing proceeding was denied; the commission held that the only statute authorizing the award of costs to intervenors is the Public Utility Regulatory Policies Act of 1978 and the motion did not aver that this proceeding was related to a PURPA standard. [2] p.44.

By the COMMISSION:

REPORT

This Order addresses the Motion to Dismiss filed by the Seacoast AntiPollution League ("SAPL"), the Conservation Law Foundation of New England, Inc. ("CLF") and the Campaign

for Ratepayers' Rights ("CRR") filed on January 23, 1985.

The general procedural history of this proceeding has been adequately set forth in the prior Orders of the Commission. For the purposes of this Order, it should be stated that this docket was opened on the motion of the Commission by an Order of Notice issued on August 2, 1984 for the purpose of, inter alia investigating the financing plan of Public Service Company of New Hampshire ("PSNH" or "Company") to complete Seabrook Unit I. Pursuant to the Order of Notice, the Commission included within the scope of this docket, inter alia:

1) Whether the terms, conditions and amount of the proposed third phase financing are in the public good; ... and

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3) Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Seabrook Unit I.

A procedural schedule was established by Report and Order No. 17,164 (69 NH PUC 446). That schedule provided for the prefiling of PSNH testimony and exhibits on the terms, conditions and amount of the proposed financing (to the extent such information was not available by August 31, 1984) no later than October 15, 1984. PSNH was unable to adhere to that deadline; thus, the testimony was not prefiled until November 21, 1984. Hearings commenced in accordance with the terms of the procedural schedule on December 3, 1984. On December 29, 1984, PSNH filed revised testimony and exhibits which, inter alia, modified the description of the terms, conditions and amount of the proposed financing. On January 21, 1985, prior to the time that much of the December 29, 1984 prefiled testimony was subject to crossexamination, the Company filed a Motion for Recess of Proceedings. The basis for the Motion was that PSNH had been presented with a new financing opportunity which the Company believed would significantly lower the cost of the proposed securities. The Commission granted the Motion for Recess (Tr. at 4409) and established a new procedural schedule for the prefiling of testimony and exhibits and for additional hearing days. Thus far, the parties have been adhering to the procedural schedule established by the Commission on January 21, 1985.

On January 23, 1985 SAPL, CLF and CRR filed a Motion to Dismiss Application ("Motion") which requested, inter alia:

1. That the present financing request, filed on November 15, 1984, be dismissed.
2. That PSNH be directed to file a new financing request, if it so desires, only when, and not before, it has a full and complete financing proposal to bring before the Commission.
3. That the Commission thereafter issue an appropriate Order of Notice and schedule a prehearing conference.
4. That the Commission, at the prehearing conference, determine what testimony admitted in DF 84-200 will be admitted in the new proceeding.
5. That the Commission order PSNH to pay to Intervenors that portion of their costs for

participating to date in matters rendered moot by PSNH's unilateral decision to withdraw or substantially modify its financing request.

6. That the Commission order PSNH to pay to Intervenors the cost of participating in the new financing docket insofar as this docket involves facts or issues not previously dealt with in docket 84200, and which have been found by the Commission to still be material and relevant in regard to the new financing request.

On January 25, 1985, PSNH filed an Objection to the Motion which requested that it be denied. On January 31, 1985, the Community Action Program ("CAP") filed a response to the Motion which requested that it be

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neither granted nor denied. Instead, CAP requested that the parties be permitted an adequate time to prepare and, if necessary, a second round of cross examination. Additionally, CAP requested that PSNH be required to file a new Petition and supported the request for compensation contained in the Motion.

Our analysis of the Motion leads us to conclude that it contains two broad requests: 1) that PSNH be required to reinstate a new financing proceeding, with accompanying procedural steps, based on the new financing proposal; and 2) that Intervenors be compensated for the cost of participation in the additional proceedings necessitated by the new financing proposal. Each request will be denied. We shall address each request in turn.

[1] With respect to the issue of whether to dismiss the present financing request, we believe that the new procedural steps necessitated by the granting of the Intervenor's request would unduly prolong the proceeding without providing any useful benefits to any party. It is clear that much relevant and substantial information is already a part of the record in this docket. As noted in the Motion, that information will continue to be material to analyze whether the new financing proposal is in the public good. The Commission is capable of sorting out which parts of the previous record continue to be applicable and the weight to be given to the evidence. PSNH has consented to file an amended Petition to conform to the evidence. Thus, the requirements of procedural due process have been satisfied without prolonging this litigation by unnecessarily initiating a new proceeding. We remind the parties that this docket was initiated on the Motion of the Commission. So long as there is a proposal before us which has as its purpose the financing of the construction of Seabrook Unit 1 to commercial operation, we shall continue to take appropriate evidence on matters which we have determined to be within the scope of proceedings.

With respect to the Intervenors request for compensation, we can appreciate the frustration of facing additional unforeseen work in the course of an extended and complex proceeding. However, there is no statutory mechanism by which such costs can be awarded.

[2] In commission practice, the only statute authorizing the award of costs is the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Our regulations implementing the PURPA authorization require that in order to receive compensation Intervenors must participate in a proceeding relating to a PURPA standard (Puc Rule No. 205.02) and that the applicant first file a

"request for a finding of eligibility for compensation" (Puc Rule No. 205.03). The Motion does not aver that this proceeding is related to a PURPA standard, as defined in the regulations. (See e.g., Puc Rule No. 205.01 (d) and (e)). The failure to make such a statement is not surprising given that this is a financing proceeding. Even if a PURPA standard was involved, the Motion would be deficient because of the failure to request a finding of eligibility for compensation. Accordingly, the request for compensation will be denied. If the parties are asserting that there exists a basis other than statute for the award of fees, we will entertain memoranda of law and issue an appropriate ruling.

Our Order will issue accordingly.

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SUPPLEMENTAL ORDER

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

ORDERED, that the Motion of SAPL, CLF and CRR to Dismiss Application for Financing Authorization and for Further Relief be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of February, 1985.

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NH.PUC*02/04/85*[60974]*70 NH PUC 45*Public Service Company of New Hampshire

[Go to End of 60974]

70 NH PUC 45

Re Public Service Company of New Hampshire

Intervenor: Seacoast Anti-Pollution League

DF 84-200, Sixth Supplemental Order No. 17,431

New Hampshire Public Utilities Commission

February 4, 1985

ORDER granting motion to compel discovery regarding ownership of notes issued by an electric utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Seacoast Anti-Pollution League (SAPL) filed a Motion to Compel Discovery seeking from Public Service Company of New Hampshire (PSNH) the following information:

Identify all purchasers, including ultimate purchasers, of the \$90 million notes sold in June;

the institutional purchasers of the exchange or public offering for the \$425 million intended to be sold in October; and

WHEREAS, PSNH objected to the Motion to Compel Discovery; and

WHEREAS, the Commission in Report and Fourth Supplemental Order No. 17,359 (69 NH PUC 690) required, inter alia, that PSNH provide the information to the Commission for an in camera inspection solely for the purpose of ruling on SAPL's Motion to Compel Discovery; and

WHEREAS, PSNH has provided the information to the Commission; and

WHEREAS, an in camera inspection has been concluded; and

WHEREAS, the Commission believes that Counsel for all parties should have access to the information subject to certain protective restrictions; and

WHEREAS, the Commission has made no ruling on the probative value of the information as evidence in the instant proceeding; it is

ORDERED, that SAPL's Motion to Compel Discovery be, and hereby is, granted, subject to the protective restrictions set forth below; and it is

FURTHER ORDERED, that PSNH shall immediately upon receipt hereof provide to the Commission Staff and Counsel appearing for the parties who have intervened in this docket a copy

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of the aforementioned information; and it is

FURTHER ORDERED, that the information is to be viewed only by the Commission Staff and said Counsel and, until further order, the information shall not become a part of the public records of the Commission, nor shall the information be copied or reproduced and the information shall not be further disseminated; and it is

FURTHER ORDERED, that no party shall use the information for the purpose of cross-examination or for direct evidence in this proceeding without first providing notice to PSNH and the Commission; and it is

FURTHER ORDERED, that upon the receipt of such notice and prior to the time the information is disseminated to be proffered as evidence in this proceeding, the Commission will allow PSNH the opportunity to be heard on any objection to the dissemination or use of the information; and it is

FURTHER ORDERED, that upon completion of this docket or upon further order of the Commission, whichever shall first occur, all information subject to this Order shall be forthwith returned to the custody of PSNH.

By Order of the Public Utilities Commission of New Hampshire this fourth day of February, 1985.

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NH.PUC*02/04/85*[60975]*70 NH PUC 46*HDI Hinsdale, Inc.

[Go to End of 60975]

70 NH PUC 46

Re HDI Hinsdale, Inc.

DR 84-344, Order No. 17,432

New Hampshire Public Utilities Commission

February 4, 1985

ORDER nisi approving a twenty-nine year rate order for an electric cogeneration project.

By the COMMISSION:

ORDER

WHEREAS on November 19, 1984, HDI Hinsdale, Inc. ("Hinsdale") filed a long term rate filing for the Lower Robertson Dam; and

WHEREAS, Hinsdale filed amendments to its filing on January 7, 1985, January 10, 1985 and January 24, 1985; and

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 32 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Hinsdale has averred that it will provide a lien (subordinate to any liens required by the permanent financing of the project) on the

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project to cover the "buy out" value at the site; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to Hinsdale's Petition for Twenty-nine Year Rate Order; and

WHEREAS, Hinsdale's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore,

ORDERED NISI, that the Petition for Twenty-nine Year Rate Order for Hinsdale, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this

Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of February, 1985.

=====

NH.PUC*02/05/85*[60976]*70 NH PUC 47*Avery Hydroelectric, Inc.

[Go to End of 60976]

70 NH PUC 47

Re Avery Hydroelectric, Inc.

DR 84-346, Order No. 17,433

New Hampshire Public Utilities Commission

February 5, 1985

ORDER nisi approving a twenty-nine year rate order for an hydroelectric project.

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By the COMMISSION:

ORDER

WHEREAS, on November 19, 1984, Avery Hydroelectric, Inc. ("Avery") filed a long term rate filing; and

WHEREAS, Avery filed amendments to its filing on January 7, 1985, January 10, 1985 and January 24, 1985; and

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Avery has averred that it will provide a lien (subordinate to any liens required by the permanent financing of the project) on the project to cover the "buy out" value at the site; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to Avery's Petition for Twenty-nine Year Rate Order; and

WHEREAS, Avery's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore,

ORDERED NISI, that the Petition for Twenty-nine Year Rate Order for Avery, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it

is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire, this fifth day of February, 1985.

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NH.PUC*02/05/85*[60977]*70 NH PUC 49*HDI Hinsdale, Inc.

[Go to End of 60977]

70 NH PUC 49

Re HDI Hinsdale, Inc.

DR 84-347, Order No. 17,434

New Hampshire Public Utilities Commission

February 5, 1985

ORDER nisi approving a twenty-nine year rate order for a cogeneration project.

By the COMMISSION:

ORDER

WHEREAS, on November 19, 1984, HDI Hinsdale, Inc. ("Hinsdale") filed a long term rate filing for the Upper Robertson Dam; and

WHEREAS, Hinsdale filed amendments to its filing on January 7, 1985, January 10, 1985 and January 24, 1985.

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Hinsdale has averred that it will provide a lien (subordinate to any liens required by the permanent financing of the project) on the project to cover the "buy out" value at the site; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to Hinsdale's Petition for Twenty-nine Year Rate Order; and

WHEREAS, Hinsdale's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore,

ORDERED NISI, that the Petition for Twenty-nine Year Rate Order for Hinsdale, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1985.

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NH.PUC*02/05/85*[60978]*70 NH PUC 50*John F. Chick & Son, Inc.

[Go to End of 60978]

70 NH PUC 50

Re John F. Chick & Son, Inc.

DE 83-265, Second Supplemental Order No. 17,435

New Hampshire Public Utilities Commission

February 5, 1985

ORDER setting interim annual customer charge for water utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the water system owned by John F. Chick & Son, Inc. of Madison, New Hampshire is a public utility as defined by N.H. Statute RSA362:4; and

WHEREAS, rates to be charged for the water service provided, have not been approved by this Commission; and

WHEREAS, using certain expenses provided by John F. Chick & Son, Inc. and Commission analysis of the plant used in providing this service, the following annual expenses are produced:

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

Depreciation (\$18729 @ 1.5%) \$ 280
Electric 485
Supervision 454
Legal (\$1737 @ 4 yrs.) 434
\$1653

it is hereby

ORDERED, that interim annual charges of \$334 (\$1653 ° 5 customers) may be applied to each customer of the John F. Chick & Son, Inc. water system in accordance with the provisions of Order No. 17,276 in this Docket.

By order of the Public Utilities Commission of New Hampshire this fifth day of February, 1985.

=====

NH.PUC*02/05/85*[60979]*70 NH PUC 51*Northern Utilities, Inc.

[Go to End of 60979]

70 NH PUC 51

Re Northern Utilities, Inc.

DF 85-11, Order No. 17,436

New Hampshire Public Utilities Commission

February 5, 1985

ORDER granting petition for authority to issue short-term notes.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire corporation having its principal place of business in Portsmouth, New Hampshire, and operating as a gas utility under the jurisdiction of this Commission, on January 10, 1985, filed with this Commission a petition requesting that its shortterm borrowing limitation remain a

s allowed in Order No. 16,841 issued January 6, 1984 (69 NH PUC 9), which is \$4,000,000; and

WHEREAS, expiration of Order 16,841 on December 31, 1984, places the Company under Supplemental Order No. 7,446, which authorizes the Company to issue and have outstanding aggregate short-term indebtedness in the amount not to exceed 10% of its fixed capital account rounded to the highest \$10,000; and

WHEREAS, the consolidated net fixed capital for the Company as of September 30, 1984 was \$24,466,623 against which the Company would be entitled to have outstanding \$2,450,000 of short-term notes; and

WHEREAS, the Company estimates Capital Expenditures of \$1,900,000 in 1985 as well as other on going working capital needs; it is

ORDERED, that Northern Utilities, Inc. be, and hereby is, authorized to issue and sell, and from time to time to renew for cash its notes or notes payable less than twelve (12) months after

the date thereof in an aggregate principle amount not exceeding \$4,000,000; and it is

FURTHER ORDERED, that authority to renew its notes up to an aggregate amount of \$4,000,000 shall expire December 31, 1985 and the Company will be required to submit its plans for future financing and redefine the level of short-term debt by November 30, 1985, or thirty (30) days prior to the expiration of this authorization; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year, the Company will file with this Commission a detailed statement duly sworn by its Treasurer, showing the

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disposition of proceeds of the notes herein authorized until the expenditures of the whole of said proceeds shall be fully accounted for; and it is

FURTHER ORDERED, that on or before January 30, 1985, Northern Utilities, Inc. will file with this Commission an estimated monthly: 1) cash flow, and 2) statement of sources and uses of funds for 1985.

By Order of the Public Utilities Commission of New Hampshire this fifth day of February, 1985.

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NH.PUC*02/05/85*[60980]*70 NH PUC 52*Exeter and Hampton Electric Company

[Go to End of 60980]

70 NH PUC 52

Re Exeter and Hampton Electric Company

DR 85-15, Order No. 17,437

New Hampshire Public Utilities Commission

February 5, 1985

ORDER approving tariff increase for interest on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, on January 15, 1985, Exeter & Hampton Electric Company filed with this Commission First Revised Page 5 to tariff NHPUC No. 15, said revision documenting the recent change to Commission rules regarding increased interest on customer deposits; and

WHEREAS, the Commission finds such change in the public good; it is

ORDERED, that First Revised Page 5, Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, be, and hereby is, approved for effect on February 15, 1985.

By order of the Public Utilities Commission of New Hampshire this fifth day of February,

1985.

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NH.PUC*02/06/85*[60981]*70 NH PUC 53*Granite State Telephone Company

[Go to End of 60981]

70 NH PUC 53

Re Granite State Telephone Company

DR 85-34, Order No. 17,442

New Hampshire Public Utilities Commission

February 6, 1985

ORDER authorizing accounting treatment for early retirement of cable carrier system.

By the COMMISSION:

ORDER

WHEREAS, Granite State Telephone, on October 2, 1984, petitioned this Commission for authorization to amortize the remaining net book value of its N-2 carrier systems over a five year period, commencing January 1, 1984; and

WHEREAS, Granite State Telephone states that the early retirement was required because of New England Telephone and Telegraph Company's requirement to replace existing N-2 carrier systems with digital T-1 type of equipment; and

WHEREAS, this Commission allowed Granite State Telephone higher annual depreciation rates retroactive to January 1, 1981, in recognition of the required replacement of the N-2 equipment; and

WHEREAS, after investigation of this request; it is hereby

ORDERED, that Granite State Telephone is authorized to amortize its remaining net book value which was transferred to the extraordinary retirement account in the amount of \$93,743.22 over a five year period commencing on January 1, 1984, and such amortization will be subject to audit by the Commission staff at a later date.

By Order of the New Hampshire Public Utilities Commission of New Hampshire this sixth day of February, 1985.

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NH.PUC*02/08/85*[60982]*70 NH PUC 54*Granite State Telephone Company

[Go to End of 60982]

70 NH PUC 54

Re Granite State Telephone Company

DR 85-28, Order No. 17,443

New Hampshire Public Utilities Commission

February 8, 1985

ORDER approving tariff increase for interest on customer deposits.

By the COMMISSION:

ORDER

WHEREAS, effective November 26, 1984, Commission Rule 403.04(b) was changed such that interest on deposits by telephone utility customers was increased to 10% from the existing 8%; and

WHEREAS, on January 25, 1985, Granite State Telephone filed with this Commission revised pages of Tariff NHPUC No. 6 - Telephone, said pages incorporating this latest rule change; and

WHEREAS, this Commission finds such tariff revision in the public good; it is

ORDERED, that Section 1, 5th Revised Sheet 4, Granite State Telephone tariff, NHPUC No. 6 - Telephone, be, and hereby is, approved for effect on November 26, 1984.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1985.

=====

NH.PUC*02/08/85*[60983]*70 NH PUC 55*Ashuelot River Partners

[Go to End of 60983]

70 NH PUC 55

Re Ashuelot River Partners

DR 85-12, Order No. 17,444

New Hampshire Public Utilities Commission

February 8, 1985

ORDER nisi approving a twenty-nine year rate order for electric cogeneration project.

By the COMMISSION:

ORDER

WHEREAS, on January 10, 1985, Ashuelot River Partners ("Ashuelot") filed a long term rate filing; and

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Ashuelot has averred that it will provide a lien (subordinate to any liens required by the permanent financing of the project) on the project to cover the "buy out" value at the site; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire ("PSNH") the opportunity to respond to Ashuelot's Petition for Twenty-nine Year Rate Order; and

WHEREAS, Ashuelot's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore,

ORDERED NISI, that the Petition for Twenty-nine Year Rate Order for Ashuelot, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1985.

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NH.PUC*02/08/85*[60984]*70 NH PUC 56*Hampton Water Works Company

[Go to End of 60984]

70 NH PUC 56

Re Hampton Water Works Company

DR 83-365, Supplemental Order No. 17,445

New Hampshire Public Utilities Commission

February 8, 1985

ORDER authorizing increase in revenues due to property tax increase for water utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in its Report and Order No. 16,818 dated December 21, 1983 (68 NH PUC 334) provided for a revenue adjustment to be made reflecting the difference between estimated property taxes used in this docket, and the actual when known and paid by Hampton Water Works; and

WHEREAS, the petitioner on January 3, 1985, filed actual tax bills supporting a \$28,030 annual increase in Property Taxes conforming with the guidelines laid down for the Step Increase; and

WHEREAS, the Commission staff has reviewed the financial statements and property tax invoices included in the filing and no discrepancies were found; and

WHEREAS, the adjustment sought is in compliance with the Report and Order No. 16,818 and in the public good; it is

ORDERED, that Hampton Water Works Company shall file new tariff pages to reflect an annual increase in revenues in the amount of \$28,030, to be applied equally to all metered and fire service rate schedules; and it is

FURTHER ORDERED, that such tariff pages shall conform to NHCAR PUC 1601.05 sections (h) and (k) and shall bear an effective date as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this eighth day of February, 1985.

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NH.PUC*02/12/85*[60986]*70 NH PUC 58*Policy Water Systems, Inc.

[Go to End of 60986]

70 NH PUC 58

Re Policy Water Systems, Inc.

Intervenors: Green Hills Residents Association and Office of Consumer Advocate

DR 84-321, Supplemental Order No. 17,447

New Hampshire Public Utilities Commission

February 12, 1985

ORDER setting schedule for water rate proceeding.

APPEARANCES: Myers and Laufer by David William Jordan, Esquire, for Policy Water Systems, Inc.; Daniel Brei and Richard Lewis for Green Hills Residents Association; and Michael Holmes, Esquire, for the Consumer Advocate.

By the COMMISSION:

On October 26, 1984 Policy Water Systems, Inc. ("Policy" or "Company") filed revised tariff pages and documentation supporting a rate increase of \$35,907. This represents a 28 percent

increase over present rates.

On November 20, 1984 the Commission issued its Order No. 17,322 suspending Policy's revised tariff pages pending investigation. The Company then filed a motion on December 12, 1984 requesting clarification of issues involved in the Commission investigation, whereupon the Commission denied the motion, after due consideration.

On January 11, 1985 the Commission issued an Order of Notice scheduling a procedural hearing on February 6, 1985.

During said hearing the Commission accepted appearances and then recessed to give all parties an opportunity to stipulate 1) a schedule for the proceedings; and 2) any limitation on the scope of the proceedings.

The following schedule was stipulated:

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

February 20, 1985	Intervenor and Staff's second set of data requests due
March 6, 1985	Due date for Policy's response to the first (issued on 12/12/84) and second set of staff data requests and Intervenor data requests
March 27, 1985	Staff, Intervenor, and additional Company testimony due
April 4, 1985	Staff, Company, and Intervenor data request due
April 18, 1985	Responses to all data requests due
May 7 & 8, 1985	Hearing dates

This being a reasonable schedule, and having no objections from staff and intervenors, the Commission will approve this schedule.

The parties also agreed to limit the scope of this docket's proceedings to only those issues traditionally explored in rate proceedings. Certain parties may present information on concerns beyond the scope but it will not be accepted as evidence. The Commission will approve this stipulation also, but reserves the right to determine which information is truly beyond the scope of these proceedings, after consideration thereof.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the procedural schedule for this docket will be as follows:

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

February 20, 1985	Intervenor and Staff's second set of data requests due
March 6, 1985	Due date for Policy's response to the first (issued on 12/12/84) and second set of staff data requests and Intervenor data requests

March 27, 1985 Staff, Intervenor, and additional Company testimony due
April 4, 1985 Staff, Company, and Intervenor data request due
April 18, 1985 Responses to all data requests due
May 7 & 8, 1985 Hearing dates

FURTHER ORDERED, that the scope of the hearings will be limited to traditional ratemaking practices as described herein.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of February, 1985.

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NH.PUC*02/13/85*[60987]*70 NH PUC 60*Public Service Company of New Hampshire

[Go to End of 60987]

70 NH PUC 60

Re Public Service Company of New Hampshire

Intervenors: New Hampshire Electric Cooperative, Inc., New Hampshire Attorney General, and Franconia Power and Light Associates

DE 84-360, Order No. 17,449

New Hampshire Public Utilities Commission

February 13, 1985

ORDER granting petition of an electric utility to surrender a limited franchise.

Service, § 252 — Abandonment — Surrender of franchise — Electric utility.

An electric utility that had a limited franchise to serve one industrial customer located within the franchise territory of another electric utility, was permitted to surrender its limited franchise; the initial reason for granting the limited franchise (the electric cooperative serving the franchise territory of the industrial customer did not have the physical capability of providing industrial service) was held to no longer exist due to the demise of the industrial customer and the change of the character of the limited franchise area to multi-use residential/commercial.

By the COMMISSION:

REPORT

On September 28, 1984 Public Service Company of New Hampshire forwarded to this Commission a petition for permission to surrender its limited franchise in the Town of Lincoln,

New Hampshire.

On December 5, 1984 an Order of Notice was issued setting a hearing for January 9, 1985 at 10:00 a.m. Notices were sent to Pierre O. Caron, Esquire, Public Service Company of New Hampshire (for Publication); Mr. Charles E. Swanson, New Hampshire Electric Cooperative, Inc. and the Office of Attorney General.

On January 3, 1985 an affidavit of publication was filed confirming that publication was made in The Union Leader on December 21, 1984.

On January 4, 1985 a motion to intervene was filed by Franconia Power and Light Associates. Franconia contended that any change in the franchise area might cause them to sell power to another utility at a different rate or might require them to pay wheeling charges to the New

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Hampshire Electric Cooperative or line loss penalties to PSNH.

[1] The Town of Lincoln is in the franchise territory of the New Hampshire Electric Cooperative, Inc. Because of the physical limitations of their plant facilities and of their inability to provide three phase service, this Commission, by its Third Supplemental Order No. 14,810 in DE 78-106 (66 NH PUC 103) granted to PSNH a limited franchise to serve one industrial customer in the Town of Lincoln, New Hampshire where the facilities of the defunct Franconia Paper Company are located.

Since the issuance of that Third Supplemental Order no customer has received service from PSNH at that location.

The character of the area is now in the process of changing to a multi-use residential/commercial complex. Since NHEC has the capability to serve that type of customer, PSNH acknowledges that there is no longer justification to retain its limited franchise. They petition to surrender that limited franchise.

Mr. Pierre Caron, Esquire representing PSNH summarized the history of electric service to Lincoln customers. Historically the Town of Lincoln was served by the Town's main employer. In 1929 this Commission ordered PSNH (see 12 NH PSC 13) to sell power to the Parker Young Company, a paper mill which included a subsidiary that served as the electrical distribution company in the Town of Lincoln. The Parker Young Company served as the electrical distributor until 1947 when its interests were sold to a manufacturing company. The Commission approved this Company's petition to serve (see 29 NH PUC 211), and the Company did so until 1950. The Commission approved the sale of the franchise to the Franconia Paper Company (see 332 NH PUC 163 [sic]) and reconfirmed the franchise at 54 NH PUC 25 in 1968.

In the early 1970's the Franconia Paper Company reorganized and the electrical distribution franchise was sold to the New Hampshire Electric Cooperative which became the base supplier for the residents of the Town of Lincoln. Under the reorganization, Franconia Paper Company remained in business and, because the Cooperative did not have adequate source power for the Company, Public Service Company was granted a limited franchise solely for the purpose of serving the single industrial customer at that point to wit the Franconia Paper Company. That

limited franchise has carried from that date and was most recently reconfirmed in the Commission's Third Supplemental Order No. 14,810.

The Company has provided service to the Franconia complex by a three mile 34-KV line that extends from a substation in Woodstock to the substation in Lincoln. Mr. John Pillsbury, NHEC General Manager, has authorized Mr. Caron to state on his behalf that the NHEC is interested in purchasing the facilities that PSNH has in that three mile line in order to meet their growing loads.

Mr. Paul Porter, General Partner, Franconia Power and Light Association offered testimony that the surrendering by PSNH of its franchise rights might cause considerable harm to the Franconia Power and Light Associates. On the basis that they might (1) have to pay wheeling charges to the New Hampshire Electric Cooperative, or (2) have to pay line losses to PSNH that would effectively reduce the rate it receives for its electricity, or (3) have to

Page 61

accept a rate for its electric less than that already established by NH PUC Order No. 17,216 in docket number DR 84-20.

On January 30, 1985 Mr. Porter filed a Motion to Withdraw Intervention Status of Franconia Power and Light Associates. Accordingly no further consideration of his Motion to Intervene is appropriate.

In view of the withdrawal, the remaining record is limited to the positions of the two utilities — both of which support the transfer.

The Commission will approve the transfer. It is clear that the facts which surrounded the original transfer to PSNH, no longer exist. There remains no customer whose unique power requirements cannot be met by the Cooperative. It is unreasonable for PSNH to retain and maintain a three mile distribution line which is no longer needed to serve customers.

The Cooperative's historical record shows that they are capable of providing adequate and reasonable service to the customers of the Town of Lincoln. No evidence was presented in this case to suggest that the addition of new customers within the Franconia Complex will tax their ability to continue such service. We have no reason to doubt that they will do so.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of the Public Service Company of New Hampshire for authority to surrender its limited franchise to serve one industrial customer in the Town of Lincoln, New Hampshire where the facilities of the defunct Franconia Paper Company are located, is hereby approved.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1985.

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NH.PUC*02/13/85*[60988]*70 NH PUC 63*Fuel Adjustment Clause

[Go to End of 60988]

70 NH PUC 63

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 84-393, Supplemental Order No. 17,450

New Hampshire Public Utilities Commission

February 13, 1985

ORDER clarifying prior order on quarterly fuel adjustment clause rates for electric utilities.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, it has come to the Commission's attention that certain matters in Order No. 17,419 require correction and clarification; and

WHEREAS, this supplemental order restates Order No. 17,419 incorporating the required corrections and clarification; and

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; and

WHEREAS, this is one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189) pertaining to the New Hampshire Electric Cooperative, Inc. maintained the rolled in rate of \$0.2822/ KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Concord Electric

Company tariff, NHPUC No. 8 — Electricity, providing for a fuel surcharge credit of (\$0.115) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for the month of February, 1985; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of (\$0.185) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for the month of February, 1985 and it is

FURTHER ORDERED, that 12th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of \$0.241 per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for February, 1985; and it is

FURTHER ORDERED, that 14th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of January, February, and March, 1985 of \$0.864 per 100 KWH, be, and hereby is, permitted to remain in effect for February, 1985; and it is

FURTHER ORDERED, that 50th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$3.24 per 100 KWH for the month of February, 1985, be, and hereby is, permitted to become effective February 1, 1985; and it is

FURTHER ORDERED, that 101st Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$1.05) per 100 KWH for the month of February, 1985, be, and hereby is, permitted to become effective February 1, 1985; and it is

FURTHER ORDERED, that 98th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$.39) per 100 KWH for the month of February, 1985; be, and hereby is, permitted to become effective February 1, 1985.

The above noted rates may be 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 thirteenth day of February, 1985.

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NH.PUC*02/13/85*[60989]*70 NH PUC 65*Pennichuck Water Company, Inc.

[Go to End of 60989]

70 NH PUC 65

Re Pennichuck Water Company, Inc.

DE 84-288, Second Supplemental Order No. 17,452

New Hampshire Public Utilities Commission

February 13, 1985

ORDER cancelling scheduled hearing on the reasonableness of payment by a water utility for easement to install underground pipeline.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on December 11, 1984, the Commission issued Order No. 17,346 which granted Pennichuck Water Company, Inc. (Company) authority pursuant to RSA 371:24 to construct and install an underground pipeline traversing the tracks and property of the Boston and Maine Corporation in the Town of Merrimack, and that the consideration of \$1,000.00 paid by the Company to the Boston and Maine Corporation for the permanent subsurface easement deed granted in connection with said crossing was in the public good; and

WHEREAS, on January 25, 1985, the Commission issued Supplemental Order No. 17,413 which scheduled a further hearing on March 5, 1985 to determine whether the \$1,000.00 payment approved in Order No. 17,346 meets the "just and reasonable" payment standard in RSA 371:24 as construed by the Commission. Re Exeter & Hampton Electric Co., 69 NH PUC 259 (1984) and Re Concord Electric Co., 69 NH PUC 578 (1984); and

WHEREAS, on December 21, 1984, the Company filed a Notice of Intent To File Rate Schedules (DR 85-2); and

WHEREAS, upon further review, the Commission has decided that the upcoming rate case is a more appropriate forum for reviewing the reasonableness of the \$1,000.00 expenditure should the Company seek its recovery through rates; it is hereby

ORDERED, that the hearing scheduled for March 5, 1985 be, and hereby is, cancelled.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1985.

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NH.PUC*02/14/85*[60985]*70 NH PUC 57*Southern New Hampshire Water Company, Inc.

[Go to End of 60985]

70 NH PUC 57

Re Southern New Hampshire Water Company, Inc.

DF 82-287, Order No. 17,446

New Hampshire Public Utilities Commission

February 14, 1985

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

 By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc., a public utility operating under the jurisdiction of this Commission as a water utility in the towns of Hudson, Litchfield, and Windham seeks authority to increase its short-term debt limit to \$2,000,000; and

WHEREAS, Southern New Hampshire Water Company, Inc. was previously authorized a short-term debt level of \$1,400,000 in Order No. 16,012 issued November 24, 1982; and

WHEREAS, Southern New Hampshire Water Company, Inc. attests that the short-term-notes outstanding at December 31, 1984 were \$1,370,000 and that the available balance of \$230,000 will be expended by February 11, 1985 in payment of construction invoices; and

WHEREAS, Southern New Hampshire Water Company, Inc. further states the 1985 approved capital budget has additions totaling approximately \$759,500 and that an increased shortterm debt limit is temporarily required to meet these obligations of increased construction and expansion of its service area; it is

ORDERED, that Southern New Hampshire Water Company, Inc., be, and hereby is, authorized to issue and sell for cash, and renew its shortterm note or notes, payable less than twelve (12) months from the date thereof, in an aggregate principal amount not in excess of two million dollars (\$2,000,000); and it is

FURTHER ORDERED, that this authorization shall remain in effect until November 25, 1985 or such time as permanent financing is obtained whichever is sooner; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, the Southern New Hampshire Water Company, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes; and it is

FURTHER ORDERED, that on or before February 28, 1985 Southern New Hampshire Water Company, Inc.

Page 57

will file with this Commission an estimated monthly: 1) cash flow, and 2) statement of sources and uses of funds for 1985.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1985.

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NH.PUC*02/14/85*[60990]*70 NH PUC 66*Public Service Company of New Hampshire

[Go to End of 60990]

70 NH PUC 66

Re Public Service Company of New Hampshire

Intervenor: Community Action Program

DR 84-354, Supplemental Order No. 17,453

New Hampshire Public Utilities Commission

February 14, 1985

ORDER denying motion for limited rehearing on an electric utility's request for energy cost recovery mechanism.

Automatic Adjustment Clauses, § 59 — Procedure — Energy cost clauses — Request for interim recovery — Electric utility.

The commission denied a request by an electric utility that had entered into an agreement concerning a coal conversion project to recover (on an interim basis pending final determination of the merits of the issues) fuel savings associated with the project as a component of the current energy cost recovery mechanism (ECRM), or through reconciliation during the next ECRM period; the commission held that procedural rules require the suspension of the entire agreement, including those sections dealing with the recovery of fuel savings, until a final determination of all issues relating to the coal conversion project has been reached.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 9, 1985 the Commission issued Report & Order No. 17,388 (70 NH PUC 14) affecting a change in Public Service Company of New Hampshire's (PSNH or Company) ECRM component and, inter alia, suspending the Recommendations of the parties concerning the Schiller Coal Conversion (Agreement) "... pending final determination of the merits of the issues involving Schiller Conversion Costs ..." (70 NH PUC at p. 20). On January 29, 1985, PSNH, pursuant to RSA 541:3, filed a Motion For a Limited Rehearing (Motion).

Community Action Program (CAP) filed an objection to PSNH's motion on February 6, 1985.

The Company's motion requests that the Commission (1) schedule a hearing and vacate the provision which suspends the operation of the agreement thereby permitting PSNH to recover the fuel savings (coal vs. oil) as a component of the current ECRM or through reconciliation during the next ECRM period; or 2) clarify Commission Order No. 17,388 by utilizing "language which defers implementation of the Settlement Agreement until the Commission has had a full opportunity to consider and decide issues raised

by the completion of the conversion; and, subject to such decision, makes the Company whole by allowing recoupment of the amounts it would have collected, together with interest, had concurrent cost recovery commenced on the date of commercial operation of the Schiller units."

CAP argues that PSNH's Motion be denied. It alleges that "PSNH mistakes the law and the evidence in this proceeding."

The Motion, and objection thereto, sets forth the parties positions. The Commissioners have reviewed both and provide the following analysis.

The Commission has deferred review of all issues concerning conversion costs until Schiller 5 & 6 are completed (70 NH PUC at p. 20). In the interim the agreement is suspended, without prejudice, pending final determination of those proceedings.

The Company's concern about recoupment is unfounded. After the Commission has had an opportunity to consider the issues at a duly noticed hearing it will approve, modify or disapprove the settlement agreement to the extent that it is justified by the evidence and arguments presented therein. Nothing in the order denies the Company recoupment of costs found to be appropriate according to the agreement.

Simply stated, before the Commission can again permit this agreement to become effective all issues (including Force Majeure) must be considered.

As the order provides (70 NH PUC at p. 20):

It is not proper to look at one part of an agreement and ignore the remainder. If the agreement is to be accepted in whole, Force Majeure must be addressed also. As the Company has stated, this issue has been set aside. Therefore, it is necessary at this time to suspend the agreement, without prejudice, pending final determination of the merits of the issues involving Schiller Conversion costs. (Emphasis added.)

PSNH's Motion is therefore denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's Motion for Limited Rehearing be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1985.

=====

NH.PUC*02/14/85*[60991]*70 NH PUC 68*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 60991]

Re Continental Telephone Company of New Hampshire, Inc.

DR 85-14, Order No. 17,455

New Hampshire Public Utilities Commission

February 14, 1985

ORDER closing docket on withdrawn telephone directory listing services tariff.

By the COMMISSION:

ORDER

WHEREAS, on January 15, 1985, Continental Telephone Company of New Hampshire, Inc. filed certain revisions to its tariff, NHPUC No. 11, by which it proposed to change the pricing of certain directory listing services; and

WHEREAS, on February 1, 1985, the Commission issued Order No. 17,429 (70 NH PUC 40) which suspended said filing pending Commission investigation and decision thereon; and

WHEREAS, by letter dated February 8, 1985, Continental Telephone Company of New Hampshire withdrew the said tariff filing; it is hereby

ORDERED, that this docket be and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1985.

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NH.PUC*02/20/85*[60992]*70 NH PUC 69*Claremont Gas Light Company

[Go to End of 60992]

70 NH PUC 69

Re Claremont Gas Light Company

Intervenor: Petrolane-Southern New Hampshire Gas Company

DR 84-380, Order No. 17,456

New Hampshire Public Utilities Commission

February 20, 1985

ORDER requiring gas utilities to appear at hearing on cost-of-gas adjustments.

By the COMMISSION:

ORDER

WHEREAS, it has come to the attention of this Commission that current methods of calculating the Cost-of-Gas Adjustment on a monthly basis for Claremont Gas Light Company

and Petrolane-Southern New Hampshire Gas Company results in instability of rates; and

WHEREAS, such instability causes severe budgeting problems for said Companies' customers; and

WHEREAS, creating such concerns among the utilities' customers is not in their best interest; and

WHEREAS, common practice among gas utilities in the state of New Hampshire is to implement six-month cost-ofgas adjustments with proven stability; and

WHEREAS, it now appears that the Cost-of-Gas Adjustment of Claremont Gas Light Company and PetrolaneSouthern New Hampshire Gas Company would also be stabilized by conversion to a six-month charge; it is

ORDERED, that Claremont Gas Light Company and Petrolane-Southern New Hampshire Gas Company appear before this Commission at its Concord offices on March 22, 1985 at 10:00 A.M., at which time testimony will be heard from all parties regarding the benefits or disadvantages of both the monthly and semi-annual charges, and whether this Commission should direct Claremont Gas Light Company and Petrolane-Southern New Hampshire Gas Company to implement a sixmonth Cost-of-Gas Adjustment; and it is

FURTHER ORDERED, that Claremont Gas Light Company and Petrolane-Southern New Hampshire Gas Company give notice of said hearing by publication of a copy of this Order in a widely circulated newspaper in the areas served.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1985.

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NH.PUC*02/20/85*[60993]*70 NH PUC 70*Claremont Gas Light Company

[Go to End of 60993]

70 NH PUC 70

Re Claremont Gas Light Company

DR 85-27, Order No. 17,457

New Hampshire Public Utilities Commission

February 20, 1985

ORDER requiring gas utility to appear at hearing on cost-of-gas adjustment.

By the COMMISSION:

ORDER

WHEREAS, it has come to the attention of this Commission that current methods of calculating the Costof-Gas Adjustment on a monthly basis has resulted in an abnormally high Cost-of-Gas Adjustment for the month of November, 1984; and

WHEREAS, the Commission has received a number of customer inquiries regarding billing for said period; and

WHEREAS, Claremont Gas Light Company contends that due to a delay in scheduled meter readings, actual gas consumption data was not available and therefore adjustment reflected normal plant production while consumption data was incomplete; it is

ORDERED, pursuant to RSA 365:5 inter alia that the Claremont Gas Light Company appear before this commission at its Concord offices on Friday, March 22, 1985 at 11:00 a.m. at which time testimony will be heard from the Company regarding the methodology and data used in its calculation of its November Cost-of-Gas Adjustment after which this Commission shall investigate and make inquiry as to whether or not bills rendered under November's Cost-of-Gas Adjustment were in compliance with the procedures, set forth by this Commission and that the effects, inter alia, of an interruption in obtaining meter readings contributed to such an abnormally high Cost-of-Gas Adjustment; and it is

FURTHER ORDERED, that the Commission, upon hearing the evidence in this proceeding, may direct the Claremont Gas Light Company to take certain actions to address customer concerns in this issue; and it is

FURTHER ORDERED, that Claremont Gas Light Company 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 March 8, 1985, said publication to be designated in an affidavit to be made on a copy of this Order and filed with this office on or before March 22, 1985.

By order of the Public Utilities Commission of New Hampshire this twentieth day of February, 1985.

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NH.PUC*02/22/85*[60994]*70 NH PUC 71*New Hampshire Electric Cooperative, Inc.

[Go to End of 60994]

70 NH PUC 71

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate and Seacoast AntiPollution League et al.

DF 83-360, Ninth Supplemental Order No. 17,464

New Hampshire Public Utilities Commission

February 22, 1985

ORDER establishing procedural schedule for adjudicating electric utility financing issues; denial of motion for recusal of public utility commissioner.

Commissions, § 51 — Action by commission — Prejudice — Recusal.

Discussion, in concurring opinion, of proper standard for determining whether a public utility commissioner must recuse himself from an adjudicatory proceeding. p.73.

(MCQUADE, chairman, concurs, p. 73.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 24, 1985, the Commission issued Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26) in this docket which, inter alia, granted authority to the New Hampshire Electric Cooperative, Inc. (Co-op) to borrow an additional \$5,290,484 on an emergency basis. The Commission also scheduled a prehearing conference on January 30, 1985 for the purpose of establishing a schedule for adjudicating the remaining issues in this docket.¹⁽⁵⁾ Our Order stated that such a schedule must provide for the issuance of a Commission Order no later than May 14, 1985.

As scheduled, a prehearing conference was convened on January 30, 1985. After extensive discussions, both on the record and during a recess, the parties were unable to agree on a schedule. Accordingly, the parties each submitted their own suggested schedules. The schedule preferred by the intervenors was as follows:

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

March 1, 1985	Prefiled testimony and exhibits of Co-op
March 15, 1985	Data Requests
April 8, 1985	Second round of data requests
April 15, 1985	Responses to second data requests
May 1, 1985	Prefiled testimony and exhibits of intervenors and staff
May 8, 1985	Data Requests
May 20, 1985	Responses to data requests
June 3 - 15, 1985	Hearings
July 15, 1985	Briefs
August, 1985	Commission Order

The schedule proposed by the Co-op was as follows:

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

March 1, 1985	Prefiled testimony and exhibits of Co-op
March 8, 1985	Data requests by intervenors and Staff
March 15, 1985	Prefiled testimony by Staff and intervenors

March 22, 1985	Responses to intervenor and Staff data requests. Data requests by Co-op
April 3, 1985	Responses to Co-op data requests. Responsive filing by Co-op
April 3-10, 1985	Hearings
May 7, 1985	Briefs
May 15, 1985	Commission Order

We have reviewed both suggested schedules and we find that they are not reconcilable. We further find that neither proposed schedule is satisfactory.

The schedule proposed by the intervenors suffers the flaw of extending the proceedings through the end of August. Since we have already indicated that we wish to attempt to adjudicate this proceeding by May 14, 1985, such a proposed schedule is deficient on its face. Uncertainties clearly exist to a point where it may not be possible to conclude this proceeding by the May 14, 1985 date. However, we do not believe that we should establish an initial schedule that changes those uncertainties into certainties by extending the proceedings through the summer of 1985. Thus, the schedule proffered by the intervenors will be rejected.

The schedule proffered by the Co-op does provide for adjudication by the May 14, 1985 date; however, the intervals included in that schedule make it highly unlikely that we will be able to meet that date. For example, the proposed schedule requires intervenors and staff to file responsive prefiled testimony and exhibits prior to the time the Co-op files responses to data requests. We can anticipate that intervenors and staff will need to review the Co-op discovery material in order to crystallize their testimony; thus, a legitimate request for a schedule extension is inevitable. We will not in this order establish a schedule which contains such facial deficiencies. Accordingly, the schedule proffered by the Co-op will also be rejected.

Since no proffered schedule can be accepted, the Commission will establish the initial schedule. In establishing that schedule we have examined the proffered schedules to ascertain the underlying concerns of the parties. Those concerns have been fully considered. We have also taken into account the Commission's own calendar and commitments. We have concluded that since the Co-op is the moving party in this docket, we will allocate to it certain procedural burdens. To the extent that the

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Co-op wishes to have those burdens relaxed, we will fully consider any request it may wish to file. The Co-op should be on notice, however, that the granting of any request to extend a particular deadline could have the effect of extending the entire procedural schedule.

In view of the above, the procedural schedule will be established as follows:

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

March 1, 1985	Prefiled testimony and exhibits of Co-op.
March 8, 1985	Data Requests

2(6)

March 15, 1985 data requests	Responses to
March 29, 1985 testimony and exhibits of intervenors and staff	Prefiled
April 2, 1985	Data Requests
3(7)	
April 15, 1985 data requests	Responses to
April 15, 16, 17, 18, 19, 23, 24, 25, 26, 1985	Hearings

It should be noted that we are not establishing a briefing schedule at this time. Such a schedule will be established in the course of the April, 1985 hearings. However, to facilitate an expeditious briefing schedule, we will direct the Co-op to arrange for daily transcripts. Other procedural matters may be addressed as they arise in the course of the hearings or through written Motions which, of course, may be filed at any time.

Our Order will issue accordingly.

CONCURRING OPINION OF CHAIRMAN McQUADE

I concur in the foregoing Report and Order which establishes a procedural schedule for the adjudication of this proceeding. The purpose of this opinion is to address the Motion to Recuse filed by Gary McCool. After careful consideration, I have decided to deny Mr. McCool's Motion.

The history of this docket has been set forth at length in earlier Commission Orders. I participated in the original proceedings which were the subject of the Court's remand in *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984). Those proceedings are not at issue here. I did not participate in the recent proceedings on whether to grant the New Hampshire Electric Cooperative, Inc. (Co-op) emergency financing authority for the first half of 1985 rendering moot the Motion to recuse insofar as it pertains to that proceeding. My denial of Mr. McCool's Motion pertains to subsequent proceedings in this docket.

My decision is based on the standard set forth at RSA 363:12 which requires, inter alia, that a Commissioner "[d]isqualify himself from proceedings in which his impartiality might reasonably be questioned". The Court in *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984) construed the standard as being an objective standard; i.e., the issue is whether a reasonable person would have a sufficient factual basis to question impartiality. *Id.*,

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slip opinion at 5. This is to be distinguished from a subjective standard in which the decision-maker has satisfied himself that he has kept an open and neutral mind.¹⁽⁸⁾ *Id.*, slip opinion at 6.

In applying the objective standard, I have ascertained that the only facts which have been or

could be used as a basis for disqualification are the time, place and content of a speech delivered by me before the Portsmouth Chamber of Commerce on June 29, 1984. Id. I have reexamined the contents of that speech and I find that it does not form a basis for disqualification in the instant matter. A reading of that speech can only lead a reasonable person to conclude that it was directed at the problems of Public Service Company of New Hampshire. It cannot reasonably be construed as being applicable to the proposed Co-op financing.

Since the Portsmouth speech cannot stand as a factual basis for disqualification in the instant proceeding and since no other facts have been averred that could form such a factual basis, I will deny the Motion to Recuse.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the procedural schedule in this docket will be as set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of February, 1985.

FOOTNOTES

¹Those remaining issues include all matters which enter into a determination of whether the proposed financing is in the public good as construed by the Court in *Re Easton*, 125 N.H. 205, 480 A.2d 88, (1984).

²The March 8, 1985 deadline will be applicable for initial data requests. All parties will be permitted to submit reasonable data requests on an ongoing basis. However, if a party wishes to receive responses in time to use the information contained therein for the purpose of preparing prefiled testimony and exhibits, the request must be filed by the March 8, 1985 deadline.

³As with the discovery of the intervenors and Staff, the Co-op will be permitted to submit reasonable data requests on an ongoing basis. However, in order to receive responses by the April 15, 1985 deadline, the Co-op must submit its requests by the April 2, 1985 due date.

Concurring Opinion of Chairman McQuade

¹In my Report and Order No. 17,127 (69 NH PUC 391), I applied a subjective standard to a similar motion by the Consumer Advocate. There, I concluded: "The facts demonstrate and the Chairman represents that he has no precuniary [sic] interest in the case, entertains no ill will toward the parties, will approach the matter with an open mind, will render a decision based on the record evidence and has no bias or prejudgment concerning issues of fact or of the outcome of the proceedings." (69 NH PUC at p. 393.) Although the subjective standard is not determinative, I believe that it is still important that I satisfy myself that I will approach each case without bias or prejudgment. Accordingly, I can represent that the above-quoted statement also applies to the instant matter.

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NH.PUC*02/27/85*[60995]*70 NH PUC 75*Fuel Adjustment Clause

[Go to End of 60995]

70 NH PUC 75

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 84-393, Second Supplemental Order No. 17,465

New Hampshire Public Utilities Commission

February 27, 1985

ORDER permitting revision to an electric utility's fuel adjustment clause rate.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing; it is

ORDERED, that 134th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$1.65 per 100 KWH for the month of February, 1985, be, and hereby is, permitted to become effective February 11, 1985.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of February, 1985.

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NH.PUC*02/27/85*[60996]*70 NH PUC 76*Watson Associates

[Go to End of 60996]

70 NH PUC 76

Re Watson Associates

DR 84-331, Supplemental Order No. 17,466

New Hampshire Public Utilities Commission

February 27, 1985

ORDER rescinding suspension of electric cogeneration rates.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on November 2, 1984 Watson Associates filed a petition for a long term rate, and filed amendments to its petition on November 30, 1984 and December 3, 1984; and

WHEREAS, on December 10, 1984, the Commission issued Order No. 17,344, (69 NH PUC 683), which ordered NISI that Watson Associates' Petition be approved; and

WHEREAS, in Order No. 17,398 on January 8, 1985 (70 NH PUC 25), in response to timely comments of Public Service Company of New Hampshire, the Commission suspended Order No. 17,344 pending the submission by Watson Associates of an amendment to paragraph II 5 of its long term rate filing to reflect Commission Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132) concerning the "buy-out" provisions; and

WHEREAS, on January 21, 1985 Watson Associates filed an amendment to paragraph II.5 which brings the long term rate petition into conformance with Commission Order No. 17,104; it is hereby

ORDERED, that Commission Order No. 17,398 be, and hereby is, rescinded.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of February, 1985.

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NH.PUC*03/04/85*[60997]*70 NH PUC 77*Fuel Adjustment Clause

[Go to End of 60997]

70 NH PUC 77

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-32, Order No. 17,472

New Hampshire Public Utilities Commission

March 4, 1985

ORDER permitting revisions to the fuel adjustment clause rates of electric utilities.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; and

WHEREAS, this is one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 83-352, Order No. 16,946, dated March 19, 1984 (69 NH PUC 189) pertaining to the New Hampshire Electric Cooperative, Inc. maintained the rolled in rate of \$0.2822/ KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Concord Electric Company tariff, NHPUC No. 8 - Electricity, providing for a fuel surcharge credit of (\$0.115) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is,

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permitted to remain in effect for the month of March, 1985; and it is

FURTHER ORDERED, that 23rd Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of (\$0.185) per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for the month of March, 1985; and it is

FURTHER ORDERED, that 12th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of \$0.241 per 100 KWH for the months of January, February, and March, 1985, be, and hereby is, permitted to remain in effect for March, 1985; and it is

FURTHER ORDERED, that 14th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of January, February, and March, 1985 of \$0.864 per 100 KWH, be, and hereby is, permitted to remain in effect for March, 1985; and it is

FURTHER ORDERED, that 51st Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 -Electricity, providing for a fuel surcharge of \$3.95 per 100 KWH for the month of March, 1985, be, and hereby is, permitted to become effective March 1, 1985; and it is

FURTHER ORDERED, that 102nd Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of (\$0.42) per 100 KWH for the month of March, 1985, be, and hereby is, permitted to become effective March 1, 1985; and it is

FURTHER ORDERED, that 99th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge of \$0.15 per 100 KWH for the month of March, 1985; be, and hereby is, permitted to become effective March 1, 1985.

The above noted rates may be 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 fourth day of March, 1985.

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NH.PUC*03/04/85*[60998]*70 NH PUC 79*Pembroke Hydroelectric Project

[Go to End of 60998]

70 NH PUC 79

Re Pembroke Hydroelectric Project

DR 84-233, Second Supplement Order No. 17,473

New Hampshire Public Utilities Commission

March 4, 1985

ORDER nisi approving thirty-year rate for electric cogeneration project.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on October 29, 1984 the Commission issued Order No. 17,284 which suspended Order No. 17,229 (69 NH PUC 560); and

WHEREAS, a hearing was held before the Public Utilities Commission on November 13, 1984 to afford Pembroke Hydroelectric Project ("Pembroke") an opportunity to address, inter alia, Public Service Company of New Hampshire's ("PSNH's") comments and exceptions; and

WHEREAS, on November 21, 1984 Pembroke filed a Brief in Support of Full Levelized Rates and PSNH filed a Post-Hearing Memorandum; and

WHEREAS, on January 7, 1985 Pembroke filed a Petition for Withdrawal or Rescission of Twenty-Year Rate Order and for inter alia a thirtyyear rate order; and

WHEREAS, Pembroke filed an amendment to its new filing on January 25, 1985; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, PSNH has stated in its Post-Hearing Memorandum that it "would be willing to consider a thirty year rate without a lien or bond as an alternative to the twenty year rate with an exemption from the ceiling"; and

WHEREAS, Pembroke is now requesting said thirty year rate; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra, in all other respects; it is therefore,

ORDERED NISI, that the Petition for Thirty-Year Rate Order for Pembroke including the interconnection agreement and the rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10

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days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By Order of the Public Utilities Commission this fourth day of March, 1985.

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NH.PUC*03/04/85*[60999]*70 NH PUC 80*Greggs Falls Hydroelectric Project

[Go to End of 60999]

70 NH PUC 80

Re Greggs Falls Hydroelectric Project

DR 84-234, Second Supplement Order No. 17,474

New Hampshire Public Utilities Commission

March 4, 1985

ORDER nisi approving thirty-year rate for electric cogeneration project.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on October 29, 1984 the Commission issued Order No. 17,285 (69 NH PUC 620) which suspended Order No. 17,230 (69 NH PUC 561); and

WHEREAS, a hearing was held before the Public Utilities Commission on November 13, 1984 to afford Greggs Falls Hydroelectric Project ("Greggs Falls") an opportunity to address, inter alia, Public Service Company of New Hampshire's ("PSNH's") comments and exceptions; and

WHEREAS, on November 21, 1984 Greggs Falls filed a Brief in Support of Full Levelized

Rates and PSNH filed a Post-Hearing Memorandum; and

WHEREAS, on January 7, 1985 Greggs Falls filed a Petition for Withdrawal or Rescission of Twenty-Year Rate Order and for inter alia a thirtyyear rate order; and

WHEREAS, Greggs Falls filed an amendment to its new filing on January 25, 1985; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, PSNH has stated in its Post-Hearing Memorandum that it "would be willing to consider a thirty year rate without a lien or bond as an alternative to the twenty year rate with an exemption from the ceiling"; and

WHEREAS, Greggs Falls is now requesting said thirty year rate; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators,

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supra, in all other respects; it is therefore,

ORDERED NISI, that the Petition for Thirty-Year Rate Order for Greggs Falls including the interconnection agreement and the rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By Order of the Public Utilities Commission this fourth day of March, 1985.

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NH.PUC*03/04/85*[61000]*70 NH PUC 81*Northern Utilities, Inc.

[Go to End of 61000]

70 NH PUC 81

Re Northern Utilities, Inc.

DE 85-48, Order No. 17,475

New Hampshire Public Utilities Commission

March 4, 1985

ORDER approving special contract for interruptible gas sales.

By the COMMISSION:

ORDER

WHEREAS, on February 19, 1985, Northern Utilities, Inc. filed with this Commission its Special Contract No. 67 by which it proposes to serve gas on an interruptible basis to Exeter Hospital; and

WHEREAS, investigation has shown the Commission that the terms thereof are in the public interest, since promotion of interruptible sales enhances the revenues which reduce the Cost-of-Gas Adjustment for firm gas customers; it is

ORDERED, that Special Contract No. 67 of Northern Utilities, Inc. be, and hereby is, approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1985.

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NH.PUC*03/04/85*[61001]*70 NH PUC 82*Northern Utilities, Inc.

[Go to End of 61001]

70 NH PUC 82

Re Northern Utilities, Inc.

DE 85-44, Order No. 17,476

New Hampshire Public Utilities Commission

March 4, 1985

ORDER approving special contract for interruptible gas sales.

By the COMMISSION:

ORDER

WHEREAS, on February 14, 1985, Northern Utilities, Inc. filed with this Commission its Special Contract No. 66 by which it proposes to serve gas on an interruptible basis to Phillips Exeter Academy; and

WHEREAS, investigation has shown the Commission that the terms thereof are in the public interest, since promotion of interruptible sales enhances the revenues which reduce the Cost-of-Gas Adjustment for firm gas customers; it is

ORDERED that Special Contract No. 66 of Northern Utilities, Inc. be, and hereby is, approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of March, 1985.

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NH.PUC*03/06/85*[61002]*70 NH PUC 83*New Hampshire Electric Cooperative, Inc.

[Go to End of 61002]

70 NH PUC 83

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Conservation Law Foundation of New England, Inc. and Seacoast Anti-Pollution League et al.

DF 83-360, Tenth Supplemental Order No. 17,479

New Hampshire Public Utilities Commission

March 6, 1985

ORDER denying motions for rehearing on order granting authority for emergency electric utility financing.

Procedure, § 33 — Rehearings — Grounds for denial — Emergency financing — Electric utility.

In denying motions for rehearing on its order granting authority for emergency electric utility financing the commission held that: (1) it did not have to complete its investigation into the utility's participation in a nuclear generating project prior to authorizing the interim financing; (2) interim financing was in the public good; and (3) it did not, by its action approving interim financing, deny any party an opportunity to present evidence on whether the utility's continued participation in a nuclear project is in the public good.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 24, 1985, the Commission issued Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26) (Decision) which, inter alia granted to the New Hampshire Electric Cooperative, Inc. (Co-op) emergency authority to borrow an additional \$5,290,484 from the amount of \$111,000,000 which had previously been approved and remanded. The Decision also scheduled a prehearing conference pursuant to Puc Rule No. 203.05 so that a schedule for adjudicating the remaining issues in this docket could be established.¹⁽⁹⁾ Timely Motions for Rehearing of the Decision were filed by the Conservation Law Foundation of New England, Inc. (CLF), the Seacoast AntiPollution League (SAPL), Roger Easton and Gary McCool. The Co-op filed Objections to the Motions on February 15, 1985.

The Motions assert: 1) that the Commission failed to make an explicit finding that the

emergency financing is in the public good as required by RSA Chapter 369; 2) that the Decision is inconsistent with the Court's holding in *Re Easton* 125 N.H. 205, 480 A.2d 88 (1984) (*Easton*) in that it failed to

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analyze whether the Co-op's continued participation in the Seabrook project is in the public good; 3) that the Commission's reliance on *Re Seacoast AntiPollution League*, 125 N.H. 465, 482 A.2d 509 (1984) (SAPL I) and *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 (1984) (SAPL II) was misplaced; 4) that the Commission failed to reconcile the Decision with its prior orders in this docket which assumed that the matter would be adjudicated by December 31, 1984; 5) that the Commission erred in defining the status quo as continued funding of Seabrook construction at reduced levels; 6) that the record did not support the Commission's findings that an emergency existed, that failure to grant the Petition would expose the Co-op to the risk of default on its Seabrook obligations and that the risk of default outweighed the risk of additional incremental Seabrook expenditures; and 7) that the Co-op's Petition was deficient in that it did not aver facts to support an *Easton* finding. We have reviewed all the assertions in the Motions and, after due consideration, we have decided that the Motions should be denied.

The central issue in the Decision was whether the Co-op should be permitted to engage in continued financing for the purpose of funding a reduced level of Seabrook construction expenditures during the period of time necessary for the Commission to investigate whether the Co-op's continued participation in the Seabrook project is in the public good. In this context, we believe that the Commission did not have to complete the investigation of the *Easton* issues prior to authorizing the interim financing. Since the Decision was directed at whether or not there can be interim financing while the *Easton* issues are investigated, it is illogical to claim that the Decision is deficient because those same issues were not fully examined in the interim decision-making process. Similarly, it would not be consistent with the issues within the scope of the Decision to require the Company to aver facts supporting an *Easton* analysis in its emergency Petition. Thus, the Motions for Rehearing should be denied on those grounds.²⁽¹⁰⁾

After consideration, we continue to believe that the interim analysis described above is consistent with our responsibilities under RSA Chapter 369. We rest this conclusion on our reading of the statute as construed in SAPL I and SAPL II. The Movants have argued that our reliance on those cases is misplaced in that the Court's decision was based on the finding that less than 10% of the proceeds of the financing at issue in those cases would be devoted to direct Seabrook construction. The Movants argue that here 100% of the proceeds of the proposed financing are to be devoted to Seabrook. We believe that the Movants argument contains both factual and analytic flaws. The factual flaw is that 100% of the proceeds of the proposed financing will not be devoted to direct Seabrook construction. Less than half of the proceeds of the financing will be devoted to direct Seabrook construction expenditures; the remaining portion will be devoted to taxes, miscellaneous expenses and debt service. (See, Exhibit B attached to Exhibit 13 and the Co-op's Objection to the Motions for Rehearing at 2). Even if 100% of the proceeds was to be devoted to direct Seabrook expenditures,

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the Decision would continue to be consistent with SAPL I and SAPL II if: 1) we conclude that the public good is best served by allowing an interim financing; and 2) we provide Intervenor with a realistic opportunity to address their concerns in a subsequent proceeding. As discussed below, both of those requirements have been satisfied in this case. Thus, the Motions for Rehearing will be denied on those grounds.³⁽¹¹⁾

The requirement that the Commission find that an interim financing is in the public good was satisfied by the balancing test employed by the Commission in the Decision. It was reasonable to assess the probable consequences of granting the Petition, the probable consequences of denying the Petition and to choose the alternative which exposed all parties to the lowest level of overall risk. In this context, we believe that the record supports our conclusion that the Co-op and its members would be subject to undue risks if we denied the Petition. Those risks included the risk of default under the Seabrook joint ownership agreement with the attendant default consequences contained in that agreement.⁴⁽¹²⁾ The Movants have argued that we have allocated too much weight to the risk of default because a Commission denial would not necessarily constitute a default. However, our analysis was not based on an assessment of what a court would conclude if a default were litigated; rather, we have assessed the risks associated with providing an opening to such litigation along with the severity of the consequences if the Co-op should not prevail in such litigation. The risk associated with granting the Petition can easily be quantified as the amount of interim financing authority approved. Given that the risk of losing an additional \$5,290,484 is significantly less severe than the cost consequences of default, we believe that our conclusion was reasonable and proper. Accordingly, we could and did conclude that granting a Petition for interim financing was in the public good.⁵⁽¹³⁾ It follows that the Motions for Rehearing should be denied on these grounds.⁶⁽¹⁴⁾

The requirement that we provide intervenors with a realistic opportunity to address their concerns in a subsequent proceeding has also been satisfied. The Decision explicitly scheduled a prehearing conference so that those issues could be adjudicated in a timely manner. Additionally we established a date by which a Commission Order on the Easton issues is expected to be issued and only allowed sufficient financing authority to carry the Co-op to that date. Finally, we issued the Procedural Order which provided for an orderly schedule leading to evidentiary hearings during the month of April, 1985. Accordingly, we do not believe that any party has persuasively argued that they will not have a realistic and timely opportunity to address an Easton concern.

The remaining issue is the Movants' argument that since we believed that this matter would be adjudicated by

December 31, 1984, the Co-op is not entitled to interim financing beyond that date. The record contains an adequate description of the events which occurred between the summer of 1984 and the winter of 1985⁷⁽¹⁵⁾ and the responsibility of the Co-op or any other party for any delay during that period will be factored into our evaluation of the Easton merits as they apply to the remaining amount proposed to be financed. Such an evaluation is not appropriate in our

examination of the interim financing because it would not affect the balance of the overall risks to the Co-op and its members associated with either granting or denying the Petition. Thus, the Motions for Rehearing will be denied on this ground.⁸⁽¹⁶⁾

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 Motions for Rehearing of CLF, SAPL, Roger Easton and Gary McCool be, and hereby are, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1985.

FOOTNOTES

¹The Commission established such a schedule in Report and Ninth Supplemental Order No. 17,464 (70 NH PUC 71) (Procedural Order) which provides for the conclusion of evidentiary hearings on April 26, 1985.

²This analysis is applicable to numbered assertions 2 and 7 listed above.

³This analysis is applicable to numbered assertion 3 listed above.

⁴The record indicates that those consequences could include the loss of the benefits of the Coop's Seabrook ownership share without concomitant recovery of sunk costs.

⁵The finding that the proposed financing was in the public good was implicit in the Decision. To the extent that any Movant believes that a more explicit finding is necessary, we will state here that we have found that an interim financing in the amount of \$5,290,484 is in the public good as defined in RSA Chapter 369. See also, SAPL II; SAPL I; and Easton.

⁶This analysis is applicable to assertions 1, 5, and 6 listed above.

⁷We also anticipate that the record will be supplemental on this issue in the upcoming proceedings.

⁸This analysis is applicable to numbered assertion 4 listed above.

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NH.PUC*03/06/85*[61004]*70 NH PUC 87*HDI Hinsdale, Inc.

[Go to End of 61004]

70 NH PUC 87

Re HDI Hinsdale, Inc.

DR 84-344, DR 84-347, Supplemental Order No. 17,485

New Hampshire Public Utilities Commission

March 6, 1985

ORDER permitting small power producer, whose project, will interconnect at greater than primary voltage, to file for the primary voltage rate pending calculation of rate for connections greater than primary voltage.

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Cogeneration, § 24 — Small power production — Rates.

A small power producer, whose project will interconnect at greater than primary voltage, was permitted to file for the primary voltage rate, pending the calculation of a rate for connections greater than primary voltage.

 By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) the Commission granted HDI Hinsdale, Inc. Twenty-nine year rates in Order Nos. 17,432 and 17,433; and

WHEREAS, on February 27, 1985 Public Service Company of New Hampshire ("PSNH") filed comments which noted that the ownership of these sites by a third party may cause complexity in the negotiation of the junior liens or surety bonds required by rates longer than 20 years; and

WHEREAS, PSNH further notes that contrary to Order No. 17,104 paragraphs II.5 state that service may be terminated on 60 days notice at the option of HDI Hinsdale, Inc.; and

WHEREAS, PSNH further notes that the rates filed are for primary voltage while the projects are planned to interconnect at transmission voltage; and

WHEREAS, whatever the complexities of the negotiation of a surety bonds or junior liens due to third party ownership, Order Nos. 17,432 (70 NH PUC 46) and 17,434 (70 NH PUC 49) are contingent on the provision of such junior liens or surety bonds; and

WHEREAS, paragraphs II.5 regarding termination of service are further explained by paragraphs II.1 which state that the "Petitioner understands that termination under paragraph 5 may be had from the energy component of its rate only and that it is required to refile with PSNH for another rate for a period of time at least as long as the time remaining in the terminated rate" and such understanding does accurately reflect the Commission's Order No. 17,104 concerning "buy out" provisions; and

WHEREAS, while Order No. 17,104 states that "Should a SPP be connected at greater than primary voltage the calculations and factors will be adjusted to reflect a lower loss adjustment factor ... but specific rates for such cases have not been developed at this time" (69 NH PUC at

pp. 357, 358, 61 PUR4th at p. 137), and PSNH correctly states that these projects will interconnect at greater than primary voltage, rates for such interconnection have not yet been developed and PSNH offers no data which would enable these rates to be calculated; it is therefore

ORDERED, that pending the calculation of a rate for connections greater than primary voltage based on data submitted by PSNH, developers of projects whose connections are greater than primary voltage will be allowed to file for the primary voltage rate; and it is

FURTHER ORDERED, that Order Nos. 17,432 and 17,434 be, and hereby are, effective as of March 6, 1985.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1985.

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NH.PUC*03/07/85*[61003]*70 NH PUC 86*Ashuelot River Partners

[Go to End of 61003]

70 NH PUC 86

Re Ashuelot River Partners

DR 85-12, Supplemental Order No. 17,484

New Hampshire Public Utilities Commission

March 7, 1985

ORDER putting into effect prior order approving twenty-nine year rate for electric cogeneration project.

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By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) the Commission granted Ashuelot River Partners a Twenty-nine year rate in Order No. 17,444; and

WHEREAS, on February 27, 1985 Public Service Company of New Hampshire ("PSNH") filed comments which noted that the ownership of the site by a third party may cause complexity in the negotiation of the junior lien or surety bond required by rates longer than 20 years; and

WHEREAS, PSNH further notes that contrary to Order No. 17,104 paragraph II.5 states that service may be terminated on 60 days notice at the option of Ashuelot River Partners; and

WHEREAS, whatever the complexities of the negotiation of a surety bond or junior lien due to third party ownership, Order No. 17,444 (70 NH PUC 55) is contingent on the provision of

such junior lien or surety bond; and

WHEREAS, paragraph II.5 regarding termination of service is further explained by paragraph II.1 which states that the "Petitioner understands that termination under paragraph 5 may be had from the energy component of its rate only and that it is required to refile with PSNH for another rate for a period of time at least as long as the time remaining in the terminated rate" and such understanding does accurately reflect the Commission's Order No. 17,104 concerning "buy out" provisions; it is therefore

ORDERED, that Order No. 17,444 be, and hereby is, effective as of March 11, 1985.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1985.

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NH.PUC*03/11/85*[61005]*70 NH PUC 89*Coin Operated Telephone Policies

[Go to End of 61005]

70 NH PUC 89

Re Coin Operated Telephone Policies

Intervenors: Comm-Tech Pay Services, Inc. and New England Telephone and Telegraph Company

DE 84-174 et al., Order No. 17,486

New Hampshire Public Utilities Commission

March 11, 1985

ORDER authorizing the provision of privately owned coin operated telephone service.

Service, § 456 — Telephones — Pay stations — Privately owned coin operated telephones.

The sale, distribution, installation and maintenance of pay telephones by parties other than the franchised telephone utility company was held to be in the public good; the commission stated that there had been no testimony to suggest positive evidence that the telephone system would be harmed by authorizing competition in the pay telephone market. [1] p.95.

Public Utilities, § 117 — Regulatory status — Telephone service — Privately owned coin operated telephones.

Every company or person who owns and makes available for others' use coin operated telephones is a public utility within the meaning of New Hampshire Statute 362:2, and is subject to the jurisdiction of the state public utilities commission. [2] p.96.

Service, § 456 — Telephones — Privately owned coin operated telephones — Service restriction — Measured service.

Privately owned coin operated telephones may be installed only on measured service lines; the commission found that restricting privately owned telephones to measured service was necessary to establish a calling history to determine whether the addition of such telephones burden the system. [3] p.97.

Service, § 456 — Telephones — Privately owned coin operated telephones — Conditions for approval of service.

A petition, by a private company, to offer coin operated telephone service was approved subject to the following conditions: (1) the telephones shall be registered and approved by the FCC; (2) there will be no restrictions placed on the location of the telephones other than the availability of measured business service; (3) the telephones shall be hearing aid compatible; (4) the telephones shall provide a dial tone prior to payment to assure emergency access to operators; (5) the telephones shall provide for local and toll access; (6) the telephones shall allow access to other common carriers; (7) the telephones shall be clearly marked as to ownership and maintenance responsibility; (8) the telephones shall be connected only to measured service lines at applicable tariffed rates; (9) the local rates shall be the same as those which apply to the New England Telephone system; (10) the service shall provide toll free calling within municipalities; (11) the customer of record upon whose line a coin phone is installed shall be responsible for adherence to all applicable laws, rules and tariff provisions; (12) surcharges for toll calls is authorized, and pricing policies shall be clearly marked at the coin telephone location; and (13) a coin telephone provider shall notify the commission by letter of its

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intent to install such telephones prior to their installation. [4] p.97.

APPEARANCES: For Comm-Tech Pay Services, Inc., Nicholas A. Abraham, Esquire and Brigitte M. Gulliver, Esquire; for the New England Telephone and Telegraph Co., Christopher M. Bennett, Esquire and Phillip M. Huston, Jr., Esquire.

By the COMMISSION:

REPORT

PROCEDURE

On June 18, 1984, SDS Telco Services petitioned this Commission for authority to operate as a public utility providing public pay telephone services in the State of New Hampshire. Its owner, Sean D. Sheedy, proposed to provide both local (toll-free) and long distance (toll) service and 911 emergency service within the State of New Hampshire. All equipment was to be FCC-registered under part 68 of its rules. Local calls were proposed at \$.25 and toll calls would bear a surcharge of \$1.00 for initial credit card access and a minimum of not less than 35 percent add-on to the cost of coin calls. Pay telephones were to be located without cost at locations determined by SDS Telco Services.

SDS Telco Services also proposed to provide semipublic telephone service at certain

locations. Instruments installed for public use on private property would be profit sharing. The owner of a property would share 30 percent of any profit remaining after access line costs, equipment costs, toll costs, and maintenance costs were covered. There would be no profit sharing provisions for semipublic phones.

On June 21, 1984 a petition was filed by Comm-Tech Pay Services, Inc. to distribute, install and maintain pay telephones in the State of New Hampshire.

On August 7, 1984 an Order of Notice was issued by this Commission ordering both companies to appear to present testimony in support of their respective positions, and expanding the issue to a generic docket on the sale, distribution, installation and maintenance of pay telephone by parties other than franchised telephone utilities. A hearing was set on the matter on September 6, 1984. On August 15, 1984 the Commission revised its Order of Notice extending the date for prefiled testimony to August 30, 1984 and changing the hearing date to September 13, 1984. On September 4, 1984 the Commission, upon request of Comm-Tech, revised the hearing date to October 25, 1984.

On October 24, 1984 the Commission was advised by telephone from Sean D. Sheedy that SDS Telco Services was withdrawing its petition.

The hearing was held as scheduled at the Commission's offices at 10:00 a.m. on October 25, 1984. An affidavit of publication was presented at the hearing confirming that the Order of Notice was published in the Union Leader on October 6, 1984. It was confirmed that Notices were sent to Nicholas A. Abraham, Esquire, Comm-Tech Pay Services, Inc.; Victor J. Toth, Esquire; Sean D. Sheedy; Karl A. Weis; Mark Goldberg; Robert E. Walker; Continental Telephone Company of Maine; Continental Telephone Company of New Hampshire; Comex, Inc.; Chichester Telephone Company; Bretton Woods Telephone Company;

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New England Telephone and Telegraph Company; Merrimack County Telephone Company; Meriden Telephone Company; Kearsarge Telephone Company; Granite State Telephone Company; Dunbarton Telephone Company; Dixville Telephone Company; Wilton Telephone Company; Union Telephone Company; and the Office of the Attorney General.

POSITION OF PARTIES

Mr. Harry T. Mathews, President, Comm-Tech Pay Services, Inc. testified that his Company is an affiliate of Communications Technology, an interconnect company which sells and installs key telephones, electronic telephone systems, and switchboards. It is Comm-Tech's intent to sell customers coin operated pay telephones and to make available trained technicians to install, maintain and repair such equipment in New Hampshire.

The coin phones which are proposed to be offered will be similar in appearance to what the public is now using, except that it will be post-pay; that is, the user of the

phone receives an answer before he deposits his money. A timing device will notify the user when his time has expired. The equipment is approved by the Federal Communication Commission. It can be programmed to accept any type of coin and may be connected to any regular business telephone line. Local calls can be made by dialing a local number, and a coin is

deposited when the party answers to activate the voice circuit.

Long distance calls are handled in a similar manner. The 11-digit code is dialed and when the party answers, the caller deposits the amount designated for a local call and additionally gives his credit card number. (Supplemental testimony filed on November 28, 1984 advised that a new model phone is now available and will be utilized by CommTech. It will accept nickels, dimes, and quarters, and will have a computerized display screen to indicate the cost of a long distance call. The caller will be able to use coins to make long distance calls.)

The phones would be programmed to provide a number of other services, such as 911 emergency calling and 800 calling. Other carriers, such as MCI or SPRINT, could be accessed by a local number for which the user would be charged the local rate approved by this Commission. All telephones would have hearing-aid compatible hand sets.

Mr. Mathews testified that New Hampshire customers would benefit by his Company's existence due to the fact that pay phones would be installed in many more locations than presently exist. According to Mr. Mathews, there is a feeling that Bell operating companies install coin phones only at profit centers, and unless a phone brought a projected revenue of \$300.00 a month, it would only be installed only on a semipublic basis with an accompanying monthly guarantee. Under his Company's proposal, any customer may purchase and install a coin phone and make it available for public use, and he projects that a doubling of the amount of pay phones in New Hampshire will result. He cited small restaurants and hospitals as examples which could be profitable for individual customers, but which would not be attractive to New England Telephone Company and other telephone utilities. The customer would lease a regular business line at an average cost of \$30.00 per month and would retain all

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proceeds from the coin phone. If the proceeds equaled \$300.00, then the customer's monthly profit would be \$270.00. The coin phone currently retails at \$1600.00, and he envisioned a hypothetical "break even" point of eight months, after which there would be no carrying charges on the investment.

Mr. Mathews estimated that approximately 3000 parties have expressed an interest in purchasing the Company's pay phone. Not only would the general public benefit from the increased opportunities for pay phone use, but the telephone company would also benefit in terms of increased business line revenue. There would be no adverse effects on the phone company if this petition is approved.

Mr. Mathews testified that repair personnel would be available on a 24-hour basis and that equipment would be warranted for the first year. Following the first year a customer would have an option of purchasing a service contract or paying for service calls as they occur. The Company currently has seven repair technicians and 15 construction personnel to perform necessary installation and repair work. Offices will be set up around the State after market needs are established.

Upon cross examination Mr. Mathews testified that the Company would not only sell coin phones for customer use but might also install phones at its own selected locations and for its own benefit. In those instances Comm-Tech would collect the revenues from any phones that it

installs and would pay the location owner approximately 25 percent of the profits from coin sales.

Mr. Mathews was also cross examined as to the costs for calls. The coin set could be programmed to either provide free access to an operator, or to provide access only upon payment of a designated charge, the set could also be programmed to establish the duration of a call and could be set for a continuing charge after a prescribed time limit. The Company's current plan is that after three minutes, a caller would have to deposit additional coins to continue a local call.

Mr. James T. McCracken, Jr., District Manager Rates and Tariffs, testified for New England Telephone Company. In the opinion of the company, acceptance of either of the petitions would introduce resale of local exchange and toll services from these instruments. Current NET tariffs prohibit the resale of these services. The Company recognized, however, that the FCC permitted the registration of coin-operated telephones in its Memorandum and Opinion Order in Docket 84-270 on June 25, 1984, and the Company was not opposed to competition through the resale of its services from such registered telephones provided certain conditions are met to provide fair and equal competition.

One of the conditions which the Company recommended be imposed is that only measured service lines be available for privately owned coin phones. In the Company's opinion, customers who wish to purchase their own coin phones will do so in anticipation of a considerable amount of usage. Since flat rates are priced on the basis of average usage, then the high volume usage which will result from the coin phones would ultimately cause subsidization by other ratepayers. The Company finds it unfair and inequitable to ask the general body of ratepayers to incur more costs in order that an individual consumer can make a profit on its service. Restricting coin

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phones to measured service lines will assure that revenues will compensate for costs and that the general ratepayer will provide no subsidy.

Mr. McCracken testified that he envisioned instances where there would be requests for coin phones in areas in which there was currently no service available. He gave assurance that the Company was prepared to install necessary facilities for such installations so long as the requesting customer would bear the burden of installation charges.

In regard to rates, Mr. McCracken requested that if the Commission set a policy which differs from its existing, single price coin policy then New England Telephone should be allowed the same rate treatment. Currently the Company is allowed a \$.10 coin charge. If the Commission sets a policy which allows a \$.25 maximum and then allows the provider to charge optional lower rates, then New England requests the same opportunity to do so.

Mr. Bruce B. Ellsworth, Staff Chief Engineer, testified that this Commission is under an obligation to favorably consider the concept of privately-owned, coin-operated phones. The decision made by the Federal Communications Commission which was released on June 25, 1984 gave the public sector an opportunity to provide registered coin-operated equipment, and cautioned that any state restrictions affecting the use of such telephones would be reviewable by the FCC. On the basis of that FCC ruling, Mr. Ellsworth recommended that the Commission allow such operations to exist subject to certain controls which he contends will protect the

public.

Mr. Ellsworth recommended that all providers of coin telephones be made public utilities. He interpreted New Hampshire RSA 362:2 to require such public utility status. He offered a mechanism by which coin operators can be regulated without the full impact of regulatory control and made certain specific recommendations as to the reporting requirements and fees which should accompany such status. He suggested a short form certification process whereby an applicant would return a postcard certificate which would verify the establishment of such service and assure adherence to relevant Commission rules and regulations. Annual utility assessments would be made on the same basis that assessments are now made to all other utilities. So long as such utilities receive revenues less than \$20,000 annually they would pay a \$25.00 assessment fee to the Commission to cover the Commission's administrative expenses of monitoring the company's operations. Revenues would be reported to the Commission on an annual basis.

Mr. Ellsworth recommended that coin phones should be available for sale and use in all parts of the State (subject, of course, to the availability of the type of service approved for such instruments.) He added that no limitations should be prescribed by the Commission on the types of businesses in which these pay phones could be located.

He recommended that each coin phone should provide a hearing aid compatibility in order to be responsive to the hearing impaired.

Mr. Ellsworth also recommended specifically that:

1. Each phone provide dial-tone first such that a customer could reach an emergency operator without use of a coin.

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2. All coin sets have both local and toll capability and provide Directory Assistance on the same basis now offered by coin telephones.

3. Coin telephones ultimately be capable of access to other common carriers.

4. Each instrument be marked clearly regarding ownership and maintenance responsibility, so customers can solicit refund or repair services.

5. The local rate be standardized among utility-owned and privately owned coin phones.

6. Service to privately owned coin phones be limited to a measured business service.

Mr. Ellsworth recognized that no firm data were available to suggest that the system would be burdened by providing unlimited service to privately owned coin phones, yet he cautioned that measured service was the only method which could establish a calling history which could verify such a burden. He advocated a strict policy which mandates that privately owned coin phones be prohibited from any area in which measured business service is unavailable.

As to the specific petition before the Commission, Mr. Ellsworth recommended that Comm-Tech be considered a public utility. As such, Comm-Tech would not be given a franchise but it would be given a certificate to operate and provide telephone service to the public as a registered public utility and would be subject to the control that the Commission might adopt.

Mr. Ellsworth made no specific recommendations regarding the opportunities for private coin operators to impose surcharges upon customers. He found difficulty in seeing different rates at different phones. As a minimum he recommended that rates be published at each set.

Finally, he recommended that the Commission promulgate rules on the specific issue of privately owned coin telephones.

COMMISSION ANALYSIS

In its Order of Notice opening this docket, the Commission identified three issues: (1) whether SDS Telco Services should be given the authority to operate as a public utility to provide public pay telephone services; (2) whether Comm-Tech Pay Services, Inc. should be authorized to distribute, install and maintain pay telephones; and (3) whether the public good is best served by allowing the sale, distribution, installation and maintenance of pay telephones by parties other than the franchised telephone utility company.

The withdrawal of the petition by SDS Telco Services would suggest that the Commission's determinations are reduced to two. Our review of the evidence in this docket suggests that is not the case. By its testimony it is clear that Comm-Tech Pay Services, Inc. proposes to go beyond its petitioned request and to allow itself the option of leasing its own business lines and installing and operating coin phones of its own. In view of that characterization of its intended business, and in view of staff testimony that any provider of telephone service to the public must be identified as a public utility, we find that the issues before us have been redefined as follows: (1) whether SDS Telco Services, CommTech Pay Services, Inc., or any other party not already a franchised telephone utility company which proposes

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to provide public pay telephone services should be given the authority to operate as a public utility in the State of New Hampshire; (2) whether CommTech Pay Services, Inc. should be authorized to distribute, install and maintain pay telephones; and (3) whether the public good is best served by allowing the sale, distribution, installation and maintenance of pay telephones by parties other than the franchised telephone utility company.

As noted heretofore, SDS Telco Service has withdrawn its petition. Accordingly, the issues are narrowed to the generic one and to the extent to which Comm-Tech should be allowed to operate in New Hampshire.

Staff's Chief Engineer Ellsworth refers us to the Federal Communications Commission decision FCC 84-270 in the matter of "Registration of Coin Operated Telephones under part 68 of the Commission's Rules and Regulations" and its memorandum opinion and order adopted June 15, 1984 and released June 25, 1984. The memorandum said in part:

12. State Authority. A part 68 registration grant constitutes a federal right to interconnect registered terminal equipment with the public switch telephone network, pursuant to any terms and conditions prescribed by part 68. Our current rules require for example that all coin telephones located on public property or in semipublic locations must, by January 1, 1985, be hearing aid-compatible ... furthermore, the Commission's decision to register instrument implemented coin telephones does not necessarily affect state policies or regulations governing

the resale of intrastate toll and local exchange services ...

24. ... we caution, however, that any state restriction affecting the use of registered coin telephones that unreasonably infringes upon the right of customers to interconnect with the network in a way that is privately beneficial and not publicly detrimental will be reviewable by this commission

Mr. Ellsworth accepts that decision as giving private operators an explicit right to provide coin service. We are not convinced that the right is explicit. Cross examination by Commissioners Aeschliman and Iacopino point out that the Commission must go beyond the technical provision of coin sets and consider the impact of such sets on the overall network system. They attempt to quantify whether or not it can be determined with any degree of specificity that the addition of such phones will result in a stranded investment on the part of the New England Telephone Company, or whether or not there have been any specific studies to identify the impact on New England Telephone revenues as presently identified in the rate base formula. The answers to their questions were in the negative. We are concerned about making decisions when so few facts are known.

We will be guided by the directions of the Federal Communications Commission, however, and we cannot escape the fact that the situation is such that the information which we seek can only be assembled if we allow the program to develop a data base.

[1] Accordingly, since there has been no testimony to suggest positive evidence that the system will be harmed,

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and since there is no real evidence to suggest that there will be such an immediate impact on the system that customer conversion to public phones will even be noticeable, we will find that allowing the sale, distribution, installation and maintenance of pay telephones by parties other than the franchised telephone utility company is in the public good.

[2] Having made that judgment we now turn to the matter of whether or not the provider of that telephone service should be a public utility. Mr. Ellsworth referred us to the New Hampshire statutes:

362:2 Public Utility. The term public utility shall include every corporation ... owning, operating or managing ... any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages ...

We find the statutory reference to be appropriate. A coin-operated telephone, whether privately owned or utility owned is certainly a piece of equipment which is used for the conveyance of telephone messages. It is clear that the owner of that equipment is providing the vehicle by which those messages are conveyed. It is clear from the statute that the term "public utility" includes those companies and persons.

In 1982, the New Hampshire Supreme Court held that certain kinds of telephonic devices are not subject to PUC jurisdiction. *Re Omni Communications, Inc, d/b/a Page Call*, 122 N.H. 860, 451 A.2d 1289 (1982). In this case the Court held that paging devices should be left to the marketplace to regulate and should not be interfered with by the Public Utilities Commission. In

the instant case, however we encounter substantial differences concerning pay phones. Pay phones are an actual extension of the telephone lines and are designed for use in normal and comprehensive conveyance of telephone messages as contemplated by the legislature in RSA 362:2. Radio paging devices, on the other hand, use the telephone lines for a limited purpose and are used by individuals as opposed to the general public. Pay phones must be available for public use, should be reliable, available in a variety of locations throughout the state and be reasonably priced.

Paging devices are used by individuals who can shop around among competitors who have rights of action against the vendor and who alone are affected by inadequate service. It is therefore our conclusion that, although our authority does not extend to paging devices, the regulation of pay telephones is clearly within the jurisdiction of this Commission.

Accordingly, every company or person who owns, and makes available for other's use coin operated telephones shall be a public utility subject to the jurisdiction of this Commission.

The degree to which that jurisdiction will be exerted will require further Commission action. Mr. Ellsworth offered a series of controls which he finds necessary to protect the public: (1) they should be made available for sale and use in all parts of the State; (2) they should be hearing aid compatible; (3) they should provide dial tone first; (4) they should provide for local and toll calls; (5) they should allow for directory assistance; (6) they should allow access to other common carriers; (7) they should be clearly marked as to ownership and maintenance

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responsibility; (8) a standard single rate should apply to all coin phones; (9) coin phones should be allowed only over measured service lines.

Comm-Tech contends that their own equipment will provide the following, with or without Commission direction: (1) free emergency "911" capability; (2) free "411" call or option to charge; (3) free "800" call or option to charge; (4) touch tone dialing; (5) interexchange carrier assessability; (6) hearing aid compatibility; (7) FCC approved and registered; (8) phone cabinet will display owner's name and repair information; (9) access to local and long distance lines by coin, credit card or collect; (10) data base memory containing nationwide rates; (11) display screen showing cost of call, with reverse counting mechanism; (12) multi-mechanism feature which will accept nickels, dimes and quarters.

[3] New England Telephone testimony recommends that: (1) instruments must be connected to measured business service; (2) standard coin rates should be set throughout the State; (3) instruments should be hearing aid compatible; (4) instruments should provide coinless access to the operator, 911 and directory assistance; (5) free municipal calling service should be available; (6) instruments should be clearly marked as to ownership, maintenance and refund responsibilities; (7) instrument owners should be responsible for calls originating from or accepted at the line and must bear any risk of loss; (8) a surcharge policy should be established by this Commission.

In consideration of the measured service issue we find staff's argument persuasive. It is necessary to establish a calling history in order to determine whether or not there is a burden on the system by the addition of privately owned coin phones. Since documented calling histories

can be established only through measured service, and since calling histories cannot be specifically identified by unlimited service, then we will require that privately owned coin phones may be installed only on measured service lines.

In view of that decision we recognize that there may be instances where coin phones may be prohibited where measured business service is unavailable. We find that a proper exercise of our decision. The areas in which measured service is not available may be generally identified from Commission records as being the less populated, rural areas of the state. There are, within those areas, portions of the telephone network which are approaching saturation. It would be unwise to impose a further customer load on those areas without knowing what the magnitude of those loads will be. Accordingly, we will prohibit privately owned coin phones from any area in which measured business service is unavailable.

We will rely, over the longer term, on our prescribed rulemaking process to set forth the generic conditions pertaining to pay telephones. We will direct staff to submit to the Commission a proposed rule outlining the conditions under which privately owned coin phone operations are to be regulated, and the conditions under which they may be operated, and we will expect a draft to be produced by May 1, 1985. Subsequently, the proposes [sic] rules will be published and all parties will have an opportunity to comment.

[4] In the interim, our approval of Comm-Tech's petition shall be subject to the following conditions:

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1. They shall be registered and approved by the FCC.
2. There will be no restrictions placed on their location other than the availability of measured business service.
3. They shall be hearing-aid compatible.
4. They shall provide dial tone first to assure emergency access to operators.
5. They shall provide for local and toll access.
6. They shall allow access to other common carriers.
7. They shall be clearly marked as to ownership and maintenance responsibility.
8. They shall be connected only to measured service lines at applicable tariffed rates.
9. Their local rates shall be the same as those which apply to the New England Telephone system.
10. They shall provide toll-free calling within municipalities.
11. The customer of record upon whose line a coin phone is installed shall be responsible for adherence to all applicable laws, rules and tariff provisions.
12. Surcharges for toll calls is authorized, and pricing policies shall be clearly marked at the coin phone location.
13. A coin phone provider shall notify this Commission by letter of its intent to install such

phones prior to their installations.

Mr. Ellsworth testified to the need for a certification process which will keep the Commission aware of all designated coin phone utilities. We accept that concept and will require that staff include in its rulemaking draft a provision for such certification.

Having satisfied ourselves that the generic concepts have now been addressed, we can now turn our attention to Comm-Tech Pay Services, Inc.'s petition. The testimony and exhibits provided in this docket have satisfied us that Comm-Tech is equipped to respond to the regulatory requirements outlined herein. We therefore find that they may distribute, install and maintain pay telephones in the State of New Hampshire. We further find that they are a public utility in the State of New Hampshire and that they are subject to the Rules and Regulations promulgated under this docket. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that the public good is served by allowing the sale, distribution, installation and maintenance of pay telephones by parties other than the franchised telephone utility company; and it is

FURTHER ORDERED, that any party not already a franchised telephone utility company shall, following notification to this Commission, be considered a public utility for the limited purpose of providing public pay telephone service in New Hampshire; and it is

FURTHER ORDERED, that CommTech Pay Services, Inc. shall be authorized to distribute, install and maintain pay telephones, and shall be considered a public utility to the extent that it qualifies under the conditions of the foregoing report.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 1985.

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NH.PUC*03/12/85*[61006]*70 NH PUC 99*Public Service Company of New Hampshire

[Go to End of 61006]

70 NH PUC 99

Re Public Service Company of New Hampshire

Additional petitioner: New England Power Company

Intervenor: Office of Consumer Advocate

DF 85-19, Order No. 17,488

New Hampshire Public Utilities Commission

March 12, 1985

ORDER granting petition by two electric utilities to issue guarantees with respect to certain loans to be issued by Connecticut Yankee Atomic Power Company.

APPEARANCES: for Public Service Company of New Hampshire, Debbie Sklar, Esquire; and for New England Power Company, Kirk L. Ransauer, Esquire; for Consumer Advocate, Michael W. Holmes, Esquire; and for the staff, Eugene F. Sullivan, Finance Director.

By the COMMISSION:

REPORT

By this unopposed petition filed on January 18, 1985, Public Service Company of New Hampshire ("PSNH"), a corporation duly organized and existing under the laws of the State of New Hampshire, and New England Power Company ("NEP"), a corporation duly organized under the laws of the Commonwealth of Massachusetts and qualified as a foreign corporation to do business in New Hampshire (but does not engage in local distribution therein), electric public utilities subject to the jurisdiction of this Commission, seek authority pursuant to the provisions of RSA 369 to issue their several, not Joint unconditional guarantees of the Revolving Credit Loans to be issued by Connecticut Yankee Atomic Power Company ("Connecticut Yankee"). A duly noticed hearing was held in Concord on February 28, 1985, at which the following witnesses testified: Leonard A. O'Connor, Treasurer of Connecticut Yankee; George Branscombe, Vice President and Treasurer of PSNH; and Robert H. McLaren, Assistant Treasurer of NEP.

Connecticut Yankee, a Connecticut corporation, is the owner and operator of a nuclear powered electric generating plant with a capacity of approximately 575 MW (net) located in Haddam, Connecticut. Connecticut Yankee sells the entire output of its plant to eleven sponsoring New England utilities (the "Sponsors"), including PSNH and NEP, based on the percentage of the outstanding stock of Connecticut Yankee owned by each Sponsor. The Sponsors are obligated under their separate Capital Funds Agreements with Connecticut Yankee to contribute capital to Connecticut Yankee under certain defined

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circumstances based on each Sponsor's percentage of common stock ownership.

Connecticut Yankee proposes to incur up to \$25,000,000 of revolving credit bank loans (the "Revolving Credit Loans"), which will replace the \$50,000,000 Revolving Line of Credit which Connecticut Yankee had and was approved by this Commission in Docket DF 81-236 Report and Order No. 15,288 (NHPUC Vol. LXVI @ 499). The proposed Revolving Credit Loans are to be guaranteed severally, not jointly, by the Sponsors.

Mr. O'Connor stated that the Revolving Credit Loans are to be incurred under an agreement (the "Credit Agreement") to be entered into with the Connecticut Bank and Trust Company N.A., and the Connecticut National Bank, Manufactures Hanover Trust Company, and Bay Bank Valley Trust Company, N.A. (the "Banks"), each of which has agreed to loan Connecticut Yankee up to an aggregate maximum of \$25,000,000. The commitment of each Bank will be subject to reduction by Connecticut Yankee in integral multiples of \$100,000 and subject to further reduction in the event of any Sponsor's election to make loans to Connecticut Yankee on the basis described below. Within such limits, Connecticut Yankee will be able to borrow from,

repay, and reborrow from the Banks in proportion to their respective commitments from time to time for five years from the effective date of the Banks commitments (the "Termination Date").

The Revolving Credit Loans will mature on the Termination Date, and will bear interest at a rate per annum equal to the base rate of the Connecticut Bank and Trust Company, N.A.. Connecticut Yankee will pay to each Bank a stand-by commitment fee payable quarterly in arrears at the rate of 3/8 of 1% per annum on the average daily unused portion of the Bank's commitment plus a 1/8 of 1% per annum agency fee on the average daily unused portion of the commitment.

Each of the Sponsors, including PSNH and NEP, will enter into a Guarantee Agreement (the "Guarantee Agreement") with the Banks and Connecticut Yankee. Under each Guarantee Agreement, a Sponsor will guarantee severally, not jointly, its percentage share of the Revolving Credit Loans by the Banks in proportion to its stock ownership in Connecticut Yankee. The percentage shares and the maximum amount to be guaranteed are as follows:

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

Company	Ownership Percent
The Connecticut Light and Power Company	34.5
New England Power Company	15.0
Boston Edison Company	9.5
The United Illuminating Company	9.5
Western Massachusetts Electric Company	9.5
Central Maine Power Company	6.0
Public Service Company of New Hampshire	5.0
Cambridge Electric Light Company	4.5
Montaup Electric Company	4.5
Central Vermont Public Service Corporation	2.0
	-
	100.0

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The cash flow assured by the Power Contracts represents the underlying basis for the making of the Revolving Credit Loans. The Power Contracts, however, contain certain cancellation provisions under specific contingencies. Because of the potential, albeit remote, for such cancellations, the financial institutions involved will not proceed on these proposed financings unless the Sponsors issue the guarantees as proposed.

According to Mr. Branscomb and Mr. McLaren, without Sponsor guarantees as proposed, it is their understanding that Connecticut Yankee would be forced to raise the amount needed (\$25,000,000) with capital contributions or loans from the Sponsors. This would require actual cash outlays by PSNH and NEP of \$1,250,000 and \$3,750,000 respectively. It is the opinion of PSNH and NEP that it is in the best interests of their ratepayers and stockholders to enter into the proposed Guarantee Agreements rather than making such cash outlays.

Copies of the draft documents relating to the financings were submitted, as were balance sheets of PSNH and NEP and resolutions of the board of directors of PSNH approving the execution and delivery of the proposed Guarantee Agreements.

Based upon all the evidence, the Commissions finds (1) that the terms and conditions in the

draft Guarantee Agreements relating to the Revolving Credit Loans are reasonable to enable Connecticut Yankee to be used for working capital; to finance its need for additional funds in order to acquire and maintain an inventory of nuclear fuel and to make construction expenditures reasonably requisite for the continue [sic] operation of the plant, (2) that it is in the best interests of the stockholders and ratepayers of PSNH and NEP that they execute such Guarantee Agreements rather than being required to make capital contributions or loans at this time, and (3) that the issuance by PSNH and NEP of their guarantees as proposed and for the purposes described will be consistent with the public good. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that Public Service Company of New Hampshire and New England Power Company, be, and they are hereby, authorized to issue their guarantees of their respective percentage shares of the obligations of Connecticut Yankee Atomic Power Company with respect to the Revolving Credit Loans as described in the foregoing Report; and it is

FURTHER ORDERED, that the terms and conditions in the executed guarantee agreements shall be substantially as stated in the latest draft copies submitted in this proceeding and that no further written or oral supplements to or modifications of those proposed terms and conditions shall be executed without prior approval of this Commission.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1985.

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NH.PUC*03/12/85*[61007]*70 NH PUC 102*Forest Edge Water Company

[Go to End of 61007]

70 NH PUC 102

Re Forest Edge Water Company

DE 84-376, Order No. 17,490

New Hampshire Public Utilities Commission

March 12, 1985

ORDER granting petition for authority to establish a water utility and requiring tariff filing.

APPEARANCES: Joseph E. Sullivan for the Petitioner; Daniel D. Lanning and Robert B. Lessels for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By a petition filed on November 15, 1984, Forest Edge Water Company, a subsidiary of Kearsarge Building Company, Inc. of North Conway, New Hampshire and supplying water to;

[sic] customers in a limited area in the town of Conway, New Hampshire seeks authority to establish a water public utility in the area served. A public hearing on this matter was held on February 20, 1985.

HISTORY

Kearsarge Building Co. (Kearsarge) was contacted by this Commission in 1976, concerning its operation of a water system at Forest Edge. At that time they were informed of the 1973 revision to RSA 362:4 regarding the operation of central water systems as public utilities and asked to complete a General Information Form. This form sought general tariff information including rates, billing cycle and number of customers and included instructions that a utility should not change its rates nor significantly change the operation of its system without Commission authority. At the time of completion and filing the annual rate charged by Kearsarge for unmetered service was, and is to date, \$100.

Kearsarge, as Forest Edge Water Company, now seeks to establish a franchise in a limited area of Conway and to increase its rate charged for water service to a level which will permit the recovery of operating expenses. In this proceeding, the water company seeks no return on its rate base.

REVENUE REQUIREMENTS

A revenue requirement of \$6205 is based on the following operating expenses:

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

Superintendence	\$ 200
Other Production Labor	650
Power Purchased	2,100
Maintenance	
Pumping Equipment	185
Mains	1,000
Accounting Fees, Office	
Salaries, Supplies	200
Water Test Fees	52
Vehicle Expenses	625
Depreciation Expense	1,018
Taxes	150
Utility Assessment	25
	-
	\$6,205

RATES

The water system presently serves 29 customers and it is expected that 2 more will be added by the end of the year 1985. The annual rate, or charge for water service shall be:

\$6205/31 customers = \$200

The water company bills its customers in October for service provided during the preceding 12 months.

FRANCHISE

The area sought encompasses that included in the subdivision known as Forest Edge II and

shown on a plan entitled "Plan of Land in Conway, N. H., Property of Joseph Sullivan, Subdivision Plan, Forest Edge II", which is a part of the record in this docket.

The rates to be charged and the franchise area sought, as here defined, appear to us to be reasonable and thus the authority sought 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

ORDERED, that Forest Edge Water Company be, and hereby is, authorized to operate as a public water utility in a limited area in the Town of Conway, specifically the area of the Forest Edge II subdivision as shown on a map on file in this docket; and it is

FURTHER ORDERED, that Forest Edge Water Company shall file a tariff describing the terms and conditions of the service provided and the rates to be charged to recover annual revenues of \$6205, and bearing the effective date of this Report and Order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1985.

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NH.PUC*03/12/85*[61008]*70 NH PUC 104*Concord Steam Corporation

[Go to End of 61008]

70 NH PUC 104

Re Concord Steam Corporation

DF 85-61, Order No. 17,491

New Hampshire Public Utilities Commission

March 12, 1985

ORDER authorizing recovery of the undepreciated book value of abandoned plant.

By the COMMISSION:

ORDER

WHEREAS, Concord Steam Corporation has established a cogeneration facility at the plant leased by said corporation from the New Hampshire Hospital; and

WHEREAS, the exhaust of low pressure steam from this cogeneration facility into the corporations district steam system, will replace the output, and need, of a Riley Union oil-fired boiler presently on the district steam system; and

WHEREAS, the undepreciated Book Value of the Riley Union Boiler and certain associated moving and repair costs totaling \$68,791.39 will be removed from the fixed capital accounts in accordance with this Commission's system of accounts and is in the public good; it is hereby

ORDERED, that Concord Steam Corporation is hereby authorized to transfer the undepreciated Book Value of the Riley Union Boiler to NHPUC Account No. 141 - Property Abandoned, and amortize these costs, totaling \$68,791.39, over a ten year period beginning January 1, 1985.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1985.

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NH.PUC*03/12/85*[61009]*70 NH PUC 105*Public Service Company of New Hampshire

[Go to End of 61009]

70 NH PUC 105

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Division of Human Resources, Business and Industry Association of New Hampshire, and Volunteers Organized in Community Education

DR 82-333, 17th Supplemental Order No. 17,492

New Hampshire Public Utilities Commission

March 12, 1985

ORDER setting procedural schedule for investigation into proposed lifeline rate tariff revisions.

By the COMMISSION:

REPORT

On November 30, 1984, Public Service Company of New Hampshire ("PSNH" or "Company") filed certain tariff revisions which, inter alia, extend PSNH's present pilot program of targeted lifeline rates to its entire service territory while at the same time eliminating the tariffs which offer residential customers non-targeted lifeline rates which had previously been approved in this docket. By Order of Notice dated December 19, 1984, the Commission suspended the proposed tariff revisions and set a pre-hearing conference for January 18, 1985 to determine a procedural schedule.

In the course of the January 18, 1985 pre-hearing conference, it became apparent that there was significant disagreement among the parties as to a proper time schedule to complete our investigation of the proposed tariff. PSNH, Community Action Program ("CAP"), Division of Human Resources ("DHR") and the Business and Industry Association of New Hampshire ("BIA") requested that the tariff filing be implemented by March 1, 1985 with a subsequent investigation by the Commission. The results of that investigation would then be retroactive to the March 1, 1985 implementation date. Volunteers Organized in Community Education ("VOICE") believed that the proposal should be investigated prior to the implementation of the proposed tariff. The Staff agreed that the portion of the tariff implementing the non-targeted lifeline rate on a systemwide basis could go into effect on March 1, 1985 pending investigation;

however, the portion of the tariff which flattens existing Rate D must remain in effect until the completion of the investigation. The Staff acknowledged that its approach was unacceptable to PSNH and, in the alternative, suggested a procedural schedule for an investigation which would bring the matter to hearing on April 19, 1985; a date subsequent to the March 1, 1985 implementation date requested by PSNH, CAP, DHR and the BIA. The Staff noted that its procedural schedule

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assumed that this docket would be treated on an expedited basis and, thus, would be given priority status over other dockets.

On January 29, 1985 PSNH submitted a letter to the Commission which acknowledged that other dockets, including pending PSNH dockets, should not be displaced by the need to adjudicate the lifeline issues in this docket. Accordingly, the Company recommended that, if the PSNH, CAP, and DHR proposal is not adopted, a procedural schedule be established that would result in the resolution of the lifeline issues prior to the commencement of the 1985-86 CAP fuel assistance program in October, 1985.

We have reviewed the proposals of the parties as well as the Commission's calendar. It is our conclusion that we cannot permit the Company to flatten its existing Rate D without the proposal first being the subject of a Commission investigation. Accordingly, the proposal to implement PSNH's proposed tariff pending adjudication is rejected. We do believe, however, that it is reasonable to expect the Commission to complete its investigation prior to the 1985-86 winter heating season. Accordingly, we will accept the proposal of PSNH, DHR and CAP to establish a procedural schedule which will allow us to resolve the issues in this docket prior to October of 1985.

After review, we will establish the following procedural schedule:

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

March 29, 1985	PSNH, CAP and DHR Supplemental Prefiled Testimony and Exhibits ¹
April 19, 1985	Data Requests on all Prefiled Testimony and Exhibits
May 3, 1985	Responses to Data Requests
June 7, 1985 Staff and remaining	Prefiled Testimony and Exhibits of Intervenors
June 21, 1985	Data Requests on Staff and remaining Intervenor Prefiled Testimony and Exhibits
July 9, 1985	Responses to Data Requests

July 16, 17 and 18, 1985 Hearings

¹We recognize that several parties have already prefiled testimony and exhibits in this proceeding. However, we believe that they should have an opportunity to supplement their filing by more directly connecting their analysis to the standards which govern this proceeding. See, Re Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563, 584-587 (1984). See also, Report and Eighteenth Supplemental Order No. 16,460 (68 NH PUC 389); and Report and Seventeenth Supplemental Order No. 16,356 (68 NH PUC 216).

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the procedural schedule for the investigation of Public Service Company of New Hampshire's proposed tariff revisions filed on November 30, 1985 (and suspended by Order of Notice dated December 19, 1984) shall be as set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1985.

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NH.PUC*03/12/85*[61010]*70 NH PUC 107*Manchester Water Works

[Go to End of 61010]

70 NH PUC 107

Re Manchester Water Works

DE 85-45, Order No. 17,493

New Hampshire Public Utilities Commission

March 12, 1985

ORDER nisi authorizing extension of the franchise area of a water utility.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed February 19, 1985, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; 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 Londonderry, has stated that it is in accord

with the petition; and

WHEREAS, after investigation and consideration, this 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 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 April 1, 1985; and it is

FURTHER ORDERED, that Manchester Water Works 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 18, 1985 and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its franchise in the Town of Londonderry in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point along the center line of Rockingham Road where

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said road intersects with the westerly most boundary line of the southbound lane of Interstate 93, said point being the easterly most existing franchise limit in Rockingham Road, as granted by Order No. 14,390 and IE 14,495, dated July 29, 1980; from this point continuing easterly following the path and contour of the center line of Rockingham Road to its intersection with the center line of Auburn Road; thence northerly and following along the center line of the path and contour of Auburn Road to its intersection with the center line of Ingersoll Road, so called; thence southeasterly and following along the center line of the path and contour of Ingersoll Road to its intersection with the center line of Liberty Drive, so called; thence northerly and following along the center line of the path and contour of Liberty Drive a distance of 2,000+ feet to its end. Said area more specifically set forth on a map hereto attached.

and it is

FURTHER ORDERED, that such authority shall be effective on April 2, 1985 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 twelfth day of March, 1985.

=====

NH.PUC*03/12/85*[61011]*70 NH PUC 109*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61011]

70 NH PUC 109

Re Continental Telephone Company of New Hampshire, Inc.

DR 85-59, Order No. 17,494

New Hampshire Public Utilities Commission

March 12, 1985

ORDER approving expansion of local exchange telephone utility's "usage pricing service."

By The COMMISSION:

ORDER

WHEREAS, on March 1, 1985, Continental Telephone Company of New Hampshire, Inc. (CONTEL-NH) filed with this Commission revisions to its tariff, NHPUC No. 11, by which it proposes to expand Usage Pricing Service to the Antrim, Henniker, and Melvin Village Exchanges; effective April 1, 1985; and

WHEREAS, the terms and conditions of such service duplicates that already approved by this Commission for the CONTEL-NH Hollis and Hillsboro Exchanges, and the pricing matches that of the latter; and

WHEREAS; since the Commission finds this filing consistent with its earlier decision in Docket DR83-136, and in the public good; it is

ORDERED, that Section 3, 9th Revised Sheet 1 and 2nd Revised Sheets 6, 9, and 11, Continental Telephone Company of New Hampshire, Inc. tariff, NHPUC No. 11, be, and hereby are, approved for effect on April 1, 1985.

By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 1985.

=====

NH.PUC*03/13/85*[61012]*70 NH PUC 110*Public Service Company of New Hampshire

[Go to End of 61012]

70 NH PUC 110

Re Public Service Company of New Hampshire

Intervenors: Seacoast Anti-Pollution League, Community Action Program, Office of Consumer Advocate, and Campaign for Ratepayers' Rights

DF 84-200, Seventh Supplemental Order No. 17,495

New Hampshire Public Utilities Commission

March 13, 1985

ORDER denying motion to prevent an electric utility from "stepping-up," level of nuclear power

plant construction.

Electricity, § 3 — Generating plants — Nuclear plant under construction — Spending limits — "Step-up" of construction level.

An electric utility was permitted to step-up construction activities at the Seabrook nuclear power plant despite claims that the step-up would violate a previous commission order that limited expenditures to a certain amount per week; the commission concluded that a step-up in construction activities, as proposed, would not violate the quantitative or qualitative rationales of the previous order.

(Aeschliman, commissioner, concurs, p. 112.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

The purpose of this Order is to rule on the Motion to Order Public Service Company of New Hampshire (PSNH) to comply with the Commission's Report and Order No. 17,222 (69 NH PUC 522) in Re PSNH, Docket No. DF 84-167. The Motion was orally submitted by the Seacoast Anti-Pollution League (SAPL) on the record in this docket at Tr. Vol. 38, pp. 7518-7522. The Motion was supported by the Community Action Program (CAP), the Consumer Advocate and the Campaign for Ratepayers' Rights (CRR). It was opposed by PSNH. Id. at 7522-7523.

The Motion is based on a condition imposed on PSNH's \$425 million unit financing in Re PSNH, which provided (69 NH PUC at p. 541):

2. Public Service Company of New Hampshire is prohibited from spending or contributing cash for the purpose of constructing Seabrook at a level that exceeds 35.56942% of \$5,000,000 per week until specifically authorized by a further order issued by this Commission in DF 84-200 ...

In the course of the evidentiary hearings in the instant proceeding, Mr. Robert Harrison, PSNH's President and Chief Executive Officer testified¹⁽¹⁷⁾ that

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approximately \$40,000,000 of the construction funds allocated to Seabrook since August of 1984 had not been spent. These funds were a part of the \$5,000,000 per week authorized for construction by the Joint Owners and subject to the limitation set forth above. The funds exist because of economies of operation; economies which were accomplished without causing the project to miss a major milestone. Mr. Harrison stated that it was the Joint Owners' intention to step up the level of construction as of March 1, 1985 and that the funding for such a step-up would come from the \$40,000,000 previously identified. SAPL, the Consumer Advocate, CAP and CRR objected to the step-up in construction claiming that it is inconsistent with the

condition set forth in Order No. 17,222.

The Movants claim that a step-up in construction is inconsistent with the rationale of Order No. 17,222 which was based on the need to maintain the status quo, to the extent possible, at Seabrook pending our determinations in the instant docket. PSNH maintained that it is adhering to the \$5,000,000 per week limitation. Additionally, PSNH claims that the step-up in construction is consistent with the Commission's rationale which, PSNH claims, was to limit the amount of direct Seabrook construction expenditures to less than 10% of the financing approved in that docket. After review, we will deny the Motion. Our decision is based on how we have construed the above-referenced limitation in Order No. 17,222.

The \$5,000,000 per week limitation was based on both a quantitative and qualitative rationale. The quantitative rationale involved analysis of how much of the financing approved in that docket would be devoted to direct Seabrook expenditures. Since our limitation ensured that it would be less than 10%, we were justified in deferring the more fundamental Seabrook issues to the instant docket. The qualitative rationale involved a determination that the construction program at a \$5,000,000 per week level would preserve a realistic opportunity to adjudicate the Seabrook issues in the instant docket. This is consistent with the Court's language in 125 N.H. 465, 482 A.2d 509 (1984) which held:

There is no question that in a perfect world it would be preferable to make the inquiry into alternatives before another penny is spent. There is apparently no question, as the appellants argue, that the object of this financing includes the ultimate completion of the first Seabrook unit. These two conclusions, however, do not carry the appellants' burden to demonstrate that the approval of this financing effectively eliminates a realistic consideration of alternatives to the completion of Seabrook." Slip Opinion at 10.²⁽¹⁸⁾

There has been no contention that PSNH will spend or contribute an

Page 111

amount which exceeds \$5,000,000 per week over the applicable time period. Thus, the Motion rests on an assertion that the qualitative rationale will be violated. That issue is addressed in the context of whether the proposed stepup in construction will eliminate a realistic consideration to Seabrook alternatives in this docket.

After review of the record, we conclude that the step-up in construction activity at Seabrook, as proposed, will not present the Commission or the parties with what is, in effect, a fait accompli on the issue of whether continued construction of Seabrook Unit I is a preferable alternative. Even with the construction step-up, the record establishes that there are considerable "to go" costs, ratepayer exposure will be no greater than that contemplated in Order No. 17,222 and our ability to adjudicate all issues in this docket is maintained. Accordingly, we conclude that PSNH's proposed step-up in construction activity is consistent with the condition established in Order No. 17,222. The Motions are therefore denied.

Our Order will issue accordingly.

CONCURRING OPINION OF COMMISSIONER AESCHLIMAN

The Motion of the Seacoast AntiPollution League (SAPL) is directed at whether Public

Service Company of New Hampshire (PSNH) is in compliance with the conditions imposed by the Commission in Re PSNH, Report and Seventh Supplemental Order No. 17,222 (69 NH PUC 522). Since I dissented from that Order, my analysis must be in the context of that dissent. There, I stated that I would have allowed PSNH to finance up to \$125 million to meet its expenses in the period of time necessary to adjudicate DF 84-200. I did not intend to control the level of Seabrook construction activity so long as it was consistent with the cash flow restrictions dictated by the limited \$125 million financing. Since PSNH's proposed step up in construction activity is consistent with my dissent, I concur in the Commission's decision to deny the SAPL Motion.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion of the Seacoast Anti-Pollution League, the Consumer Advocate, the Community Action Program and the Campaign for Ratepayers' Rights to Order Public Service Company of New Hampshire to comply with Order No. 17,222 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1985.

FOOTNOTES

¹The testimony summarized below may be found generally at Tr. 7509-7510.

²See also, Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984), slip opinion at 5-6 where the Court stated: "We reason today as we reasoned in Re Seacoast Anti-Pollution League, supra that the commission did not act illegally or unreasonably in the circumstances of this case when it chose to defer the Easton inquiry. Those circumstances include the small amount of the financing that will go for new construction, and the very small proportion of that amount compared to the company's investment in Seabrook to date, of more than a billion dollars; the commission's finding of the risk, if not the certainty, of bankruptcy if consideration of this financing were to await an Easton hearing; and the existence of a genuine opportunity for an Easton hearing in the near future in connection with the Newbrook financing."

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NH.PUC*03/13/85*[61013]*70 NH PUC 113*Public Service Company of New Hampshire

[Go to End of 61013]

70 NH PUC 113

Re Public Service Company of New Hampshire

Intervenors: Seacoast Anti-Pollution League, Conservation Law Foundation of New England, Inc., Campaign for Ratepayers' Rights, Office of Consumer Advocate

DF 84-200, Eight Supplemental Order No. 17,496

New Hampshire Public Utilities Commission

March 13, 1985

ORDER denying requests for the opportunity to cross-examine an electric utility concerning its responses to a request for financial data.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

This Order addresses the March 6, 1985 request of the Seacoast AntiPollution League (SAPL), the Conservation Law Foundation of New England, Inc. (CLF), the Campaign for Ratepayers' Rights (CRR) and the Consumer Advocate (jointly referred to as "Movants") for an opportunity to engage in further cross-examination of the so-called "Request Ten" scenario filed with the Commission by Public Service Company of New Hampshire (PSNH) on March 1, 1985.

On February 11, 1985, the Movants submitted to PSNH a data request which asked PSNH to perform and supply 10 additional financial scenarios reflecting various assumptions defined by the Movants. PSNH replied on February 14, 1985 (See, Exh. 139) claiming that it would be unable to comply fully with the data request within a reasonable time and offering alternatives. On February 20, 1985, the Commission ordered PSNH to supply to the Movants one of the alternatives to the data request described in PSNH's reply. See, Tr. at 6814-15. The deadline for the information was March 1, 1985.

One of the financial scenarios which PSNH was directed to file was the so-called Request Ten, a scenario which was to reflect a combination of all assumptions described by the Movants. Request Ten, as was the case for all the requests, was to utilize the Company's base case (See, Exh. 99-B) varied by the described assumptions. All financial scenarios were to be performed using the same model and the same procedures.

On March 1, 1985, PSNH filed its response to the data request. On March 6, 1985, the Movants filed a letter which stated, inter alia, that in Request Ten, PSNH had varied assumptions from those employed in the base case; assumptions which the Movants had not requested it to vary. Specifically, the Movants stated that in PSNH's base case, dividends on common equity resume in 1987. In Request Ten, such

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dividends resume in 1990. Because the assumptions were varied to an extent not anticipated by the Movants, the Movants requested an opportunity to engage in further cross-examination.

PSNH's March 8, 1985 response states that the Movant's March 6, 1985 letter reflects a fundamental misunderstanding of PSNH's modeling process. PSNH then described how the model works and represented that Request Ten used the same model and procedures employed in producing the PSNH base case.

After review of the above arguments, we find that the Movants have not identified any

information which must be elicited through additional crossexamination. The Movants' concerns can be addressed through argument, analysis of the data contained in the Request Ten response as well as all other financial scenarios admitted into evidence, analysis of record evidence which contains extensive discussion of how the financial modelling process works and, if necessary, additional data requests. Certainly, after 38 days of evidentiary hearings, 7551 pages of transcript and over 173 exhibits, additional cross-examination represents the least attractive of the various alternative mechanisms for the Movants to present their point of view to the Commission. Since we have found that such alternative mechanisms exist, we will deny the Movants request.

SUPPLEMENTAL ORDER

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

ORDERED, that the request of SAPL, CLF, CRR and the Consumer Advocate for the opportunity to engage in further cross-examination be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1985.

=====

NH.PUC*03/18/85*[61014]*70 NH PUC 115*Fuel Adjustment Clause

[Go to End of 61014]

70 NH PUC 115

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-32, Supplemental Order No. 17,499

New Hampshire Public Utilities Commission

March 18, 1985

ORDER permitting fuel adjustment clauses to become effective without a hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC

hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing; it is

ORDERED, that 135th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$1.14 per 100 KWH for the month of March, 1985, be, and hereby is, permitted to become effective March 11, 1985.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1985.

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NH.PUC*03/18/85*[61015]*70 NH PUC 116*Oda J. Caron, d/b/a Caron and Sons Mobil

[Go to End of 61015]

70 NH PUC 116

Re Oda J. Caron, d/b/a Caron and Sons Mobil

DT 76-140, Supplemental Order No. 17,500

New Hampshire Public Utilities Commission

March 18, 1985

ORDER revoking property carrier certificate of public convenience and necessity.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Oda J. Caron, d/b/a Caron and Sons Mobil, of Merrimack, New Hampshire, was authorized by this Commission by Order No. 12,531, dated December 20, 1976, to operate as an irregular route common carrier of property for compensation by motor vehicle as follows:

Transportation of wrecked, disabled, repossessed and stolen motor vehicle between all points and places in Hillsborough County, and between all points and places in Hillsborough County on the one hand and all points and places in New Hampshire on the other;

and

WHEREAS, the service is no longer being rendered; it is hereby

ORDERED, that Property Carrier Certificate of Public Convenience and Necessity #431, as issued through Order No. 12,531, dated December 20, 1976, be, and hereby is, revoked.

By order of the Public Utilities Commission of New Hampshire, this eighteenth day of March, 1985.

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NH.PUC*03/18/85*[61016]*70 NH PUC 117*New Hampshire Electric Cooperative, Inc.

[Go to End of 61016]

70 NH PUC 117

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, Eleventh Supplemental Order No. 17,501

New Hampshire Public Utilities Commission

March 18, 1985

ORDER denying request for rehearing on prior order denying motion for recusal from participation in investigation into electric utility's participation in Seabrook nuclear project.

APPEARANCES: As previously noted.

REPORT

On March 7, 1985, Roger Easton filed a Motion for Rehearing regarding the Commission's Report and Ninth Supplemental Order No. 17,464 (February 22, 1985). In this Order, I will address the portion of that Motion which is directed at my denial of Gary McCool's Motion for Recusal.

I must state that I find it unusual that a Motion for Rehearing was filed by a party who had not joined in the original Motion; particularly when no other party, including the original Movant, filed such a Motion for Rehearing.

However, I recognize that an allegation of bias is not a matter to be treated lightly and that any concerned party deserves a direct response. Accordingly, I will address and rule on the assertions contained in Roger Easton's Motion.

The Motion asserts that my ruling on Mr. McCool's Motion for Recusal was unreasonable because it was inconsistent with the Court's holding in *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984). In particular, Roger Easton construes that decision to mean that since I delivered a public speech that included a discussion of Seabrook, I must disqualify myself from every docket in which a Seabrook issue is included.

There is no question that the proposed financing of the New Hampshire Electric Cooperative, Inc. (Co-op) must examine, *inter alia*, the issue of whether the Co-op's continued participation in the Seabrook project is in the public good. To the extent that the Motion implies that my denial of Mr. McCool's Motion for Recusal was grounded on a finding that this is a non-Seabrook matter, it is simply incorrect. My decision was based on an examination of the contents of the entire public speech, in context, to determine whether it would lead a reasonable person to conclude that I had prejudged issues in the instant Co-op financing docket. *Re SAPL*, *supra*. McCool's Motion took particular words and phrases from the speech and used them out of context. My examination of the total speech — the

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portion cited by Roger Easton in his Motion for Rehearing and the portions which Roger

Easton decided not to cite — leaves me convinced that it cannot stand as a factual basis for a conclusion that I have prejudged how I will evaluate any evidence or past Commission findings pertinent to Seabrook as it will relate to the Co-op. It is clear that the Portsmouth speech was directed at the problems of PSNH; no party has contended seriously that it should be read as an analysis of the particular circumstances confronting the Co-op. It has not been disputed that the impact of Seabrook on the Co-op is different than its impact on PSNH. See e.g., Transcript of January 30, 1985 at 13. Accordingly, the Motion is denied.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Roger Easton on the assertion set forth at paragraph 2 of that Motion be, and hereby is, denied.

=====

NH.PUC*03/20/85*[61017]*70 NH PUC 118*New England Telephone and Telegraph Company

[Go to End of 61017]

70 NH PUC 118

Re New England Telephone and Telegraph Company

Additional petitioner: New Hampshire Electric Cooperative, Inc.

DE 84-385, Order No. 17,503

New Hampshire Public Utilities Commission

March 20, 1985

ORDER granting joint petition by electric utility and telephone utility for an easement to place and maintain aerial plant crossing state owned railroad tracks.

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By the COMMISSION:

REPORT

On December 14, 1984 a joint petition of the New England Telephone and Telegraph Company and the New Hampshire Electric Cooperative, Inc. was received for the purpose of an easement to place and maintain telephone and electric company aerial plant over the railroad tracks in Meredith, New Hampshire for the purpose of providing residential utility service to the proposed residence of Mr. Norman Boyer.

On December 18, 1984 an Order of Notice was issued setting a hearing for January 11, 1985 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Kathy Veracco, New England Telephone Company, (for publication); Mr. Earl Hanson, Plant Manager, New Hampshire Electric Cooperative, Inc.; Mr. Norman Boyer; and the office of the Attorney

General.

On January 10, 1985 a letter to parties was forwarded rescheduling the hearing for Wednesday, January 23, 1985 at the request of the State of New Hampshire Railroad Division. The extension was in recognition of their not being notified of the scheduled hearing.

On January 2, 1985 an affidavit of publication was received from New England Telephone Company confirming that publication was made in The Union Leader on December 24, 1984. On January 2, 1985 an affidavit of publication was received from the New Hampshire Electric Cooperative, Inc. confirming that publication was made in The Union Leader on December 24, 1984.

Mr. Earl Hanson testified on behalf of the New Hampshire Electric Cooperative, Inc. The subject location is within the maintenance area of the New Hampshire Electric Cooperative. The Company offered an exhibit identifying the existing pole line along the westerly side of the state-owned railroad bed and identifying a proposed crossing to the Boyer residence at pole 12101/18. In view of further testimony brought forward by the other parties in this matter which identified an existing crossing at pole 12101/20 to existing customers, and in view of the potential for development in the area in question, the hearing was postponed to allow all parties to reconsider the matter and offer a single crossing which would serve all parties.

On February 15, 1985 an amended petition was submitted by both parties identifying a new crossing location which would serve all parties along the shore of Lake Winnepesaukee. On March 11, 1985 a public hearing was held on the matter at the Commission's Concord offices. The petitioners propose to abandon approximately 800 feet of existing utility plant on the westerly side of the railroad property and to construct an overhead crossing at the previously designated pole 12101/18. A new pole line will be constructed southerly along the easterly edge of the state right-of-way in order to serve any potential customers along the shore. No further crossings will be required for future service. The three existing customers who were previously served by the old pole line will be served by the new pole line.

Mr. John Clements, representing the New Hampshire Railroad Division offered no objection to the revised plan.

We will find the crossing to be in the public interest. It will serve at least four customers along the westerly shore of Meredith Bay and will be capable

Page 119

of serving four additional customers if a proposed development comes to fruition. The single overhead utility crossing will be constructed in accordance with the National Electric Safety Code.

Our Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the New England Telephone and Telegraph Company and the New Hampshire Electric Cooperative, Inc. for an easement to place and

maintain aerial plant crossing state-owned railroad tracks in Meredith, New Hampshire to provide electric and telephone service to the Norman Boyer residence, at a specific location identified as an exhibit in this docket.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1985.

=====

NH.PUC*03/21/85*[61018]*70 NH PUC 120*Kona, Inc.

[Go to End of 61018]

70 NH PUC 120

Re Kona, Inc.

DE 83-137, Supplemental Order No. 17,508

New Hampshire Public Utilities Commission

March 21, 1985

ORDER requiring water utility to appear before the commission.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, in this docket, Kona, Inc. sought a finding and Order from this Commission, that would allow it to terminate the water service provided to its present customers in Moultonboro, New Hampshire; and

WHEREAS, in its petition Kona, Inc. alleges that it cannot economically maintain this system to serve the few (6) customers presently being served; and

WHEREAS, at the public hearing held on this matter on October 24, 1984, the petitioner presented estimated operating expenses for the year 1983 and provided no witness to establish actual 1983 or 1984 expenses that would enable the Commission to make a finding as to the economics of the authority sought; and

WHEREAS, in its Report and Order No. 17,310 the Commission found that the evidence presented was insufficient to decide the merits of the authority sought and ordered that certain forms and data as required under RSA 378 and Commission rules be filed by February 1, 1985; and

WHEREAS, Kona, Inc. has not complied with Order No. 17,310, nor contacted this Commission; it is hereby

ORDERED, that Kona, Inc. appear before the Commission at 2:00 p.m. on April 8, 1985 to show cause why the Commission should not invoke the penalties and provisions of RSA 374:41, 365:40 et. seq. or 374:17.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of

March, 1985.

=====

NH.PUC*03/21/85*[61019]*70 NH PUC 121*Granite State Telephone Company

[Go to End of 61019]

70 NH PUC 121

Re Granite State Telephone Company

DR 85-35, Order No. 17,509

New Hampshire Public Utilities Commission

March 21, 1985

ORDER denying petition by telephone utility to amortize costs related to annuities purchased for an employee.

By the COMMISSION:

ORDER

WHEREAS, Granite State Telephone has requested authorization to amortize the costs related to annuities purchased for Loren P. Rand over a period of five years, commencing July 1, 1984 and continuing to June 30, 1988; and

WHEREAS, Granite State Telephone has proposed to set up the annuity as a deferred charge in the amount of \$301,013.50; and

WHEREAS, Granite State Telephone claims that Mr. Rand was not included in it's pension plan because the cost was high due primarily to the age factor when the plan was established in December; 1977; and

WHEREAS, the Commission has investigated the rate of return earned by Granite State Telephone since 1977 and the growth in the equity in the balance sheet and the salary of Mr. Rand during that period; it is

ORDERED, that the request to set up a deferred charge to be amortized over five years is denied; and it is

FURTHER ORDERED, that Granite State Telephone write off one-fifth of the cost of the annuity in calendar year 1984, with the balance to be booked as a prior years adjustment directly to retained earnings.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of March, 1985.

=====

NH.PUC*03/21/85*[61020]*70 NH PUC 122*New England Telephone and Telegraph Company

[Go to End of 61020]

70 NH PUC 122

Re New England Telephone and Telegraph Company

Intervenor: Community TV Corporation and Department of Resources and Economic Development

DE 84-373, Order No. 17,511

New Hampshire Public Utilities Commission

March 21, 1985

ORDER granting petition by local exchange telephone utility for license to construct pole line facilities crossing state property.

APPEARANCES: For the Petitioner, Phillip Huston, Esquire, New England Telephone Company; James Carter, DRED; Harmon White, Community TV Corp.

By the COMMISSION:

REPORT

On December 10, 1984 the New England Telephone Company filed with this Commission a petition to construct and maintain pole line facilities crossing the Belknap State Reservation along the Carriage Road and ahead to the summit of Mount Belknap in Gilford, New Hampshire.

On December 31, 1984 an Order of Notice was issued setting a hearing for January 30, 1985 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Kathy Veracco, New England Telephone Company for publication; Gerald Eaton, Esquire, Community Action Program; Michael Holmes, Consumer Advocate; and the Attorney General's office. An affidavit was filed on January 23, 1985 confirming that publication was made in The Union Leader on January 11, 1985.

The hearing was held as scheduled. During the proceedings it was determined that there was inadequate evidence upon which to base an opinion by the Commission although the Company admitted that the line had already been constructed and was in service. The hearing was recessed pending further investigation.

On February 4, 1985 a new Order of Notice was issued setting the matter for hearing on February 12, 1985 at 10:00 a.m. in the Commission's Concord offices. The notice directed the attendance of representatives of the New Hampshire Division of Forests and Lands and the Community TV Corporation and further directed New England Telephone Company to be prepared to offer evidence as to why it should not be prosecuted for constructing and maintaining pole line facilities across Belknap State Reservation without proper Commission authority.

On February 5, 1985 the New England Telephone Company requested that the hearing be rescheduled. The

request was granted and the hearing rescheduled for February 19, 1985 at 11:00 a.m.

Witnesses testified that telephone service extended to the top of Belknap Mountain prior to 1951 for the purpose of servicing state operations at the summit. No license for such facilities exist and, in fact, none are needed (RSA 378:18). On October 31, 1951 a lease was accepted by the New Hampshire Department of Resources and Economic Development which allowed Community TV Corporation to construct a pole line to the top of the mountain. The lease provided that the pole line would extend along the existing telephone line. No license from this Commission was sought.

The first lease to Community TV in 1951 stated specifically that there was an existing telephone line and that a new power line and cable line for Community TV Corporation would be located on the right-of-way. The power line was privately owned by Community TV Corporation and was metered at the lower end of the telephone pole line.

In June 1984 New England Telephone installed a State Police circuit up the mountain. The Company discovered that their existing buried cable, which was installed in 1967, had no spare capacity, and an arrangement was made to utilize Community TV's pole line for a new telephone cable to serve all parties at the summit. Some reconstruction of the pole line was necessary to accommodate the new facilities, and New England Telephone assumed responsibility for that reconstruction.

The work was completed on November 13, 1984.

The Division of Forests and Lands gave conditional approval to the project in a letter to New England Telephone dated October 10, 1984. The letter set forth the following conditions:

1. The existing surface cable should be removed from state land.
2. The brush should be chipped or lopped so that it lies within two feet of the ground.
3. All brush should be kept back a minimum of 50 feet from the edge of the trail.
4. Trimming should be kept to a minimum within view of the trail and particularly where the line crosses the trail.
5. All damage to all existing trail water bars be repaired before completion of the work.

Mr. James F. Carter, Chief Land Management, testified that, in view of the Company's response to their conditions, he recommended that the Commission approve the petition.

Mr. Harmon S. White testified for Community TV Corporation. He confirmed that the pole line had been erected by his company in 1951 in order to carry TV cable and some electrical lines to the summit, under a lease arrangement with the Department of Resources. He was unaware as to whether a license to install the pole line was obtained from this Commission at the time of the installation. Assurance was given the Commission that the license issue would be investigated and if no such license were found, the Company agreed to make a proper submission.

The Commission is satisfied that the need for the pole line and services to the summit of

Belknap Mountain are in the public interest. We find no reason to deny the request for the license

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on the basis of need. We are also satisfied that the requirements of the landowner, the State of New Hampshire, have been addressed and satisfied, as noted by the State's Witness. We are also satisfied that in view of the difficulty in tracing the licensing history of the various lines up the mountain, and in view of the obvious good intent of the New England Telephone Company to provide requested telephone service to a requesting customer, that no penalties or prosecution need be further considered.

We will approve the request of the New England Telephone Company to maintain its facilities crossing the Belknap State Reservation along the Carriage Road to the summit of Mount Belknap in Gilford, New Hampshire.

There was no issue brought before us as to the authority of the Community TV Corporation to maintain its facilities up the mountain. In the absence of a response from the Company we cannot yet know whether or not such authority already exists. Community TV Corporation is cautioned that, in the absence of proper authority, its facilities on Belknap Mountain may be in place unlawfully. Since the authority to approve licenses under such conditions rests with this Commission, we cannot allow this matter to go on unresolved. We must note that there has been no response from the Company since the date of the hearing of February 19, 1985. We will therefore direct Community TV Corporation to provide this Commission, by April 1, 1985, either a copy of the approved license giving them authority to have their poles and equipment on state land, or to provide us with a petition upon which we can act to provide them the proper authority to continue doing so. Our Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the New England Telephone Company to construct and maintain pole line facilities crossing the Belknap State Reservation along the Carriage Road and ahead to the summit of Mount Belknap in Gilford, New Hampshire; and it is

FURTHER ORDERED, that Community TV Corp. provide this Commission, by April 1, 1985, either with a copy of an existing license to maintain its facilities at the same location or to submit a petition requesting proper authority to do so.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of March, 1985.

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NH.PUC*03/21/85*[61021]*70 NH PUC 125*Policy Water Systems, Inc.

[Go to End of 61021]

70 NH PUC 125

Re Policy Water Systems, Inc.

DR 84-321, Supplemental Order No. 17,512

New Hampshire Public Utilities Commission

March 21, 1985

ORDER setting schedule for water utility rate making proceedings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 25, 1985, Policy Water Systems, Inc. (Policy) filed an Objection To Prehearing Order And Motion alleging, inter alia, certain errors in Commission Order No. 17,447 (70 NH PUC 58) including failure to specify the issues involved in this docket; and

WHEREAS, on March 12, 1985, Policy filed a Motion requesting a two month postponement of the ratemaking proceedings pending final agreement on the sale of the water company (subject to Commission approval) and offering to defer exercise of its rights to put the filed rates into effect under bond, pursuant to RSA 378:6, for two months beyond the statutory date; and

WHEREAS, the Commission business will not allow acceptance of the entire schedule, as proposed by Policy; it is hereby

ORDERED, that Policy's Motion, dated March 12, 1985, proposing, inter alia a procedural schedule, will be accepted in part and rejected in part; and it is

FURTHER ORDERED, that the schedule for ratemaking proceedings is as follows:

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

May 6, 1985	Respondent's response to all staff and intervenor data requests.
May 27, 1985	Staff, intervenor, and additional company testimony due.
June 4, 1985	Staff, company, and intervenor data requests due.
June 18, 1985	Responses to all data requests due.
July 8 & 9, 1985	Hearing Dates.

and it is

FURTHER ORDERED, that this order will become effective on March 29, 1985 subject to confirmation prior to that date by Policy that it will not exercise its rights under RSA 378:6 until at least August 14, 1985; and it is

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FURTHER ORDERED, that all issues not addressed herein concerning Policy's Motion of

February 25, 1985, and which are not rendered moot through this order, are deferred without prejudice pending a final determination of the sale of the water company, whereupon Policy or its successor may renew its motion.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of March, 1985.

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NH.PUC*03/25/85*[61022]*70 NH PUC 126*New Hampshire Electric Cooperative, Inc.

[Go to End of 61022]

70 NH PUC 126

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 12th Supplemental Order No. 17,513

New Hampshire Public Utilities Commission

March 25, 1985

ORDER denying motion for rehearing on procedural schedule for investigation of electric utility's participation in Seabrook nuclear project.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On February 22, 1985, the Commission issued Report and Ninth Supplemental Order No. 17,464 (70 NH PUC 71) (Procedural Order) which, inter alia, established a procedural schedule for adjudicating the remaining issues in this docket. In a separate concurring opinion to the Procedural Order, Chairman McQuade denied Gary McCool's Motion for Recusal. On March 7, 1985, Roger Easton filed a Motion for Rehearing which averred, inter alia, that the procedural schedule established by the Commission is unreasonable and that Chairman McQuade erred in denying Gary McCool's Motion. In this Order, we will address the contention on the procedural schedule. Chairman McQuade has addressed the portion of the Motion directed at his ruling in a separate Order.

The Motion states that the procedural schedule is unreasonable because it does not provide sufficient time for parties to prepare due to possible mail delays. Mr. Easton's assertion is not persuasive. The procedural schedule is "tight"; however, such intervals are necessary given the deadline we established for resolving this docket. If a party finds that he is having difficulty meeting a particular deadline, we will entertain an appropriate Motion. However, given the history and circumstances of this proceeding, a general claim that the entire procedural schedule is unreasonable must be rejected.

We are nevertheless sympathetic to the problem of mail delays. Accordingly, we will direct the parties to contact the other parties at the time documents are filed in order to arrange for

expeditious and, if possible, personal service. Additionally, all documents filed with the Commission are available for public inspection during Commission business hours.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Roger Easton on the assertion set forth at paragraph 1 of that Motion be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentyfifth day of March, 1985.

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NH.PUC*03/25/85*[61023]*70 NH PUC 127*New Hampshire Electric Cooperative, Inc.

[Go to End of 61023]

70 NH PUC 127

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, Thirteenth Supplemental Order No. 17,514

New Hampshire Public Utilities Commission

March 25, 1985

MOTIONS for administrative notice and suspension of procedural schedule; granted in part and denied in part.

Evidence, § 3 — Judicial notice — Matters covered — Procedure.

The commission may take official administrative notice of (1) any fact accepted in a state court; (2) the record established in prior commission proceedings; (3) generally recognized technical or scientific knowledge; or (4) codes or standards adopted by any federal, state, local, or national agency or association, but before declaring a taking of administrative notice, other parties should be given the opportunity to present their positions on the relevancy of the item in question and the need for any further related evidence. [1] p.128.

Procedure, § 12 — Stale petitions — Suspension of procedural schedule — Updating.

Although a utility's petition for a rate increase or financing authority may grow stale over time due to changing facts and figures, such staleness does not justify total suspension of the procedural schedule established for reviewing the petition; amendments and updating of supporting figures is sufficient for curing staleness. [2] p.128.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

This docket was opened to adjudicate a Petition filed by the New Hampshire Electric Cooperative, Inc. (Co-op) on November 18, 1983. The Commission granted the relief sought by the Co-op in Report and Supplemental Order No. 16,915 (69 NH PUC 137). That Order was subsequently appealed and the matter was remanded to the Commission for further investigation. *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984) (Easton). Pursuant to the Court's decision, the Commission in Report and Ninth Supplemental Order No. 17,464 (February 22, 1985) established

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a procedural schedule for adjudicating the remaining Easton issues. The Co-op filed revised testimony and exhibits on March 1, 1985. Additionally, the Commission is currently addressing the Easton issues applicable to Public Service Company of New Hampshire (PSNH) in Docket No. DF 84-200.

The purpose of this Order is to rule on two procedural Motions that have been filed as a result of the above stated history. On March 15, 1985, the Co-op filed a Motion to Take Administrative Notice. On March 19, 1985, Roger Easton and Gary McCool filed a Motion for Suspension of Procedural Schedule. We shall address each Motion in turn.

MOTION TO TAKE ADMINISTRATIVE NOTICE

[1] The March 15, 1985 Motion of the Co-op requests that the Commission take administrative notice of certain portions of the testimony and exhibits which were entered into evidence in *Re PSNH*, Docket No. DF 84-200. In ruling on this request, we are guided by RSA 541-A:18 V. (Supp. 1983) which provides, in pertinent part:

Official notice may be taken of any one or more of the following:

- (1) Any fact which may be judicially noticed in the courts of this state;¹⁽¹⁹⁾
- (2) The record of other proceedings before the agency;
- (3) Generally recognized technical or scientific facts within the agency's specialized knowledge;
- (4) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. (Footnote added). See also, N.H. Admin. Rules, Puc 203.09(f).

We also must provide notice to the parties of the material which will be administratively noticed. *Id*; See also, *Insurance Service Office v. Whaland*, 117 N.H. 712, 720 (1977). The material at issue falls within the second category as part of

"[T]he record of other proceedings before the agency". Accordingly, we may, in our discretion, grant the Coop's request. In exercising our discretion, we are concerned that we have not yet had an opportunity to hear from other parties as to, inter alia, whether the material is relevant to this proceeding or whether other material should be included from the DF 84200 record to complete an evidentiary picture.

Accordingly, we will direct the parties to file responses to the Co-op Motion no later than April 5, 1985. After review of any responses which are filed, we shall issue an appropriate ruling.

MOTION FOR SUSPENSION OF PROCEDURAL SCHEDULE

[2] The March 19, 1985 Motion of Gary McCool and Roger Easton correctly asserts that the Co-op's November 1983 Petition is stale. The Motion is also correct in its assertion that we cannot issue a final Order in this docket unless we know precisely what relief is requested and what facts justify that relief. Accordingly, we will

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direct the Co-op to file an amended Petition that conforms to its proof. N.H. Admin. Rules, Puc 204.04.

We cannot, however, grant the precise form of relief requested in the Motion. The Motion does not aver any facts which would justify a suspension of the procedural schedule pending the filing of the Co-op's amended Petition and our independent review of the procedural history does not give us the basis to accord such relief. The Movants are certainly aware of the relief that will be sought in the amended Petition and the underlying factual assertions which, if proved, would support that relief. That material was included in the Co-op's prefiled testimony and exhibits filed with this Commission on March 1, 1985. The Movants have been able to engage in discovery; data requests were filed by Roger Easton on March 8, 1985 and March 19, 1985 and the Co-op has filed timely responses to the initial set of questions. Thus, we are unable to conclude that any party has been prejudiced by the failure of the Co-op to file an amended Petition. Of course, when the amended Petition is filed, the Movants will be entitled to renew their request if unexpected material in that amended Petition prejudices their ability to participate effectively under the schedule already established. However, without a showing of prejudice, a request to suspend the schedule appears to be a request to delay just for the sake of delay. Such a rationale will not support the granting of a Motion to Suspend a Procedural Schedule.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that all parties may file responses to the Motion to Take Administrative Notice no later than April 5, 1985; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, directed to file an amended Petition to conform to the proof no later than April 5, 1985; and it is

FURTHER ORDERED, that the Motion to Suspend Procedural Schedule be, and hereby is, denied in all other respects.

By order of the Public Utilities Commission of New Hampshire this twentyfifth day of March, 1985.

FOOTNOTE

¹See e.g., New Hampshire Rules of Evidence, Rule 201 which will be effective on July 1, 1985.

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NH.PUC*03/26/85*[61024]*70 NH PUC 130*Mountain Springs Water Company

[Go to End of 61024]

70 NH PUC 130

Re Mountain Springs Water Company

Intervenor: Mountain Lakes District

DR 85-5, Supplemental Order No. 17,515
New Hampshire Public Utilities Commission

March 26, 1985

ORDER establishing a procedural schedule pursuant to a water utility's request for a rate increase.

APPEARANCES: Meyers & Laufer by David W. Jordan, Esquire for Mountain Springs Water Company; Larry M. Smukler, General Counsel for the Public Utilities Commission and Lawrence Gardner, Esquire for Mountain Lakes District.

By the COMMISSION:

REPORT

On December 31, 1984, a petition was filed by Mountain Springs Water Company (Company) requesting an annual increase of 219.8%. In compliance with this Petition, the Commission held a duly noticed pre-hearing conference on March 13, 1985. At the hearing, the Commission granted a Motion to Intervene filed by Mountain Lakes District.

A Motion by the Company for a written list of issues to be raised by the Commission was objected to by the Staff. The Commission deferred its decision on this, stating it would take the matter under advisement and would rule at the appropriate time. It should be stated that under all circumstances adequate notice will be given to the Company of any issues which may arise in connection with the rate case; the form of the notice will be determined after a consideration of the circumstances as they will exist subsequent to the pre-filing of Staff and Intervenor direct

testimony. This is not to be construed in any way as shifting the burden of proof to the Commission.

After an opportunity to confer, the parties jointly proposed the following procedural schedule:

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

March 29, 1985	Data Requests
April 12, 1985	Company's Response
May 3, 1985	Prefiled Testimony & Exhibits
May 17, 1985	Data Requests
May 31, 1985	Response
June 7, 1985	Company's Rebuttal
June 14, 1985	Data Requests on Rebuttal
June 21, 1985	Company's Response
June 25, 26, 27, and 28, 1985	Hearings

After review, we find that the proposed schedule is reasonable and

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accordingly, it will be adopted. 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 procedural schedule in this docket will be as set forth in the foregoing Report; and it is

FURTHER ORDERED, that Mountain Springs Water Company's Motion for a Written List of Issues will be taken under advisement as described in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of March, 1985.

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NH.PUC*03/28/85*[61025]*70 NH PUC 131*New Hampshire Electric Cooperative, Inc.

[Go to End of 61025]

70 NH PUC 131

Re New Hampshire Electric Cooperative, Inc.

DR 85-38, Order No. 17,516

New Hampshire Public Utilities Commission

March 28, 1985

ORDER requiring refunds of amounts overcollected through an electric cooperative's fuel adjustment clause.

Automatic Adjustment Clauses, § 57 — Overcollections — Refunds — Interest.

In the course of reducing an electric cooperative's fuel adjustment clause (FAC) rate, the commission noted that the cooperative had consistently overcollected FAC amounts during the last year, and it therefore ordered the cooperative to refund to customers in the next three months those overcollected amounts, including interest at a rate of 10%.

APPEARANCES: Mayland H. Morse, Esquire for the New Hampshire Electric Cooperative, Inc.; Eugene F. Sullivan, Finance Director, and James Lenihan, Rate Analyst for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

The New Hampshire Electric Cooperative, Inc. ("Coop"), a public utility engaged in the business of supplying electric service in the state of New Hampshire, on December 31, 1984 filed with this Commission tariff pages providing for an aggregate increase in base revenues of \$1,316,305 (3.8%). Said tariff pages were suspended pending investigation by Commission Order No. 17,423 on January 13, 1985, in DR 84-348, a docket established to investigate the proposed filing.

On February 8, 1985 the Commission issued an Order of Notice opening the instant docket to, inter alia, determine if the Coop's rate case (DR 84-348) should be bifurcated so that the Fuel Adjustment Clause (FAC) in that case can be determined in this docket as a separate matter.

On February 26, 1985 the Commission held a duly noticed hearing to consider 1) bifurcation of the Coop's rate increase filing (DR 84-348) between the Fuel Adjustment Clause and an increase in rates, and 2) establishing an

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appropriate FAC for the forthcoming year.

During a recess from the hearing the parties met and stipulated the following subject to Commission approval:

- a) The Coop's yearly FAC will be 2.706 per 100 KWH, effective on billings rendered after March 31, 1985;
- b) The Coop will refund the accumulated overcollection of the FAC based upon the overcollection balance as of January 31, 1985 plus interest at 8%; and
- c) The parties agreed to bifurcate the rate proceedings in DR 84-348. The instant docket will be for consideration of the FAC, and DR 84-348 will remain open for review of the increase in base rates. In addition the parties agreed that a hearing should be scheduled as expeditiously as possible for temporary rates.

The Commission will accept the stipulation.

Beginning on April 1, 1985 the billings will reflect a FAC of 2.706 per 100 KWH, decreased

from the previous year's FAC of 2.822 per 100 KWH. According to the Coop's witness, Charles A. Farrington, the 2.706 per 100 KWH rate was calculated by using year end 8/31/84 actual fuel costs divided by retail sales (exhibit 1).

Review of documentation on file with the Commission displays a consistent cumulative overcollection of the Coop's FAC since January, 1984. The cumulated overrecovery was never less than \$400,000 and climbed to a level of \$1,300,000 in December, 1984 (excluding interest).

This is a concern. The Coop should not expect its customers to carry this level of overcollections.

Therefore, the Commission feels it is in the public good to refund the agreed upon overcollection in an expeditious fashion. The Commission will require a refund of the overcollection (\$886,230 as of 1/31/85) plus interest (\$64,686 at 8%) in a three month period beginning with billings issued after March 31, 1985.

Using the same method as Mr. Farrington did in calculating the FAC, the Commission will divide the total to be refunded (\$950,916) by actual retail KWH sales for April, May, and June, 1984 (86,762,938) the quotient of \$.01096 per KWH will be credited to customer billings in the three months after March 31, 1985.

The Commission feels the interest rate of 8% on over/under collections of FAC is no longer appropriate (see DR 84-353 report & order No. 17,378 [70 NH PUC 2]). Accordingly, the interest on over/under collection of the Coop's FAC will now be 10% (indexed to the rate this Commission has determined proper for customer deposits).

The Commission will set a hearing date to establish temporary rates on the second day of May. During this hearing the Commission will receive motions for intervention and the Coop's petition for an appropriate temporary rate.

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. filed revised tariff pages reflecting a reduced fuel adjustment charge of 2.706 per 100 KWH for all billings issued after March 31, 1985; and it is

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FURTHER ORDERED, that a refund of \$.01096 per KWH be credited to all electric customer billings after March 31, 1985, for a three month period; and it is

FURTHER ORDERED, that the over/ under collection of the New Hampshire Electric Cooperative, Inc.'s Fuel Adjustment Clause will accrue interest at 10% beginning April 1, 1985; and it is

FURTHER ORDERED, that the Commission will bifurcate the rate filing in DR 84-348 between the Fuel Adjustment Clause, which is addressed in the instant docket, and a base rate increase; and it is

FURTHER ORDERED, that the refund will be shown as a separate item on each customer's bill; and it is

FURTHER ORDERED, that the Commission's Executive Director and Secretary issue an Order of Notice providing a hearing date for temporary rates and setting a procedural schedule in DR 84-348.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of March, 1985.

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NH.PUC*04/02/85*[61026]*70 NH PUC 133*Fuel Adjustment Clause

[Go to End of 61026]

70 NH PUC 133

Re Fuel Adjustment Clause

Intervenors: Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-52, Order No. 17,517

New Hampshire Public Utilities Commission

April 2, 1985

INVESTIGATION into fuel adjustment clause practices and procedures.

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Automatic Adjustment Clauses, § 63 — Procedure — Burden of proof — Reliance on outside data.

When a utility files a fuel adjustment clause rate proposal, the burden of proof is on the utility to show that the rate is reasonable, and where a utility does not file its own support data but relies instead on another utility's cost and estimate data, the former utility has accepted the latter utility's data in lieu of its own and may not then complain of deficiencies in the other utility's data. [1] p.135.

Automatic Adjustment Clauses, § 50 — Billing periods — Changes — Stable fuel prices as a factor.

Because world fuel prices had stabilized and dependency on foreign oil as a fuel source for electric generation had decreased, electric utilities were ordered to extend the period for fuel adjustment clauses from three months to six months. [2] p.136.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Warren Nighswander, Esquire; for Granite State Electric Company, Janis A. Callison, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on March 25, 1985 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, for the second quarter of 1985.

I. Concord Electric Company and Exeter & Hampton Electric Company

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") were represented by one witness, William H. Steff.

Concord's FAC in effect during the period January 1, 1985 through March 31, 1985 was a credit of (\$0.115) per 100 KWH and Exeter & Hampton's FAC was a credit of (\$0.185) per 100 KWH during the same period (both credits are exclusive of franchise tax effects). These two companies filed revised FAC surcharge credits of (\$0.295) and (\$0.299) per 100 KWH for Concord and Exeter & Hampton respectively.

On March 20, 1985 the witness for both companies filed testimony and exhibits which:

1. supported the proposed revision to Concord and Exeter & Hampton's FAC surcharge credits;
2. reiterated both companies objections to applying interest on over and under collections of their FAC, as required in Commission Report and Order No. 17,378; and
3. state the companies reluctance to changing the FAC from a quarterly forward looking to a six month forward looking mechanism.

The Commission will address the first two issues presently, the third issue will be addressed generically elsewhere in this report.

Both Concord's and Exeter & Hampton's FAC are decreasing \$0.180 and \$0.114 per 100 KWH respectively in the proposed filing. This decrease is attributable to a decrease in estimated fuel costs from the companies' sole electricity supplier, Public Service Company of New Hampshire (PSNH), offset slightly by undercollections of the first quarter 1985 FAC for Concord and

Exeter & Hampton.

Staff, through cross examination, brought out that a factor contributing to the decrease in FAC estimates is PSNH's projected completion dates of Schiller's conversion to Coal Generation. Exhibit 5 in these proceedings is a letter dated March 21, 1985 to Mr. Steff from Mr. Goldsmith of PSNH, this letter provides estimated capacity factors for all units on PSNH's system. According to the projections in this letter Schiller Unit 6 will have a capacity factor of

.59 in April, 1985 and Unit 5 will have a capacity factor of .12 in May, 1985. Both Units will have a capacity factor of .72 by June, 1985. The cost savings attributable to the use of coal in these months is passed directly onto customers.

[1] Other areas of concern discussed through cross-examination were company use and "unaccounted for" KWH and the calculation of interest on over/ under collections.

Based on the information provided during the proceedings the Commission finds the FAC rates, as filed by Concord and Exeter & Hampton, are just and reasonable.

In addressing the issue concerning appropriateness of the application of interest to Concord and Exeter & Hampton's over/under collections, the companies' attempt to attribute the lion's share of "missed" estimate on PSNH is not convincing.

When Concord and Exeter & Hampton file a rate adjustment the burden of proof supporting the proposed rate is their responsibility, RSA 378:8.

The Companies have an opportunity to provide their own estimated FAC rates independent of PSNH yet they chose not to do so. By foregoing this option the Companies are accepting PSNH's estimates in lieu of their own. The responsibility of "missed" estimates are not allocable between PSNH and the companies, as proposed by the witness, they are 100% Concord and Exeter & Hampton's. Therefore, any penalties or rewards perceived by the companies through application of interest on an over/under collection of FAC rates would be appropriately applied.

This, however, was not the reasoning used by this Commission in ratifying the interest charges. The interest is simply a means of providing equity among ratepayers and the utilities when excess funds are supplied by either.

The Commission's decision to apply interest in Report and Order No. 17,378 (70 NH PUC 2) remains unchanged.

II. Granite State Electric Company

Granite State Electric Company ("Granite State") made its second quarter 1985 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on March 18, 1985. Granite State had an FAC rate of \$0.864 per 100 KWH in effect for January 1, 1985 through March 31, 1985, and an OCA rate of \$0.241 per 100 KWH during the same period.

The rates requested on March 18, 1985 are \$0.204 per 100 KWH for FAC, and \$0.278 per 100 KWH for OCA. This represents a decrease of \$.66 per 100 KWH in the FAC and an increase of \$0.37 per 100 KWH in the OCA rates.

The decrease in the FAC rate from the prior period is due to: 1) estimated improved generation for Brayton J3 and the Salem Harbor units; 2) an estimated load decrease by New England

Power Company (Granite States' sole electricity supplier) which reduces the demand for the more expensive power producing units; and 3) a first quarter overcollection, a result of increased coal and nuclear production during that period.

During the course of the hearing the staff brought up subjects which the company witness responded to concerning coal pricing, oil pricing, generating facility capacity factors, and the calculation of interest on over/under collection of the FAC. Based on the witness' testimony, and cross-examination thereon, the Commission believes the rates as filed by Granite State are just and reasonable.

The increase in the OCA rates from the prior period is caused by the estimated increase in capacity factors at Salem Harbor and an undercollection from the prior period OCA. The Commission finds this rate, as filed, is just and reasonable also.

III. Six Month FAC

[2] Granite State, Concord, and Exeter & Hampton spoke out against changing from a quarterly FAC to a six month FAC. In their opinion the quarterly FAC is in [sic] the best mechanism because, inter alia:

1. Extending the period to six months will effectively double the potential swings in the utilities fuel adjustment charges;
2. in Concord's and Exeter & Hampton's situation extending the period will serve to exacerbate their perceived problems of getting accurate wholesale fuel cost projections from PSNH;
3. based on history, the six month FAC probably will not eliminate the need for a quarterly filing — i.e. the companies will be forced to file as often under a trigger mechanism;
4. the present method matches fuel expense with rates charged to customers more accurately than a six month FAC would; and
5. the quarterly FAC provides a more appropriate price signal to the utility's ratepayers than a six month FAC.

The Commission has weighed these and other arguments offered by the three companies and provides the following analysis.

In recent years world oil markets have reached a point where prices have, to an extent, stabilized. In fact, any projections of fluctuation in prices tend to indicate a downward turn. This is in contrast to the early seventies when most of the FAC mechanisms were initiated.

At that time the tendency was to recover cost variations as expeditiously as possible which alleviated undue stress on a company's financial well being. The mechanisms requested and put into effect during that period of volatile pricing was a monthly FAC. This mechanism served its purpose.

Assisted by a decreased dependency on foreign oil and consumer conservation utility fuel prices began to stabilize through the 1980's. As price fluctuations steadied the need for expeditious recovery of fuel costs decreased. This began a trend toward longer period FACs, such as quarterly and, in PSNH's situation, six month FACs.

The Commission now feels that because fuel prices have stabilized, the

dependency on foreign oil for electric generation has decreased (especially for Granite State), and an adequate amount of fuel costs have been "rolled in" to basic rates of the three utilities, exposure to financial uncertainty when extending the FAC to a six month period is minimized.

Weighing the consumers needs for rate continuity against the decreased exposure of financial uncertainty to the utility supports a decision to mandate a six month FAC. To maintain consistency in adjustment clauses the OCA will also have to be extended.

Therefore, we will require all parties to meet within one month, following the issuance of this order, to stipulate a mechanism whereby the FAC and OCA will be extended to a six month period. In the stipulation meetings consideration will be given to:

1. standardization of FAC mechanism to accommodate all nongenerating electric distribution companies;
2. calculation of interest on over/ under collection of the FAC;
3. a "trigger" mechanism;
4. a method of reporting or updating to the Commission monthly on the progress of the six months FAC after approval of a rate is made; and

One month from the date of this report and order if the parties have no progress to report on their meetings, the Commission will issue an order establishing a mechanism of their own design.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 24th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of (\$0.295) per 100 KWH for the months of April, May, and June, 1985, be, and hereby[is, permitted to go into effect for the month of April, 1985; and it is

FURTHER ORDERED, that 24th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of (\$0.299) per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to go into effect for the month of April, 1985; and it is

FURTHER ORDERED, that 13th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of \$0.278 per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to go into effect for April, 1985; and it is

FURTHER ORDERED, that 15th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of April, May, and June, 1985 of \$0.204 per 100 KWH, be, and hereby is, permitted to go into effect for April, 1985; and it is

FURTHER ORDERED, that 52nd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 -Electricity, providing for a fuel surcharge of \$3.12 per 100

KWH for the month of April, 1985, be, and hereby is, permitted to become effective April 1, 1985; and it is

FURTHER ORDERED, that 103rd Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 -Electricity, providing for a fuel surcharge credit of (\$0.53) per 100 KWH for the month of April, 1985, be, and hereby is, permitted to become effective April 1, 1985; and it is

FURTHER ORDERED, that 100th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 -Electricity, providing for an energy surcharge credit of (\$0.15) per 100 KWH for the month of April, 1985, be, and hereby is, permitted to become effective April 1, 1985; and it is

FURTHER ORDERED, that Granite State Electric Company, Concord Electric Company, and Exeter & Hampton Electric Company apply an interest rate of 10% on all over/under collections of their FAC; and it is

FURTHER ORDERED; that, in accordance with the attached report, all electric utilities currently utilizing a quarterly FAC mechanism, be, and hereby are, mandated to extend the period of the FAC mechanism to six months.

The above noted rates may be 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 second day of April, 1985.

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NH.PUC*04/02/85*[61027]*70 NH PUC 138*Greggs Falls Hydroelectric Project

[Go to End of 61027]

70 NH PUC 138

Re Greggs Falls Hydroelectric Project

DR 84-234, Third Supplemental Order No. 17,522

New Hampshire Public Utilities Commission

April 2, 1985

ORDER discussing the purposes of small power production projects and junior liens.

cogeneration projects.

The commission said that its failure to mention a surety bond or junior lien when setting a hydroelectric project's long term rate contract did not mean that the bond or lien requirement was being waived, but it praised the electric utility that would be purchasing power from the project for demonstrating its own willingness to waive the lien standard, finding that in so doing, the utility had shown that it understood that the development of efficient energy resources was of a higher priority than maximizing benefits to ratepayers and that if a junior lien would make a small power production project uneconomical, it could be waived.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

In Second Supplemental Order No. 17,474 (70 NH PUC 80) (Order Nisi), the Commission approved a Petition for Thirty-Year Rate Order filed by Greggs Falls Hydroelectric Project (Greggs Falls). The effective date of the Order Nisi is March 25, 1985. Pursuant to the Order Nisi, Public Service Company of New Hampshire (PSNH) filed comments on March 14, 1985.

PSNH raises certain arguments which, even if accepted, would not bring the thirty year rate outside the general provisions of the Commission established regulatory arrangements between PSNH and Small Power Producers (SPPs). See: Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). To that extent, we will not disturb the findings and conclusions which formed the basis for the Order Nisi. However, PSNH also alleges that a portion of the Order Nisi may be inconsistent with the established regulations in that it appears to approve a Thirty Year Rate without a concomittant requirement for a junior lien or surety bond. (Id. 69 NH PUC at pp. 366, 367, 61 PUR4th at p. 146.) It is that assertion which will be addressed in this Order.

PSNH correctly stated that the Order Nisi noted PSNH's willingness to consider a thirty year rate without a junior lien or surety bond. The Order Nisi then went on to approve the arrangement as proposed in Greggs Falls' Petition. PSNH correctly asserted that the Greggs Falls Petition did not include a request for a waiver of the junior lien or surety bond requirement. In fact, the parties have apparently agreed that the imposition of the requirement of a junior lien or surety bond would not affect the viability of the project.

PSNH has identified an ambiguity in the Order Nisi. It is not clear whether the Order does or does not waive the junior lien or surety bond requirement. Accordingly, we will hereby provide in this Order that the junior lien or surety bond requirement has not been waived. The rate has been approved subject to all the provisions of Re Small Energy Producers and Cogenerators, supra.

We would be remiss, however, if we did not comment further on PSNH's willingness to consider a waiver of the Commission requirements. While it is inappropriate to prejudge whether a particular proposal is or is not consistent with the public interest, it is useful to address the utility's decision to be flexible with a SPP where such

flexibility makes a significant difference in the economic viability of a project.

The underlying rationale of the regulatory structure established by Title II of the Public Utility Regulatory Policies Act of 1978, the Federal Energy Regulatory Commission regulations promulgated pursuant thereto (18 C.F.R. § 292.101 et seq.) and RSA Chapter 362-A is to promote the development of facilities that utilize renewable or efficient energy inputs to the extent that they meet the test of economic efficiency. That test of economic efficiency is the purchasing utility's avoided cost; an economic test that is in conformance with marginal ratemaking standards adopted in New Hampshire and other jurisdictions. See e.g., Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563, 583 (1984). It therefore follows that the development of a project that utilizes renewable or efficient resources which is viable at a rate at or below avoided cost is in the public interest.

Thus, when the rationale of SPP regulation is considered, PSNH's professed flexibility must be commended. Certainly PSNH should attempt to maximize benefits and reduce risks to ratepayers by bargaining for rates below avoided cost and by minimizing unnecessary front loading. However, strict application of certain standards should not result in the cancellation of development or the failure of an "on line" project when the overall cost of relaxing the standard will not exceed avoided cost. Clearly, higher priority must be accorded to promoting the development of efficient energy resources than to the marginal benefit to ratepayers of, inter alia, a rate that is below avoided cost. By stating its willingness to consider alternative arrangements, PSNH has displayed its understanding of the above rationale and the priorities that flow therefrom. It is appropriate to recognize and applaud such flexibility in an Order of the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Second Supplemental Order No. 17,474 (70 NH PUC 80) be, and hereby is, clarified as set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1985.

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NH.PUC*04/02/85*[61028]*70 NH PUC 141*Thomas Hodgson and Sons, Inc.

[Go to End of 61028]

70 NH PUC 141

Re Thomas Hodgson and Sons, Inc.

DR 84-386, Order No. 17,523

New Hampshire Public Utilities Commission

April 2, 1985

PETITION by a small power producer for approval of a long term rate filing; granted.

Cogeneration, § 19 — Long term rate contracts — Junior lien — Interconnection agreement.

A small power producer's proposed thirty year rate filing was accepted where the producer was prepared to offer an interconnecting electric utility a junior lien on its site and where the utility was given an opportunity to submit comments on the proposed interconnection plan.

By the COMMISSION:

ORDER

WHEREAS, on December 17, 1984, Thomas Hodgson & Sons, Inc. (Hodgson) filed a long term rate filing; and

WHEREAS, the Petition requested inter alia a thirty-year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety bond or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Hodgson has averred that it is prepared to offer Public Service Company of New Hampshire (PSNH) a "junior lien" on the Project; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire the opportunity to respond to Hodgson's Petition for Thirty Year Rate Order; and

WHEREAS, Hodgson's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore,

ORDERED NISI, that the Petition for Thirty-Year Rate Order for Hodgson, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from

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the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this second day of April,

1985.

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NH.PUC*04/02/85*[61029]*70 NH PUC 142*Hemphill Power and Light Company

[Go to End of 61029]

70 NH PUC 142

Re Hemphill Power and Light Company

DR 85-25, Order No. 17,524

New Hampshire Public Utilities Commission

April 2, 1985

ORDER approving an electric utility's long term small power production rate filing.

By the COMMISSION:

ORDER

WHEREAS, on January 24, 1985, Hemphill Power and Light Company (Hemphill) filed a long term rate filing; and

WHEREAS, Hemphill filed amendments to its filing on February 4, 1985 and March 11, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to the Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in all respects; it is therefore,

ORDERED NISI, that the Petition for Twenty-Year Rate Order for Hemphill, including the interconnection agreement and the rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date. By order of the Public Utilities Commission of New Hampshire this second day of April, 1985.

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NH.PUC*04/02/85*[61030]*70 NH PUC 143*Golden Pond Hydropower Associates

[Go to End of 61030]

70 NH PUC 143

Re Golden Pond Hydropower Associates

DR 85-29, Order No. 17,525

New Hampshire Public Utilities Commission

April 2, 1985

APPLICATION by a hydroelectric power producer for approval of a long term rate filing and interconnection agreement; granted.

By the COMMISSION:

ORDER

WHEREAS, on January 28, 1985, Golden Pond Hydropower Associates (GPHA) filed a long term rate filing; and

WHEREAS, GPHA filed an amendment to its filing on March 11, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to the Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in all respects; it is therefore,

ORDERED NISI, that the Petition for Twenty-Year Rate Order for GPHA, including the interconnection agreement and the rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date. By order of the Public Utilities Commission of New Hampshire this second day of April, 1985.

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NH.PUC*04/02/85*[61031]*70 NH PUC 144*River Street Associates

[Go to End of 61031]

70 NH PUC 144

Re River Street Associates

DR 85-31, Order No. 17,526

New Hampshire Public Utilities Commission

April 2, 1985

PETITION by a hydroelectric power producer for authority to institute a long term rate filing; granted.

By the COMMISSION:

ORDER

WHEREAS, on January 29, 1985, River Street Associates (RSA) filed a long term rate filing for their facility located at the site of the former Noone Falls on the Contoocook River; and

WHEREAS, RSA filed an amendment to its filing on March 11, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to the Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in all respects; it is therefore,

ORDERED NISI, that the Petition for Twenty-Year Rate Order for RSA, including the interconnection agreement and the rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date. By order of the Public Utilities Commission of New Hampshire this second day of April, 1985.

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NH.PUC*04/04/85*[61032]*70 NH PUC 145*TDEnergy, Inc.

[Go to End of 61032]

70 NH PUC 145

Re TDEnergy, Inc.

Intervenors: Public Service Company of New Hampshire and Ashland Power Associates

DR 85-13, Order No. 17,529

New Hampshire Public Utilities Commission

April 4, 1985

MOTION by an out of state small power producer to intervene in a long term small power production rate proceeding; granted.

Parties, § 18 — Intervenors — Untimely motions — Limitations.

A motion to intervene in a commission proceeding may be granted, even if the motion was untimely and involved an out of state entity, as long as the commission finds that justice requires participation by the intervenor and the intervention will not disrupt the regulatory flow, but the commission is always empowered to restrict an intervenor's cross-examination, to limit the issues an intervenor may address, and to require a late intervenor to accept any rulings already made in a case before its intervenor status was granted.

APPEARANCES: Thomas Dinwoodie, Louis Cohen and Robert Bordner on behalf of TDEnergy, Inc.; Sulloway, Hollis and Soden by Margaret Nelson, Esquire on behalf of Public Service Company of New Hampshire; Robert Olson, Esquire on behalf of Ashland Power Associates; Larry Smukler, Esquire and Dr. Sarah Voll on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On January 14, 1985, TDEnergy, Inc. of Boston, Massachusetts filed a petition for a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) for its 16 mw facility located in Florida, Massachusetts. An Order of Notice was issued on February 14, 1983 setting a procedural hearing for March 15, 1985. Prior to the hearing, both PSNH and Ashland filed timely Motions to Intervene pursuant to Commission Rule No. Puc 203.02. In addition, Ashland filed a Motion to Consolidate this docket with DR 85-65 which concerns Ashland's petition for determination of long-term rates for its 12,000 kw facility located in Ashland, Maine.

At the hearing, the Commission granted both PSNH and Ashland's Motion to Intervene. The Commission also granted Ashland's Motion to Consolidate upon the condition that Ashland give proper notice by publication. On March 19, 1985, the Commission issued an Order of Notice in this

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regard. Ashland filed an affidavit of publication on March 28, 1985 which evidenced timely publication as required in the Order of Notice.

Both petitions present as a threshold issue whether this Commission has jurisdiction to establish rates for small power producers (SPP) located outside of New Hampshire. At the March 15, 1985 hearing, the parties proposed and the Commission accepted the following procedural schedule for the preliminary jurisdictional determinations in this consolidated proceeding:

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

March 25, 1985 Parties to file a stipulation regarding:
 (a) the underlying facts necessary to resolve the jurisdictional issue; and
 (b) the scope of the issues to be resolved in the second part of the proceedings; and
 (c) a recommended procedural schedule in the event the Commission decides it has jurisdiction in this matter.

April 15, 1985 Parties to submit legal memoranda on the legal question of the Commission's authority to set rates for out of state small power producers.

May 15, 1985 Tentative date for Commission decision regarding the jurisdictional issue.

The parties filed a stipulation on March 27, 1985 in accord with the above-cited procedural schedule.

Thereafter, on March 20, 1985, Northeast Power Associates (NEPA) filed a Petition to Intervene in this proceeding. According to the petition, NEPA seeks to intervene in this proceeding because it expects to sell power to PSNH from outside New Hampshire and because any ruling might therefore affect its rights and interests. The petition states that NEPA is a joint venture between Marmac Power Corporation, a California corporation, and Dyer Interests, a Maine sole proprietorship, with a principle place of business in Bangor, Maine.

On March 29, 1985 PSNH filed a Response to NEPA's petition which states that PSNH does not object to the petition provided NEPA be required to accept the procedural status of the case as of its intervention. Specifically, PSNH requests the Commission impose as a condition of intervention that NEPA be bound by the terms and conditions of the stipulation. In addition, PSNH asks that NEPA be required to accept that if NEPA is ultimately determined to be eligible for rates, those rates should be established in a forthcoming parallel proceeding which will update certain aspects of Order No. 17,104 in Docket DE 83-62.

Commission Rules No. Puc 203.02 sets forth the standards to be applied in determining the issue of intervention. Rule No. Puc 203.02 (a) (1) requires parties seeking intervention to file a written motion with the Commission at least 3 days before the hearing. Notwithstanding that requirement, Rule number Puc 203.02 (c) provides that the Commission may grant motions to intervene "at any time, upon determining that such intervention would be in the interest of justice and would not impair the orderly and prompt

Page 146

conduct of the proceedings." In granting intervention, the Commission may impose conditions upon a party's intervention, including, but not limited to:

(1) Limitation of the intervenor's participation to designated issues in which the intervenor

has a particular interest demonstrated by motion; (2) 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 (3) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings. (N. H. Administrative Rules, Puc 203.02 (c))

At the outset, we must note that we interpret NEPA's petition as a request to be heard with regard to the jurisdictional issue only. Unlike Ashland (and TDEnergy, Inc.), it has no petition pending requesting the long-term rate. NEPA is therefore not seeking affirmative relief as a result of its participation in this proceeding.

As stated in its petition, NEPA intends to sell power to PSNH from a plant in Maine. Thus, NEPA's interests will clearly be affected by the Commission's decision in this proceeding. If NEPA had timely filed its petition, it would have been granted at the hearing along with the motions of PSNH and Ashland.

Notwithstanding the untimely nature of NEPA's request under N. H. Administrative Rule, Puc 203.02 (a)(1), the Commission may, as stated above, still grant intervention if it would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings (N.H. Administrative Rules, Puc 203.02 (c)). We find that NEPA's participation in this proceeding will be in the interest of justice. Its participation in this docket will assist in producing a complete and adequate exposition of the jurisdictional question.

With regard to the second standard, we find that NEPA's intervention will not impair the orderly and prompt conduct of the proceedings so long as it accepts the procedural status of the case as of this date. Thus, we will grant NEPA's petition to intervene on the condition that it accept the factual stipulation of the parties filed on March 27, 1985 with respect to the legal/jurisdictional issues (Section A of the stipulation), and that it file a legal memoranda by April 15, 1985. Given that NEPA's participation is limited to the jurisdictional issue, it is not necessary for us to address PSNH's request that NEPA's intervention be conditioned upon its rates being established in the aforementioned future parallel 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 Petition to Intervene of Northeast Power Associates in this docket be, and hereby is, granted subject to the conditions described in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1985.

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NH.PUC*04/12/85*[61033]*70 NH PUC 148*Sunapee Hills Water Company

[Go to End of 61033]

Re Sunapee Hills Water Company

DE 85-100, Order No. 17,531

New Hampshire Public Utilities Commission

April 12, 1985

ORDER directing reimbursement of private contractors for work done in repairing a water system's leak.

Expenses, § 147 — Water — Leakage — Reimbursement of repair contractors.

A water utility was ordered to reimburse two private contractors for work done by them in locating the source of a leak in the utility's system, with the commission noting that the utility still owed the contractors for other work performed over the last several years.

By the COMMISSION:

ORDER

WHEREAS, this Commission was informed on March 7, 1985 that a severe loss of water was occurring from a probable main leak on the Sunapee Hills Water System; and

WHEREAS, Mr. Gilbert Rowe and Mr. Henry Cunningham as private contractors have been performing certain work authorized by the attorney representing the water system owner in an effort to locate the source of the leak and make necessary repairs; and

WHEREAS, as a result of these efforts the necessary repairs were made to restore the system integrity at a cost of \$787.00 incurred by Mr. Rowe and Mr. Cunningham; and

WHEREAS, work performed on this water system over the past several years by Mr. Rowe and Mr. Cunningham has resulted in accounts payable to these individuals of some \$2900; it is hereby

ORDERED, that the recent bill incurred for services rendered, of \$787 shall be paid within 30 days or agreement reached for payment of all funds due.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61034]*70 NH PUC 149*Pinetree Power, Inc.

[Go to End of 61034]

70 NH PUC 149

Re Pinetree Power, Inc.

DR 85-58, Order No. 17,532
New Hampshire Public Utilities Commission
April 12, 1985

ORDER approving a small power producer's long term rate filing and interconnection agreement.

By the COMMISSION:

ORDER

WHEREAS, on February 28, 1985, Pinetree Power, Inc. (Pinetree) filed a long term rate filing; and

WHEREAS, filed an amendment to its filing on March 13, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission wishes to allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Petition for Twenty Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that the Petition for Twenty-Year Rate Order for Pinetree, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61035]*70 NH PUC 150*Public Service Company of New Hampshire

[Go to End of 61035]

70 NH PUC 150
Re Public Service Company of New Hampshire
DR 85-73, Order No. 17,533
New Hampshire Public Utilities Commission

April 12, 1985

ORDER requiring temporary service connection costs to be shouldered by the temporary customer.

Service, § 189 — Extensions — Burden of cost — Labor and materials — Temporary service.

Where an electric utility incurs labor and materials costs in installing facilities to provide temporary service to a location that will not become a permanent customer, those costs should be borne by the temporary customer, not the general ratepayer.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire has filed with this Commission a revision to its Tariff No. 29 by which it clarifies the procedures followed when temporary electric services are installed in locations where they would not become permanent Domestic (D) or General (G) accounts; and

WHEREAS, such procedures require payment for labor, overhead and materials expended in the installation and removal of such services; and

WHEREAS, the Commission finds assessment of such costs to the customers incurring them to be in the interest of the general ratepayer; it is

ORDERED, that 2nd Revised Page 1 (Table of Contents) and 3rd Revised Page 3 (Terms and Conditions), Public Service Company of New Hampshire tariff, NHPUC No. 29, be, and hereby are, approved for effect on April 22, 1985.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

=====

NH.PUC*04/12/85*[61036]*70 NH PUC 151*Union Telephone Company

[Go to End of 61036]

70 NH PUC 151

Re Union Telephone Company

DR 85-75, Order No. 17,534

New Hampshire Public Utilities Commission

April 12, 1985

ORDER approving a local exchange telephone carrier's tariff revision bringing its customer

deposit interest rates into compliance with commission rules.

By the COMMISSION:

ORDER

WHEREAS, on March 25, 1985, Union Telephone Company filed with this Commission a revision to its tariff No. 7 by which it proposes to correct the stated interest rate paid on customer deposits to the rate currently approved by the Commission; and

WHEREAS, Union Telephone Company states that all interest paid since the effective date of the Commission rule has been at the specified higher rate; and

WHEREAS, the Commission finds that the updating of the tariff to conform to Commission rules is in the public good; it is

ORDERED, that Part I, 1st Revised Page 10 of Union Telephone Company tariff, NHPUC No. 7 - Telephone, be, and hereby is, approved for effect as of November 26, 1984.

By order of the Public Utilities of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61037]*70 NH PUC 152*Northern Utilities, Inc.

[Go to End of 61037]

70 NH PUC 152

Re Northern Utilities, Inc.

DR 85-83, Order No. 17,535

New Hampshire Public Utilities Commission

April 12, 1985

ORDER accepting a natural gas distributor's special rate contract with one customer alone.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission, has filed with this Commission Special Contract No. 68 with Elliott & Williams Roses, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist relative thereto which render the terms and conditions thereof just and consistent with the public interest, it is

ORDERED, that said contract may become effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61038]*70 NH PUC 153*Lakes Region Water Company, Inc.

[Go to End of 61038]

70 NH PUC 153

Re Lakes Region Water Company, Inc.

Intervenor: Balmoral Homeowners Association

DR 84-314, Order No. 17,536

New Hampshire Public Utilities Commission

April 12, 1985

APPLICATION by a water utility for authority to increase rates; granted.

Valuation, § 278 — Particular kinds of property — Meters — Water utility.

Where a water utility had been ordered to install meters at its service locations, the value of the meters, less depreciation, was included in the utility's rate base, expenses associated with meter reading and maintenance were allowed, and the rate of return was calculated based upon the debt incurred specifically for the purchase of the meters. [1] p.154.

Rates, § 261 — Uniform charges — Seasonal versus year round consumption — Water utility.

A water utility serving a number of seasonal and vacation home customers was required to implement a uniform usage charge rather than seasonal rates, because rates should be based on costs rather than an ability to pay and the utility's costs in serving seasonal and year round customers were the same. [2] p.154.

Expenses, § 89 — Rate case expense — Method of recovery — Surcharge.

A water utility was allowed to recoup costs incurred in proceeding with a rate case through a temporary surcharge to be added to each customer's quarterly bill over the next two years. [3] p.155.

APPEARANCES: Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire, for Lakes Region Water Company, Inc.; Edgar D. McKean, Esquire, for Balmoral Homeowners Association; Daniel E. Lanning, Assistant Finance Director and Robert B. Lessels, Water Engineer, for the Public Utilities Commission.

By the COMMISSION:

REPORT

Procedural History

On October 24, 1984, Lakes Region Water Company, Inc. (Lakes Region) filed certain revisions to its tariff NHPUC No. 2 seeking an increase in annual revenues of \$19,031 (25.7%). By Order No. 17,286 dated October 30, 1984 (69 NH PUC 621) the Commission suspended the filing, pending investigation and opened this docket. The increased revenues sought in the docket are to cover the capital investment and operating expenses associated with the purchase and installation of meters required by the Commission in Report and Fifth Supplemental Order

Page 153

No. 16,183, DR 81-203 (March 21, 1983). On March 5, 1985 a conference was held between representatives of Lakes Region, the Balmoral Homeowners Association and the Commission staff to resolve all possible issues prior to public hearing. As a result of this conference, the parties agreed a revenue increase of \$9700 should be allowed to recover the costs associated with the meter purchase.

Rate Base

[1] We find the following rate base computation, which all parties accept, to be reasonable:

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

Purchase & Install Meters	\$35974
Less Depreciation Res.	(1799)
Materials & Supplies	213
Working Capital	6272
	-
Additions to Rate Base	\$40660

Rate of Return

The Company's filing proposed a 14% rate of return indexed directly to an issue of debt approved in Commission Docket DR 83-329. This loan was borrowed specifically for the installation of meters.

The Commission approved this debt and its rate in DR 83-329, therefore a 14% rate of return for this step is appropriate.

Expenses

We find the following expense adjustments, which all parties accept, to be reasonable:

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

A. Operation & Maintenance	
Meter Reading	\$ 640
General Administrative	1600
	-
	\$ 2240
B. Depreciation	
(Based on a 20 year life for meters)	\$ 1799

Revenue Requirement

With the above adjustments, the revenue requirement becomes:

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

Operating Revenues (DR 81-203)	\$66538
Adjustments:	
O & M Expense	2240
Depreciation Expense	1799
Return Requirement	5692
	-
Adjusted Operating Revenues Required	\$ 76269

Rate Structure

[2] In its filing, Lakes Region has offered two different rate structures for consideration. One would employ the same consumption unit charge for all customers with the alternative employing three different charges relating to the annual longevity of the customers usage i.e.: year round, seasonal, or second home as defined by Lakes Region.

Both proposals would, in addition to the consumption charge, also employ a minimum charge derived from certain fixed costs which would be assessed against each connected customer irrespective of any consumption.

Lakes Region favors the structure that would use a common unit charge to all customers basically because of its simplicity and the potential problems that probably would arise in allocating customers to either of two part time use categories. Counsel for the Balmoral Homeowners Association contends that the socioeconomic condition of the year round user is such, compared to that of the seasonal, that it should warrant the acceptance of the varied unit consumption charge, with its attendant lowest charge for the full

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time user of the system. Counsel further points out that the varied unit charge was designed to produce approximately the same annual revenue from all customers, regardless of use, and the resulting increase would then be of a greater magnitude on the more affluent seasonal consumer.

Staff's position, set forth in Exhibit F, supports a single unit charge for all consumption. Exhibit F has taken the basic structure as proposed by Lakes Region, but has expanded the cost recovery under the minimum charge portion. One half of the operating expense allowed for Superintendence and General Office Salaries has been included in the minimum charge. Staff is of the opinion that the seasonal nature of this system, only 10% use the facilities during the full 12 months of any year, requires the inclusion of these expenses under a general definition of fixed charges. Meters of all customers must be read each quarter, bill calculated, and mailed, and certain Superintendence functions are performed for the system as a whole, irrespective of each customers time in residence. Further, in the design of water rate structures, the socioeconomic condition, or ability to pay, is not the primary consideration. Standard ratemaking principles long utilized by this Commission require customer cost responsibility to be the primary determinant in rate structure design. There is no cost evidence to support a varying unit charge.

We will accept staff's proposed rate structure derived to meet the revenue requirement as detailed in this report and is as follows:

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

Minimum charge \$28.00/quarter
Consumption charge \$ 5.37/100 cubic feet

This metered rate shall become effective with all service rendered on or after April 1, 1985.

Rate Case Expense

[3] Lakes Region has submitted an itemized statement in support of total expenses incurred in establishing metered rate service of \$4548.21. We will allow this expense to be recovered as a temporary surcharge to each customer's bill over the next eight quarterly billings, beginning July 1, 1985. Our order will issue accordingly.

ORDER

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

ORDERED, that the revenue increase, metered rate design, and rate case expense surcharge, as set forth in this Report shall become effective with all service rendered on or after April 1, 1985; and it is

FURTHER ORDERED, that new tariff pages shall be filed bearing the effective date of April 1, 1985 and the metered rate design and temporary surcharge as set forth in this Report. By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

NH.PUC*04/12/85*[61039]*70 NH PUC 156*New England Telephone and Telegraph Company

[Go to End of 61039]

70 NH PUC 156

Re New England Telephone and Telegraph Company

DE 84-373, Supplemental Order No. 17,537

New Hampshire Public Utilities Commission

April 12, 1985

INVESTIGATION into telephone and television line location rights.

Radio and Television, § 7.1 — Cable television — Line locations — Licensing requirements.

A cable television company was allowed to retain its existing pole lines and conduits, without a license, in the same location as a telephone company's pole line facilities where the television company had acquired line rights to that location prior to the time licensing of a private television corporation had been required under the commission's jurisdiction.

SUPPLEMENTAL ORDER

WHEREAS, on March 21, 1985 this Commission, in Order No. 17,511 (70 NH PUC 122), granted authority to the New England Telephone Company to construct and maintain pole line facilities crossing the Belknap State Reservation along the Carriage Road and ahead to the Summit of Mt. Belknap in Gilford, New Hampshire; and

WHEREAS, the Commission also ordered Community TV Corp. to provide this Commission, by April 1, 1985, either with a copy of an existing license to maintain its facilities at the same location or to submit a petition requesting proper authority to do so; and

WHEREAS, on April 1, 1985 Community TV Corporation petitioned this Commission for authorization to maintain its existing pole line facilities crossing Belknap State Reservation without license from the Commission since it acquired its rights prior to the time such licensing of a private corporation came within the jurisdiction of the Commission or, in the alternative, to authorize Community TV Corporation to construct, repair, and maintain its pole line facilities crossing Belknap State Reservation along Carriage Road and ahead to the Summit of Mt. Belknap; and

WHEREAS, upon investigation the Commission is satisfied that the existing pole line of Community TV Corporation was, in fact, installed prior to the time such licensing of a private corporation came within the jurisdiction of this Commission; and

WHEREAS, the Commission finds that it is in the public interest to grant to Community TV Corporation the

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authority to construct, repair, and maintain its existing pole line facilities crossing the Belknap State Reservation; it is

ORDERED, that authority be granted to the Community TV Corporation to construct repair and maintain its pole line facilities crossing the Belknap State Reservation along Carriage Road and ahead to the Summit of Mt. Belknap in Gilford, New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61040]*70 NH PUC 157*Town of Ashland Electric Department

[Go to End of 61040]

70 NH PUC 157

Re Town of Ashland Electric Department

DE 85-47, Order No. 17,538

New Hampshire Public Utilities Commission

April 12, 1985

PETITION by an electric utility for permission to locate a power line over railroad land; granted.

Electricity, § 7 — Transmission lines — Crossing of railroad land — Factors.

An electric utility was authorized to place a power line over railroad property in order to serve an expanding industrial customer where the line crossing was found to be in the public interest and the railroad had no objection.

By the COMMISSION:

REPORT

On February 19, 1985 the Ashland Electric Department, (Ashland), Town of Ashland, New Hampshire, filed a petition to construct and maintain an electric power line over the state-owned Concord to Lincoln railroad line in Ashland.

On February 20, 1985, an Order of Notice was issued providing for a hearing on March 20, 1985 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Thomas E. Marsh, Superintendent, Ashland Electric Department (for publication); John W. Clement, New Hampshire Department of Public Works and Highways (NHDPWH) Railroad Division; Robert E. Patnaude and Associates and the Office of the Attorney General.

On March 7, 1985, Ashland filed an affidavit of public notice certifying that publication was made in the Plymouth Record Citizen on Wednesday, February 27, 1985.

Mr. Thomas E. Marsh, Superintendent, Ashland Electric Company testified that the proposed line will serve the L. W. Packard Wool Company. An existing 1500 KVA line serves the Company from its existing substation on the westerly side of the right-ofway. The proposed new 6000 KVA line will cross at a point just south of the existing crossing to provide additional power to support the Ashland's

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expansion plans. The new construction will consist of a 34.5 KV three phase electric power line and two poles on stateowned land as shown on exhibits which were marked as part of this proceeding. The crossing will be constructed and maintained in accordance with all applicable safety standards.

An alternative plan extending along Town Street and Winter Street was discounted on the basis that it would require an additional 2000 feet of extra line and would still require a crossing of the railroad property.

Mr. John Clement, Railroad Operations Engineer, NHDPWH, testified that his Department has no objection to the plan. He offered an unexecuted License for Power Line Crossing into

evidence. The Department has established, and the utility has concurred, in the establishment of a \$270.00 preparatory fee and annual administrative fees of \$27.00.

Upon investigation the Commission finds the proposed crossing to be in the public interest. Our Order will issue accordingly.

ORDER

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

ORDERED, that the Ashland Electric Department be and hereby is authorized to construct and maintain an electric power line over the state-owned Concord to Lincoln Railroad Line in Ashland as specifically identified on exhibits in the proceeding.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/12/85*[61041]*70 NH PUC 158*Marjorie LaDuke

[Go to End of 61041]

70 NH PUC 158

Re Marjorie LaDuke

DE 84-361, Order No. 17,539

New Hampshire Public Utilities Commission

April 12, 1985

PETITION by a small water system for waiver of its public utility status; granted.

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Public Utilities, § 11 — Public utility status — Exemptions — Factors.

A water system, owned and operated by two individuals and serving only nine customers, was exempted from public utility status so that it could apply for capital investments to make needed repairs without going through the costly process of first obtaining prior commission approval for each transaction.

By the COMMISSION:

REPORT

Marjorie LaDuke, as co-owner with her daughter, Cynthia Harbour, of a water system located in Northfield, New Hampshire and serving nine customers, petitioned this Commission

on November 30, 1984, for exemption from utility status under the provisions of RSA 362:4.

The water system has been operated by Mrs. LaDuke and Harbour for the past five years. Recent equipment failures have required fixed capital investment for new plant including a new pump and pressure storage tanks. Because of the difficulty in raising capital for replacement and repairs and to avoid any additional expenses that would be encountered as a regulated utility, exemption is being sought in this docket. Prior to submitting the instant petition, customers were contacted concerning common ownership as a more equitable means of continuing the operation of the water system. No interest was shown.

Consumers attending the hearing indicated that they did not object to granting the exemption sought if there was some assurance that rates in the future would not increase beyond reasonable bounds. The petitioner, owner, indicated that the rate now charged, \$16 per month, was sufficient and could see no reason for any change, barring unforeseen equipment failure.

Exemption, as provided by RSA 362:4 has been granted to other small water companies when it was proven to be in the public good. We acknowledge that the cost of regulation, with its filing requirements and the necessary rate setting procedures, can and does add additional costs that for small water systems such as the one before us, are significant. For this reason we are convinced that the public good will be served by granting this petition with the understanding that such authority can and will be revoked if it is at any time shown that it would be in the best interest of the customers to do so.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the water system owned by Marjorie LaDuke and Cynthia Harbour is hereby declared exempt from regulation as provided by RSA 362:4 as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1985.

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NH.PUC*04/16/85*[61042]*70 NH PUC 160*Androscoggin Electric Corporation

[Go to End of 61042]

70 NH PUC 160

Re Androscoggin Electric Corporation

Intervenor: Society for the Protection of New Hampshire Forests

DE 85-55, Order No. 17,548

New Hampshire Public Utilities Commission

April 16, 1985

PETITION by an electric utility for permission to install transmission lines across state land and

waters; granted.

Electricity, § 7 — Transmission lines — Aesthetic factors.

An electric utility was authorized to locate a transmission line over state land and waters that were subject to an oversight committee checking development in the area where the line was found to be necessary for public service and where the utility would limit its cutting of vegetation so as to minimize the visual impact of the line.

APPEARANCES: For the petitioner, Steven McAuliffe, Esquire; for the Society for the Protection of New Hampshire Forests, Martha West Lyman.

By the COMMISSION:

REPORT

On February 27, 1985 the Androscoggin Electric Corporation filed with this Commission a petition to cross the Androscoggin River in Dummer, New Hampshire. The petition was amended on March 1, 1985 to request a permit to cross a public water way and to cross state lands with an interconnection line from the Pontook Hydroelectric Facility in Dummer, New Hampshire to the PSNH transmission line on Route 110A.

On February 28, 1985 an order of notice was issued setting a hearing for March 29, 1985 at 10:00 a.m. together with publication. Notices were sent to Robert W. Shaw for publication, James Carter, Chief Land Management, DRED; New Hampshire Aeronautics Commission; Public Service Company of New Hampshire; Delbert Downing, Chairman, Water Resources Board; and the Attorney General's Office.

An affidavit confirming that notification was made in the Berlin Reporter on March 13, 1985 was received at the Commission office on March 20, 1985.

Mr. Robert Shaw, President, Androscoggin Electric Corporation, testified that the petition was filed pursuant to RSA 371:17, in order to obtain a license to make a crossing across the Androscoggin River and to make an interconnection between the Pontook Facility and the transmission lines of

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the Public Service Company of New Hampshire. The Pontook generating facility has been licensed by the Federal Energy Regulatory Commission. All permits and requirements issued by the State of New Hampshire, except for the license required in this proceeding, have been received, and construction is about to begin. A construction permit has been received from the Federal Energy Regulatory Commission.

The Company proposes to install a 34.5 KV three-phase line in a direct route from the proposed location of the power house on land leased to the Androscoggin Electric Corporation and extending, as identified in the Company's Exhibit 1, across the Androscoggin River to a

point adjacent to the intersection of Route 110A and Route 116. The line will extend along Route 110A to a point of crossing of the existing PSNH 115 KV circuit number W-179, at which point a substation will be installed. The line will be approximately 50 feet above the water level of the Androscoggin River and will not affect navigation of the river. Visibility of the line at the river crossing will be minimal. The actual crossing is approximately 250 feet from the highway to the westerly bank of the Androscoggin River. In the summer time it is overgrown with trees and vegetation. The land on both sides of the Androscoggin is owned by the Water Resources Board of the State of New Hampshire, and the Androscoggin Electric Corporation has a lease of the property for the hydroelectric facility. The lease includes the right to run transmission line across the property.

A memorandum from Delbert F. Downing, Chairman, Water Resources Board, to this Commission on March 25, 1985 included a copy of the lease agreement dated December 16, 1981. The memorandum recommended that a favorable decision be made relative to this petition.

Upon cross examination Mr. Shaw testified that alternative routes had been considered. One alternative extended the transmission line from the pump house in a south/southwesterly direction to PSNH pole number 229, and then followed the PSNH pole line westerly to Route 110A. That alternative was eliminated because of the frequency of the highway crossings along Route 116 that would result and the possibility of safety hazards involved by those frequent crossings.

Another alternative would extend the transmission line in a westerly direction from the power house through a wooded area to PSNH pole W-179 and extend in a northerly direction along that line for some 2000 feet to the point of substation. Upon investigation it was learned that that PSNH right-of-way was a dedicated line to PSNH and that the petitioner could not gain access to the right-of-way.

A third considered alternative was to parallel the PSNH 345 KV line northerly to Milan and connect at a point some three miles from the power house. That alternative was discounted on the basis of the distance involved.

Miss Martha West Lyman, appearing for the Society for the Protection of New Hampshire Forests, testified that the Forest Society has been involved in the Pontook project for many years and that they are interested in preserving the recreational and scenic values of the Androscoggin River from the Pontook Dam south. The Society is concerned that the crossing of the line as it is proposed will represent an

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impact on both recreational and scenic values at that particular site.

Miss Lyman testified that the state recognizes its responsibility to insure that the recreation and scenic resources of the river are preserved in two ways. Firstly, Executive Order No. 84-4 established the Pontook Coordinating Committee which was to be an oversight committee to review and evaluate and make recommendations on the development and operation of the proposed project, and to insure that the recreational and scenic were preserved. Miss Lyman recommended that alternatives for the transmission line siting be more fully analyzed than they have been to date and that the recommendations for a final transmission line siting be agreed

upon by this Pontook Coordinating Committee. Upon cross examination Miss Lyman explained that the Committee, which was formed by the Executive Order on July 27, 1984, has not yet been formed.

Miss Lyman recommended that the line either go along the easterly side through Dummer or across at Wheeler Bay or be installed under water and underground.

Upon consideration of all the alternatives considered, the Commission will accept the Company's proposal as identified in Exhibit 1; that is, to run a reasonably direct route from the site of the power house to the intersection of Route 110A and Route 116. Although the alternatives deserve consideration they appear to create at least as much of an environmental impact as does the preferred route and, in most cases the cost would be significantly higher than the proposed route.

The Society's concern to maintain the aesthetic beauty of the area is to be commended and should be supported. We do not find, however, that the alternatives offered by any party will provide less environmental impact than the preferred route. The Company's proposal to limit its cutting and trimming to an area approximately 15 feet wide at the base of the right-of-way, and then to cut back vegetation on a 45 degree angle, will minimize the visual impact of the transmission route.

We will approve the request to install the line along the petitioner's preferred route. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that the request of the Androscoggin Electric Company to install and maintain a 34.5 KV electric transmission line across state lands and state waters as indicated in exhibits provided in this docket be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April, 1985.

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NH.PUC*04/18/85*[61043]*70 NH PUC 163*Fuel Adjustment Clause

[Go to End of 61043]

70 NH PUC 163

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-52, Supplemental Order No. 17,557

New Hampshire Public Utilities Commission

April 18, 1985

ORDER permitting an electric utility's fuel adjustment clause revision to go into effect without formal hearings on the matter.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing; it is

ORDERED, that 136th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$0.70 per 100 KWH for the month of April, 1985, be, and hereby is, permitted to become effective April 8, 1985.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1985.

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NH.PUC*04/18/85*[61044]*70 NH PUC 164*Public Service Company of New Hampshire

[Go to End of 61044]

70 NH PUC 164

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, Campaign for Ratepayers' Rights, Community Action Program, Business and Industry Association of New Hampshire, Calcoen, Inc., New Hampshire Electric Cooperative, Inc., and Office of Consumer Advocate et al.

DF 84-200, Ninth Supplemental Order No. 17,558

66 PUR4th 349

New Hampshire Public Utilities Commission

April 18, 1985

PROCEEDING initiated by commission to review request by electric utility for financing of completion of Seabrook nuclear power plant Unit I; order issued approving financing and discussing need for power, alternatives to additional nuclear generating capacity, and consequences of plant cancellation and utility bankruptcy.

Electricity, § 3 — Generating plants — Need for power.

A public utility has an obligation continually to evaluate and anticipate the need of present and potential customers in order to meet reasonable demands for utility service; New Hampshire law and commission rules require that utilities plan for the maximum probable demand under possible adverse conditions. [1] p.195.

Electricity, § 3 — Generating plants — Need for power — Load forecasts.

Electric load forecasts should contain certain basic elements, including (a) end use detail, (b) sufficient disaggregation to facilitate comprehensive analysis, (c) an econometric foundation driven by a material forecast, (d) a reflection of price elasticity, (e) an integrated planning approach, (f) a recognition of conservation and load management, and (g) adequate assumptions and data. [2] p.195.

Electricity, § 3 — Generating plants — Need for power — Load forecasts — Price elasticity — Appliance saturation.

Appliance saturation is not a function of rate levels because as rates increase, inefficient appliances are replaced by efficient models. [3] p.198.

Electricity, § 3 — Generating plants — Need for power — Load forecasts.

There are four key assumptions that drive load forecasts: (1) price elasticity of demand, (2) correlation between economic growth and growth in electricity consumption, (3) impacts of switch overs from alternate fuels, and (4) impacts of conservation and new technologies. [4] p.198.

Electricity, § 3 — Generating plants — Need for power — Load forecasts.

A 1984 load forecast submitted by an electric utility in conjunction with its request for approval of financing for completion of a nuclear generating plant was held acceptable as a basis for determining the utility's need for power from the plant. [5] p.199.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cogeneration.

Alternative supplies of electricity from small power production and cogeneration were held inadequate and unreliable to serve future need for power for New Hampshire electricity users; forecasts of small power production and cogeneration capacity availability were held undependable for the following reasons: (1) expenses

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for small power production or cogeneration projects could escalate beyond rate support (making such projects economically infeasible), (2) operating characteristics might be unfavorable, (3) operation and maintenance costs could exceed estimates, and (4) design lives might not endure as planned. [6] p.208.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Conservation.

Energy conservation was held to be an unrealistic alternative to completion of a nuclear

electric generating plant to satisfy need for power because of the unpredictability of customer behavior regarding reduction of electric use or load shedding in response to higher priced electricity. [7] p.211.

Electricity, § 3 — Generating plants — Need for power.

It was held that the completion of the Seabrook nuclear power plant Unit I was required to serve the public interest of New Hampshire energy consumers, to serve the requirements of the New England Power Pool, which, it was found, might otherwise experience a capacity shortage before 1992, and to aid in diversification of sources of electric power generation. [8] p.211.

Electricity, § 3 — Generating plants — Needs for power — Alternative energy — Canadian imports.

It was held that electric power sources from Canada were unreliable as an alternative to completion of a nuclear electric generating plant to serve future power needs of New Hampshire energy users, in part because there is no obligation of treaty between the United States and Canada to enforce the sanctity of contracts between New England utilities and Canadian provincial agencies. [9] p.211.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cost comparisons.

In deciding whether completion of construction of a nuclear electric generating plant is the least cost option to serve the public interest and need for power, the cost of the plant should be determined on the basis of "incremental cost" — the additional cost to be incurred by completion — rather than "total cost" — including all incremental cost plus "sunk" costs already incurred; an incremental cost standard is both preferred and legally permissible. [10] p.214.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cost comparisons.

For the purpose of determining the incremental cost of completing construction of the Seabrook nuclear power plant Unit I, and how well that plant would satisfy future need for power, it was found that a projected capacity factor of 60% was reasonable because the plant was a "state of the art unit" that had not been subject to the quality assurance problems experienced by other reactors. [11] p.224.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cost comparisons.

For the purpose of determining the incremental cost of completion of construction of the Seabrook nuclear power plant Unit I, and how well the plant would satisfy future need for power, findings were entered stating estimated (1) cost of nuclear fuel (per kilowatt-hour) from 19862005, (2) operations and maintenance expenses, (3) decommissioning costs, (4) useful life, and (5) cost of capital. [12] p.226.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cogeneration.

Electric power supplied by cogeneration was held not a reliable substitute for nuclear generating capacity, either regarding the volume of capacity or the synchronization of capacity with demand. [13] p.234.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Conservation.

The availability of electric capacity through increased energy conservation was held not to be preferred over completion of construction of a nuclear electric generating plant in order to meet future need for power. [14] p.234.

Electricity, § 3 — Generating plants — Need for power — Alternative energy — Cost comparisons — Ratemaking considerations.

Completion of construction of a nuclear electric generating unit, although the least cost alternative of meeting future need for power, nevertheless will not be in the public interest if the financing necessary for such completion will create a capital

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structure that produces unacceptable consequences for ratepayers. [15] p.235.

Security Issues, § 54 — Authorization — Factors considered — Ratemaking effects.

For the purpose of deciding whether to approve financing for the continued construction of a nuclear electric generating plant, and whether such approval is in the public interest, such financing may be determined to be injurious to the public interest if the capitalization (capital structure) is so high that the utility, because of its inability to earn operating costs, depreciation, and other charges, will not be able to provide service to its customers at reasonable rates. [16] p.242.

Security Issues, § 54 — Authorization — Factors considered — Ratemaking effects.

Approval of additional financing for construction of the Seabrook nuclear power plant Unit I was found to produce a capitalization (capital structure) that would produce rate levels for utility service consistent with the public interest. [17] p.242.

Bankruptcy — Electric utilities — Public interest considerations.

It was held that a denial of approval of additional financing for completion of construction of the Seabrook nuclear power plant Unit I that would result in the bankruptcy of the electric utility would be inconsistent with the public good. [18] p.247.

Bankruptcy — Electric utilities — Jurisdiction — Conflict of laws.

Upon the bankruptcy of an electric utility, federal law would control; state law in conflict with the Bankruptcy Code violates the Supremacy Clause of the United States Constitution. [19] p.251.

Bankruptcy — Electric utilities — Jurisdiction — Conflict of laws.

Upon the bankruptcy of an electric utility, the state public utilities commission would have jurisdiction over the utility as a debtor-in-possession and could be exempt from an automatic stay (under 11 USC § 362) prohibiting commencement or continuation of any judicial or quasi-judicial action against the utility; however, such exemption might be restricted to enforcement of laws regarding health, welfare, morals, and safety, and might not extend to regulation affecting control of the property of the debtor. [20] p.251.

Bankruptcy — Electric utilities — Jurisdiction — Plan of reorganization — Rate changes.

Upon the bankruptcy of an electric utility, approval of the state public utilities commission would be required for any plan of reorganization involving a rate change. [21] p.251.

Bankruptcy — Electric utilities — Jurisdiction — Conflict of laws.

The bankruptcy of an electric utility would result in continuing jurisdictional conflicts between the bankruptcy court and the state public utilities commission concerning the utility, interested trade creditors, bankruptcy creditors, stockholders, bondholders, credit committees, stockholder committees, and indenture trustees; there are no express provisions of the Bankruptcy Code requiring the bankruptcy court to consider and balance the interests of ratepayers against the interest of creditors. [22] p.251.

Bankruptcy — Electric utilities — Procedure — Intervention.

Upon the bankruptcy of an electric utility, the Bankruptcy Code would entitle the state public utilities commission and ratepayers to a right of permissive intervention subject to bankruptcy court approval. [23] p.251.

Electricity, § 3 — Generating plants — Need for power — Alternative energy.

It was held that electric power generated by the Seabrook nuclear power plant Unit I would be required to meet the future power needs of the state of New Hampshire and that approval of additional financing to complete construction of the unit was in the public interest independent of the probable bankruptcy of the electric utility (the lead participant in the project) that would result from a denial of financing or the fact that a bankruptcy would not solve the public interest; unacceptable alternatives to completion of construction would include (1) an alternative base-load plant, (2) the use of conservation, capacity from small hydroelectric plants, or cogeneration capacity, or (3) the financing of alternate capacity following reorganization under the bankruptcy laws. [24] p.258.

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Electricity, § 3 — Generating plants — Planning — Demand forecasting.

Discussion of electric demand forecasting. p. 195.

Bankruptcy — Electric utilities — Regulation.

Discussion of regulatory uncertainties resulting from bankruptcy of an electric utility. p.250.

Security Issues, § 54 — Authorization — Factors considered — Ratemaking effects.

Statement, in separate opinion, that approval of additional financing for completion of construction of the Seabrook nuclear power plant Unit I with full cost rate support was inconsistent with the public interest and that approval of financing should be conditioned upon adoption of ratemaking standards that would limit the exposure of ratepayers. p.269.

Electricity, § 3 — Generating plants — Need for power — Alternative energy.

Discussion, in separate opinion, of future need for power in the state of New Hampshire and of alternatives to completion of construction of the Seabrook nuclear power plant Unit I, including energy conservation, small power production, cogeneration, and fossil-fueled electric generation. p.269.

(AESCHLIMAN, commissioner, issues separate opinion, p. 269.)

APPEARANCES: Sulloway, Hollis & Soden by Martin L. Gross, Esquire for Public Service Company of New Hampshire; Douglas I. Foy, Esquire and Armond Cohen, Esquire for the Conservation Law Foundation of New England, Inc.; Robert A. Backus, Esquire for the Seacoast Anti-Pollution League; Lawrence Eckhaus, Esquire for the Campaign for Ratepayers' Rights; Gerald M. Eaton, Esquire for the Community Action Program; Michael W. Holmes, Esquire for the Consumer Advocate; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for the Business and Industry Association of New Hampshire; Hall, Morse, Gallagher & Anderson by Mayland Morse, Esquire and Jeffrey Zellers, Esquire for the New Hampshire Electric Cooperative, Inc.; John Hilberg, Pro Se for Calcogen, Inc.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This proceeding was initiated by the Commission on August 2, 1984, to address the issue of whether an anticipated financing request (The "Newbrook Plan") by the Public Service Company of New Hampshire (PSNH or Company) for prefinancing the completion of the Seabrook Nuclear Power Plant Unit I (Seabrook) is consistent with the public good pursuant to RSA 369:1 et seq. The docket, which resulted from the bifurcation of DF 84-167, a prior PSNH financing, was opened to allow for a timely in-depth review of the projected PSNH Newbrook financing, and to determine the relative economic desirability of allowing or disallowing the Company's continued participation in the Seabrook project.

This financing is one in a series of financings that arise from the liquidity crisis that was triggered by the actions of a group of banks which had a revolving credit agreement with PSNH. In March, 1984, the banks indicated that they were unwilling to make advances under the terms of \$169,000,000 revolving credit agreement. The Company, as a result thereof, was unable to meet its payments for the costs for the Seabrook project along with many

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other obligations. Consequently, the construction on the Seabrook project was suspended in April and did not resume until July 2 at substantially lower expenditure levels.

As a result, the Joint Owners entered into a number of agreements, including amendments to the Joint Ownership Agreement, to provide for the establishment of, among other things, a six-member Executive Committee, of which the Company is a member, to oversee the budget for the Seabrook plant. The Executive Committee is in turn subject to the control of Joint Owners holding 51% of the ownership interests. As a result of these amendments, the Company no

longer has sole authority over the level of construction expenditures at the Seabrook Plant. These arrangements also contemplate that the Company will delegate its responsibilities under the Joint Ownership Agreement for the construction and operation of the Seabrook Plant to a new managing agent.

On June 23, 1984, at the same time that the Joint Owners adopted resolutions to resume construction of Seabrook Unit I and accepted the financing plans of the Seabrook participants for completion of construction of Seabrook Unit I, the Joint Owners unanimously adopted a resolution providing for the phased transfer of construction and operation responsibilities from the Company to an independent entity, subject to the receipt of all necessary regulatory approvals. Responsibility for construction of Unit I is presently vested in a new division of the Company, known as the New Hampshire Yankee Division. Upon receipt of all required regulatory approvals, the New Hampshire Yankee Division will become an independent corporate entity, to be known as New Hampshire Yankee Electric Corporation (N.H. Yankee), which will assume the Company's responsibilities for the management of construction and start up of Unit I. The Joint Owners of the Seabrook Plant will own the new corporation and will be represented on its governing board in proportion to their ownership of the Seabrook Plant. The existing agreement between the Company, as agent for the Joint Owners, and Yankee Atomic Electric Company (YAEC) for the provision by YAEC of engineering, quality assurance, and other services for Seabrook Unit I will then be administered by N.H. Yankee. It is contemplated that at some future time, subject to regulatory approval, N.H. Yankee may be given responsibility for the operation and maintenance of Unit I.¹⁽²⁰⁾

Another response by PSNH to its liquidity crisis was to propose a three phase plan, of which this financing purports to be the third and final phase, developed by its underwriters,

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Merrill Lynch Capital Markets, Inc. (Merrill Lynch), to finance the Company's Seabrook and Non-Seabrook financing needs through the projected completion of Seabrook Unit I.

The objective of this three phase plan was to ensure the availability of all funding necessary to complete Seabrook Unit I at a specified date (5 Tr. 710). This explicit goal was deemed necessary to the success of the financing by Merrill Lynch, and subsequently by other involved underwriters (27 Tr. 4886).

The first phase, a petition to raise \$135,000,000 to meet the Company's immediate cash needs was filed with the Commission on May 21, 1984, at Docket No. DF 84-121. The Commission, after public hearing, approved the petition and the Company issued and sold \$90,000,000 of Secured Exchangeable Promissory Notes.²⁽²¹⁾ This approval was appealed to the Supreme Court where the issue is pending.³⁽²²⁾

Subsequently, in Re Public Service Commission of New Hampshire, the Commission approved a petition to restructure the Company's short term credit obligations to enable PSNH to meet its cash needs, obtain new revolving credit and to avoid final defaults.

The second phase financing for \$425,000,000 was approved by the Commission in Docket No. DF 84-167 in Report and Eighth Supplemental Order No. 17,228 (69 NH PUC 558), aff'd,

Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984) (SAPL II).⁴⁽²³⁾

In the second phase financing, the Commission, citing the continuing exigencies facing the Company as well as the fact that only a small portion of the proposed financing was for Seabrook construction, deferred consideration of Seabrook issues to this third phase financing. Order No. 17,141 (69 NH PUC 422) aff'd, SAPL II, supra. In affirming the PUC order, the Court said that deferral of the Seabrook issues to the third phase financing would not render the inquiry academic and that Commission findings must rest on the "record of a substantial inquiry".⁵⁽²⁴⁾

Although PSNH had not yet filed a petition for the third phase financing, the Commission, reflecting the same concerns later expressed by the Court in SAPL II, opened the instant docket on its own motion by Order of Notice dated August 2, 1984 for the purpose of investigating, inter alia, whether continued financing of the construction of Seabrook I is in the public good. The

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Order of Notice scheduled a procedural hearing for August 9, 1984 at the Commission offices and specified the issues to be addressed as including:

1) Whether the terms, conditions and amount of the proposed third phase financing are in the public good;

2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and

3) Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Seabrook Unit I ...

A procedural hearing was convened on August 9, 1984, to set a procedural schedule and to address such procedural matters as intervention and scheduling. The Commission subsequently issued Report and Order No. 17,164 (69 NH PUC 446) (1st Procedural Order) which granted full intervenor status to the Conservation Law Foundation of New England, Inc. (CLF), the Seacoast Anti-Pollution League (SAPL), the Campaign For Ratepayers' Rights (CRR), the Community Action Program (CAP), The Business and Industry Association of New Hampshire (BIA), the New Hampshire Electric Cooperative, Inc. (NHEC)⁶⁽²⁵⁾ and the Consumer Advocate. A decision on the Motion To Intervene of Calcogen, Inc. (CALCOGEN) was deferred and subsequently granted in Order No. 17,212 (69 NH PUC 517). The first procedural order also established a procedural schedule governing discovery, hearings and the submission of prefiled testimony and exhibits. While the Commission scheduled hearings to commence on December 3, 1984, no ending date was established.

In the First Procedural Order, the Commission noted that "[s]ince the level of uncertainty about how this proceeding will develop increases rapidly, the latter dates in the procedural schedule, to the extent that they are scheduled at all, will be tentative."⁷⁽²⁶⁾ The Order continues

(69 NH PUC at pp. 450, 451):

... the schedule is designed to move the proceedings in an attempt to avoid any further delays in the construction project. It would not be in the public interest for the Commission to cause a delay by gratuitously extending the proceeding beyond the date negotiated by the management of the companies that comprise the joint owners. If the project is to be completed, it should be done as soon as possible. If the facts determine that the project should not receive further approvals for financing, then action should be taken as soon as possible. This docket ... is driven by circumstances which were made known to the Commission during the past year and the necessity to bring some final conclusion to the Seabrook controversy. ... [T]he Commission has

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set a schedule for itself, the Company, Intervenors and Staff that attempts to devote adequate time to accomplish an investigation. As noted above, the adequacy of the time period will be highly dependent on PSNH's ability to provide the necessary information early in the process. To the extent that PSNH cannot supply timely information or meet the deadlines established herein, an extension may be appropriate. However, PSNH should be on notice that any granted extensions will have the effect of extending the entire procedural schedule.

In accordance with these guidelines, the Commission modified the procedural schedule throughout the proceedings.⁸⁽²⁷⁾ As a result, the thirty-eight days of hearings in this docket extended through February 20, 1985 with 7,512 pages of transcript and 179 Exhibits. The schedule of witnesses is attached hereto as Attachment A, and a list of all orders issued by the Commission in this docket follow as Attachment B.

The first procedural order provided for the prefiling of PSNH testimony and exhibits on the terms, conditions and amount of the proposed financing. The hearings commenced as scheduled on December 3, 1984. On December 29, 1984, after presenting four of its witnesses, PSNH filed revised testimony modifying the terms, conditions and amount of the proposed financing. Well before cross examination was completed on the revised filings, the Company filed a motion to recess the proceedings on January 21, 1985. The basis for the motion was that PSNH had been presented with a new financing opportunity which the Company believed would significantly lower the cost of the proposed securities. The Commission granted the motion for recess (24 Tr. 4409) and established a new procedural schedule for the prefiling of testimony and exhibits and for additional hearing days.

SAPL, CLF and CRR filed a Motion To Dismiss the Application on January 23, 1985 which requested that the Commission dismiss the petition, direct PSNH to file a new financing request and for further related relief. PSNH objected to the motion and CAP moved that the motion be neither granted nor denied. The Commission found that the new procedural steps which would be required by granting the intervenors' request would unduly prolong the proceeding without providing any useful benefits to any party and accordingly denied the motion.⁹⁽²⁸⁾

On February 21, 1985, the Company filed its amended petition.

Original Newbrook Proposal

On November 15, 1984, approximately two weeks before the commencement of hearings,

PSNH filed its petition under RSA 369 for authority to enter into the Newbrook financing for the completion of construction of Seabrook Station Unit I. PSNH requested authority: (a) to issue to Newbrook Corporation not more than \$730,000,000 in aggregate principal amount of Collateral Bond Indenture, (b) to issue to the Newbrook Trustee on the date of

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the closing and thereafter from time to time General and Refunding Mortgage Bonds in the maximum amount then issuable under the provisions of the Company's General and Collateral Bonds, (c) to issue First Mortgage Bonds as further security for the G&R Bonds and the Collateral Bonds, (d) to mortgage the Company's properties, tangible and intangible, including franchises and after-acquired property, as security for the Company's Collateral Bonds, General and Refunding Mortgage Bonds and First Mortgage Bonds, (e) to pledge all of the common stock of the Company's rights to receive payments from the PSNH Subsidiary as further security for the Collateral Bonds, and (f) to issue evidences of indebtedness in connection with a letter of credit, insurance policy or other similar arrangement and pledge as security therefor the portion of the proceeds from this financing allocated to the pre-financing of Unit I construction expenditures.

The Newbrook Corporation, as described in the petition, was organized under the laws of the State of Delaware and intended to issue to the public the aforementioned securities in lieu of having said securities issued directly by PSNH. This arrangement was designed to reduce the financial risk associated with the construction of Seabrook (Exh. 3 at 7, 17). Merrill Lynch submitted the plan to the joint owners who adopted the plan. The estimated cost of completion used by the joint owners was 1.3 billion dollars.¹⁰⁽²⁹⁾

The Company also stated in its petition that the proceeds would have been used as follows:

- 1) Approximately \$421,000,000 would be deposited into an escrow account to prefund PSNH's share of Seabrook Unit I construction expenditures.
- 2) Sufficient funds would be set aside to meet the first four semiannual interest payments.
- 3) To purchase interest in one or more United States Treasury Securities on a zero coupon basis with a maturity equal to the principal amount of the Newbrook bonds.
- 4) To enter into a third mortgage and collateral trust indenture and to issue thereunder not more than \$730,000,000 worth of third mortgage and collateral trust bonds as security for the Newbrook bonds.
- 5) To apply the proceeds of the sale of its interest in Maine Yankee Nuclear Power Corporation as a capital contribution to a PSNH subsidiary.

Revised Petition

On February 21, 1985, PSNH filed an amended petition as a result of a new proposal made to PSNH by the firms of Kidder, Peabody and Company, Inc. (Kidder) and Drexel, Burnham and Lambert (Drexel). Kidder was underwriter for all Seabrook financings prior to the liquidity crisis of March, 1984 (27 Tr. 4828). After the liquidity crisis, PSNH chose Merrill Lynch as its financial advisor and that firm developed the Newbrook financing proposal. On January 15,

1985, representatives of Kidder and Drexel approached PSNH with the new proposal. Merrill Lynch was not involved in that meeting but was allegedly preparing to make a similar proposal to PSNH soon

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thereafter (27 Tr. 4845-46). Merrill Lynch, Kidder and Drexel are the Underwriters for the proposed financing.

The reason given by the underwriters that the revised proposal could be accomplished presently, but could not have been accomplished in the past, is that various key factors have changed. The underwriters testified that the three phase financing plan which was developed in response to PSNH's liquidity crisis helped restore the Company's access to the marketplace (27 Tr. 5079). Other factors that contributed to the restoration of commercial bank money and market confidence were the elimination of common stock dividends, the elimination of the preferred stock dividends and other cash conservation efforts. (27 Tr. 5079-80).

The amended petition requests:

a) Authority to enter into the Third Mortgage Indenture, mortgaging company property as security for the deferred interest bonds (DIB) and/or pollution control revenue bonds (PCRBS); and

b) Authority either (i) to issue and sell up to \$525,000,000 of DIBS, within the range of terms set forth in paragraph 5 of the petition, or, alternatively, (ii) to issue and sell and/or arrange for the issuance and sale of a mix of Securities, consisting of DIBS, PCRBS and/or Credit Support PCRBS, up to \$525,000,000 in principal amount (not counting any third mortgage bonds issued in connection with the PCRBS bonds) and to take all actions necessary to complete such issuance of securities as described in paragraphs 5 through 13 of the petition; so long as the company's net cost to maturity is not greater than its maximum net cost to maturity of the issue and sale of up to \$525,000,000 principal face amount of DIBS only pursuant to alternative (i).

The Company further requested that the Commission remove the following conditions imposed in Docket DF 84-167, Order No. 17,222 (69 NH PUC 522):

a) A prohibition for PSNH from contributing cash for Seabrook construction at a level exceeding its ownership share of \$5,000,000 per week in construction expenditures;

b) A restriction on accruing Seabrook allowance for funds used during construction (AFUDC) and servicing Seabrook related debt;

c) A limitation on the Company's ability to use additional proceeds from the prior financing in DF 84-167, authorized in Order No. 17,222. The Company now proposes to use an appropriate portion of said proceeds for the purpose of the present financing as a pro tanto reduction in the amount of the issue to be authorized herein.

In summary, the original and amended petitions are similar in that they request the use of the proceeds for the purpose of prefunding the completion of Seabrook Unit I. The two petitions differ in five respects. First, the amended petition does not require the use of a PSNH subsidiary, the prefunding of the first four interest payments, the purchase of a Treasury

Investment Growth Receipt (TIGR) and use of the Newbrook Corporation. Second, the amount of financing requested in the amended petition is \$525,000,000 as compared to \$730,000,000 in the original petition. Third, the Yankee Swap provision has been removed in the amended petition. Fourth, the amended petition seeks use of deferred interest bonds and pollution control revenue bonds with or without credit supports. Finally, the amended petition requests the removal of certain conditions which were imposed in Order No. 17,222.

Issues

At the request of the Commission, the parties presented their views of the issues which they wished to be addressed and within the scope of the proceedings. The parties agreed that the scope as previously defined by the Commission *supra* included:

- 1) Bankruptcy;
- 2) The Commission's authority over the Newbrook Corporation;
- 3) The potential effect of PSNH's financing plans on rates;
- 4) The effect of Seabrook based rates on demand for electricity;
- 5) The rate issues identified by the Court in SAPL II.

The Commission found these issues to be within the scope of the proceedings.¹¹⁽³⁰⁾

Regarding other proposed issues, the Commission ruled as follows:

1) THE RATE IMPACT OF ALTERNATIVE TREATMENTS OF SEABROOK UNIT II AND PILGRIM UNIT II. PSNH objected to including this issue arguing that it is before the Commission in other proceedings, the issue is irrelevant and the Commission may in this case make findings that will affect PSNH's rights in subsequent ratemaking proceedings. The Commission decided to allow evidence on the issue; however it noted that ratemaking treatment for Seabrook Unit II and Pilgrim Unit II has not been noticed and accordingly, any such determination must be deferred until the appropriate proceeding.¹²⁽³¹⁾

2) WHETHER THE PROPOSED MAINE YANKEE TRANSACTION BETWEEN PSNH AND THE NEW HAMPSHIRE ELECTRIC COOPERATIVE (YANKEE SWAP) IS IN THE PUBLIC GOOD. PSNH objected to consideration of this issue claiming the Commission approval of the Yankee Swap is not sought and not necessary. The NHEC objected because the issue will be before the Commission in its remanded Seabrook financing docket, DF 83-360. Although the Commission ruled that the Yankee Swap is within the scope of this proceeding, the revised petition of February 21, 1985 eliminates the Yankee Swap from the financing.

3) WHETHER AN APPROPRIATE EVALUATION OF THE COMPANY'S PETITION CAN BE MADE ON THE BASIS OF INCREMENTAL COST. Several intervenors argued that an evaluation of the alternatives to

Seabrook should address more than incremental cost alone. PSNH objected arguing that the incremental cost is appropriate and was noticed in the Commission's orders. The Commission sustained PSNH's objection¹³⁽³²⁾ explaining that a finding of public good for the purpose of reviewing a proposed financing involves an evaluation of the circumstances as they exist today. Sunk costs are a fait accompli and should be treated in a consistent way in comparing alternatives. This did not preclude any evidence on total cost for the purpose of assessing ratepayer and investor exposure and any other matters related to the public good.¹⁴⁽³³⁾

4) WHETHER THE COMMISSION CAN CONSIDER A CAP ON SEABROOK COSTS AS A PART OF THIS PROCEEDING. PSNH objected alleging lack of notice and because there is already an ongoing docket before the Commission on the issue. The Commission decided to allow the parties to present evidence or argument on the issue.¹⁵⁽³⁴⁾

On February 22, 1985, SAPL orally moved (38 TR 7518-22) that the Commission order PSNH to comply with the conditions imposed in Order NO. 17,222 in DF 84-167. One of the conditions imposed in said order was:

2. Public Service Company of New Hampshire is prohibited from spending or contributing cash for the purpose of constructing Seabrook at a level that exceeds 35.56942% of \$5,000,000 per week until specifically authorized by a further order issued by this Commission in DF 84-200. ...¹⁶⁽³⁵⁾

During the hearings in DF 84-200, PSNH's President Robert Harrison testified that because construction spending had been less than the authorized \$5,000,000 per week, approximately \$40,000,000 of the construction funds allocated to Seabrook had not been spent. Mr. Harrison expressed the intent to increase the weekly spending level to \$5 million plus a portion of the previously saved \$40,000,000. SAPL and other Intervenors filed a motion objecting to the step-up in construction spending claiming it is inconsistent with the above cited condition in Order No. 17,222.

In Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110), the Commission denied the motion holding that PSNH's spending levels are not inconsistent with Order No. 17,222. We provided, however, that PSNH must continue to expend in the aggregate no more than its portion of construction at a cumulative level of \$5 million per week: vis, any amount of expenditures less than PSNH's 35.6942% share of \$5 million per week since December 1984 may be aggregated and spent for any increase in joint funding levels for Seabrook I construction but in no event more than 10% of the net proceeds of the \$425 million in Order No. 17,222.

Other Regulatory Approvals Needed

PSNH first announced its intention to construct the Seabrook plant in May, 1968. It was planned to have two 1,150 megawatt (MW) Westinghouse pressurized water reactor (PWR) units with an ocean water cooling system. On February 1, 1972, PSNH filed its application before the State of New Hampshire site evaluation committee and the New Hampshire Public Utilities Commission for a certificate of site and facility. At that time the estimated cost to complete both units was approximately \$850,000,000. Since then Seabrook has experienced "persistent and

substantial cost increases".¹⁷⁽³⁶⁾ PSNH described the increased costs as having been due to, inter alia, "design changes, revisions of regulations of and other actions by the (Nuclear Regulatory Commission) NRC and other regulatory bodies, extraordinarily high interest rates, inflation and construction delays, all of which have resulted in total costs, including allowance for funds used during construction (AFUDC) ..., far higher than planned."¹⁸⁽³⁷⁾

PSNH now estimates that Unit I will cost \$4.6 to \$4.7 billion including AFUDC with a projected commercial date of October 31, 1986, assuming full spending is authorized by April 1, 1985.¹⁹⁽³⁸⁾

The Joint Owners must all have adequate financing either in hand or otherwise assured before construction can resume at full spending levels (Exh. 3 at 8); (5 Tr. 827). The Joint Owners and their relative ownership interests in the Seabrook project are as follows:

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

Public Service Company of New Hampshire	35.56942%
The United Illuminating Company	17.50000
Massachusetts Municipal Wholesale Electric Company	11.59340
New England Power Company	9.95766
Central Maine Power Company	6.04178
The Connecticut Light and Power Company	4.05985
Canal Electric Company	3.52317
Montaup Electric Company	2.89989
Bangor Hydro-Electric Company	2.17391
New Hampshire Electric Cooperative, Inc.	2.17391
Central Vermont Public Service Corporation	1.59095
Maine Public Service Company	1.46056
Fitchburg Gas and Electric Light Company	0.86519
Vermont Electric Generation and Transmission Cooperative, Inc.	0.41259
Taunton Municipal Lighting Plant	0.10034
Hudson Light and Power Department	0.07737
-	-
	100.00000%

The Joint Owners agreed that unless a Joint Owner can demonstrate sufficient financial security meeting certain specific criteria,²⁰⁽³⁹⁾ it must provide a plan to put into an escrow account, before the end of 1984, an amount of cash sufficient to pay its share of the construction cost of completing Seabrook Unit I.

Seven of the Joint Owners are expected to be able to demonstrate that adequate financing will be available in the future to complete their individual portions of Seabrook construction costs. The remaining Joint Owners must prefinance their share of the construction costs (5 Tr. 944) subject to

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regulatory approvals. Regulatory or appellate proceedings regarding these utilities are pending in Massachusetts and Maine and others are completed, with certain conditions, in Vermont and Connecticut.

On April 4, 1985, the Massachusetts Department of Public Utilities (DPU) issued an order in docket DPU 84-152 affecting four Joint Owners who own an aggregate 25.9% of Seabrook: New England Power Company (NEP), Fitchburg Gas and Electric Light Company (FG&E), Canal

Electric Company (Canal) and the Massachusetts Wholesale Electric Company (MMWEC). The docket, opened on petition of these Joint Owners, addressed the estimated cost of completing Seabrook I, the estimated completion date and the cost of the electricity to be generated by the unit.²¹⁽⁴⁰⁾

In its order, the DPU found that the utilities' "Seabrook I cost and construction schedule estimates are substantially understated" and that the utilities did not provide a "credible analysis" of the project's potential costs. Order of April 4, 1985 at 69. The DPU accordingly ordered that "... if the Companies wish to obtain the Department's approval for Seabrook related financings in order to continue with that investment, they must do so with the clear understanding that the risk of any future expenditures will not be borne by their ratepayers." Id at 70-71.

Because MMWEC, a cooperative of municipal light departments, has no shareholders the DPU ordered MMWEC to submit a plan for avoiding rate shock to its customers. Under the order, MMWEC may issue only such bonds as are deemed "reasonably necessary to mitigate ... rate shock associated with

its investment to date, but in no event will it be permitted to issue bonds to pay for further construction costs of Seabrook I." Id. at 78.

NEP, FG&E and Canal are investor owned utilities (IOU's). The DPU ordered that each IOU will get financing approvals for future Seabrook construction only if the IOU commits to the following:

1. In the event Seabrook 1 does not become commercially operable, cost recovery from ratepayers will be limited solely to those expenditures which were prudently incurred before the date of this Order.

2. In the event that Seabrook becomes commercially operable, cost recovery from ratepayers will be limited to the marginal costs of capacity and energy that would otherwise be faced by the utility, but in no event more than the amount which would be collected by placing the prudently incurred, used and useful portion of the cost of the plant in rate base and no less than the amount that the company would be entitled to collect if the plant were abandoned as of the date of this Order.

3. In the alternative, a company may choose to receive an as-available marginal cost rate for electricity produced throughout the life of Seabrook 1, without a constraint on the minimum and maximum levels of cost recovery.

Id. at 74.

DPU 84-152 is a generic Seabrook docket. The findings of the April 4 order, unless overturned, are expected to be used in additional proceedings addressing each individual utility's

proposed financing plan.²²⁽⁴¹⁾ These latter proceedings were projected to end in late April, 1985.²³⁽⁴²⁾ The recent DPU order could delay final resolution, however.

The Vermont Public Service Board approved in a 2-1 decision on December 28, 1984 the continued participation of the Vermont utilities (2% aggregate ownership interests) in Seabrook

Unit I on the condition that the financing of all joint owners for the cash completion cost of the unit be in place by April 15, 1985.²⁴⁽⁴³⁾ The Vermont Public Service Board held that the cash cost to complete Seabrook was less than the cost of alternative power sources, assuming a Unit I commercial operation date as late as August, 1987 and a cost to complete of between \$1 billion and \$1.3 billion. An additional hearing is scheduled for April 16, 1985 to review the status of the financing plans and related matters. The Vermont Board further stated that Seabrook Unit I is marginally economic and if it cannot be securely financed by midApril, 1985, it should be cancelled.²⁵⁽⁴⁴⁾

On December 13, 1984, the Maine Public Utilities Commission ordered the three Maine utilities (9.7% aggregate ownership shares) to obtain credible, firm offers to buy their interest in Unit I by January 11, 1985 or be prepared to submit a plan for disengagement from the project. Various timely offers to buy approximately one-third of the ownership in the Maine utilities were received but at a price deemed too low by the Maine Commission. The Maine utilities appealed the December 13 Order to the Maine Supreme Court and have filed briefs with the Commission questioning its authority to order disengagement from the Seabrook project.²⁶⁽⁴⁵⁾ Various extensions have been granted by the Maine Commission and no firm date for final resolution is indicated.

The Connecticut Department of Public Utility Control determined in November, 1984 that the two Connecticut joint owners, holding an aggregate of 21.5% of the ownership interests, should continue their participation in the project. One of the utilities, the United Illuminating Company, has its approval relating to a portion of its financing plan, contingent on removal of pending limitations on Unit I construction before May 5, 1985. In summary, further regulatory approvals are required from Massachusetts and Maine with further action possible from Connecticut and Vermont regarding the conditions imposed in those jurisdictions.

The above-described regulatory environment indicates that timely regulatory approvals may be an essential determinant of whether completion of Seabrook Unit I is economic.²⁷⁽⁴⁶⁾

II. DESCRIPTION OF PSNH PROPOSED FINANCING

As noted in the foregoing section, the PSNH financing proposal has been amended throughout the course of these proceedings. What is described in this section is the proposal which is the subject of this Order; a proposal described in Mr. Bayless' Second Supplemental Testimony (Exhibit 105) and

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the February 21, 1985 Amended Petition of PNSH for Authority to Enter Into Financing Transactions for the Completion of Seabrook Station Unit I.

The proposed financing is the last phase of a three-phase plan to restore PSNH's financial integrity and to prefinance the construction of Seabrook Unit I. The first phase involved the issuance and sale of \$90 million in shortterm notes to resolve temporarily the Company's liquidity crisis. Re Public Service Co. of New Hampshire, 69 NH PUC 275 (1984). The second phase involved the issuance and sale of \$425 million in long term securities for the purpose of pre-financing the Company's operations through the commercial operation date of Seabrook Unit

I. Re Public Service Co. of New Hampshire, 69 NH PUC 522 (1984), aff'd SAPL II. The instant proposed financing, described in its petition of February 21, 1985 is the third phase. It is in accordance with the "Newbrook Plan" approved by the Joint Owners. The Newbrook Plan was described in Form 10-K, Exh. 173 at 11, as follows:

Newbrook Plan. As part of a plan to complete the construction of Unit 1 of the Seabrook Plan each Seabrook Joint Owner submitted to the other Joint Owners (i) a plan for raising funds sufficient to pay for such Joint Owner's share of the remaining cost to complete Unit 1 and (ii) a schedule for regulatory approvals of such plan. The plans assume a cash cost to complete construction of Unit 1 of \$1.0 billion and a commercial operation date in October 1987. Each of such plans and schedules was approved by the Joint Owners. In order to obtain such approval each Joint Owner had to evidence that the required financing would be available by satisfying one of the following criteria:

(1) the Joint owner has debt securities rated A- or better by both Moody's Investors Service, Inc. and Standard & Poor's Corporation; or

(2) the Joint Owner has a commitment from the Rural Electrification Administration to guarantee loans which will fund that owner's share of the cost to complete Unit 1; or

(3) The Joint Owner provides an irrevocable letter of credit from a financial institution (the long-term debt of which is rated A or better by both Moody's Investors Service, Inc. and Standard & Poor's Corporation) sufficient to fund that owner's share of the cost to complete Unit 1 when that owner cannot otherwise obtain funds; or

(4) the Joint Owner agrees to put into an escrow account an amount of cash which, together with interest thereon, would be sufficient to pay its share of the cost to complete Unit 1.

To accomplish its objective, the Company proposes to raise approximately \$340 million through the issuance and sale of deferred interest bonds (DIBs) and, to the extent possible, tax exempt pollution control revenue bonds (PCRBs).

The DIBs would be a direct obligation and a direct issuance of PSNH and would be secured by a third mortgage on PSNH's properties within New Hampshire, including tangible and intangible property and after acquired property and franchises. The mortgage will be of substantially the same breadth as PSNH's General and Refunding (G & R) Mortgage Indenture, which is a

second mortgage on the Company's assets, except that the property covered by the third mortgage will be limited to property located in New Hampshire. The Third Mortgage Indenture would permit the issuance and sale of additional third mortgage bonds provided that immediately after such issuance, the principal amount of first mortgage bonds, G & R Bonds and third mortgage bonds then outstanding would not exceed 75% of the Company's net utility plant.

The DIBs are designed so that the Company will not be required to pay cash interest on the bonds for up to two years. Instead, the Company proposes to issue the bonds at a discount from the principal amount; a discount which will approximately equal the interest which otherwise would have accrued during the two year period. Interest will accrue after the two year period and

will be payable semiannually. If the Company raises its entire \$340 million cash requirement through the issuance and sale of the DIBs, the maximum face amount of the bonds would be \$525 million. Interest would be calculated on the face amount of the bonds. While the final terms and conditions of the DIBs must be determined based on market conditions as they will exist at the time of issuance, the Company provided ranges for the purpose of facilitating Commission evaluation. Those ranges are:

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

Maturity:	8 - 12 years
Sinking Fund Requirements:	If any, a requirement to retire up to 80% prior to maturity
Interest Rate:	Up to 23% payable semiannually after interest deferral period
Interest Deferral Period:	Up to 2 years
Underwriting Discounts:	Up to 5% of Offering Price
Offering Price to Public of \$1,000 Principal Amount DIB:	The offering price to the public will vary as a function of the interest rate and the interest deferral period. At a 23% interest rate with a two year interest deferral period, the Offering Price would be approximately \$647.00

For the purposes of Commission analysis, we will assume that the Company will issue the bonds on terms that are at the top of the above ranges. Under these circumstances, the proper basis of evaluation is the PSNH testimony which anticipated a sale of \$525 million of DIBs at a 23% interest rate; a 2 year interest deferral period; a ten year maturity; a 20% sinking fund requirement beginning in year six; a 5% underwriting discount; and \$930,000 expenses of issuance. Those assumptions reflect a net cost to maturity to the Company of 24.11% with \$321.8

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million net cash proceeds available to fund PSNH's share of the completion cost of Seabrook Unit I. This amount is consistent with PSNH's 35.56942% of a \$1 Billion cash "to go" cost because the proceeds will be earning interest prior to the time construction expenditures are made. The prefinanced funds will be administered by an independent agent or agents on behalf of the Joint Owners of Seabrook.

As noted above, the Company is also seeking Commission authority to issue and sell PCRBs. No specific maximum amount of authorization was sought by the Company; rather, PSNH represented that the face amount of the combination of DIBs and PCRBs would not exceed \$525 million. The Company's underwriters estimated that up to \$150 million of PCRBs could be marketed.

PCRBs are tax-exempt securities which may only be issued after they are approved by the

New Hampshire Industrial Development Authority (IDA). The PCRBs would then be issued by the IDA in accordance with the provisions of a trust indenture between the IDA and a trustee for the holders of the PCRBs. The PCRBs would be sold to the underwriting group which, in turn, will sell the bonds to the public. The PCRBs would not be general obligations of the State of New Hampshire and neither the general credit of the State or any subdivision thereof, including the IDA, will be pledged to secure the payment of any obligation under the PCRBs.

Under an agreement to be executed by the Company and the IDA, the IDA will make loans to the Company from the proceeds of the PCRBs and the Company will make payments to the IDA sufficient to fund the principal, premium, if any, and interest on the bonds. The Company will issue third mortgage bonds to secure its obligations under the agreement.

As noted above, the PCRBs are taxexempt. Thus, they can be issued at a lower interest rate and, accordingly, a lower cost to the borrower than taxable securities. In addition, the Company is exploring avenues of credit support such as a letter of credit from a bank and floating market driven interest rates (lower floater) that would allow the IDA to issue the securities at a better rating or lower interest cost. The price of the PCRBs will be agreed upon by the IDA and the underwriters with the approval of the Company and it will be the difference between the price to the public and an amount representing the underwriting discount and commissions. Unlike the DIBs, the PCRb will not have a deferred interest term. Thus, the PCRBs will have to be issued in an amount sufficient to allow the prefinancing of interest costs in addition to the Company's construction obligations. The prefinancing of interest will have the effect of increasing the overall revenue requirement to support the financing. PSNH has represented that the revenue requirement for supporting a combination of DIBs and PCRBs will not exceed the revenue requirement of supporting a financing composed entirely of DIBs with the two year deferred interest term. Thus, PSNH is seeking the flexibility to pursue whatever combination of PCRb and DIB financing which offers the lowest cost to the Company and the lowest exposure to its ratepayers.

III. POSITIONS OF THE PARTIES

A. Introduction

As previously described, the active parties to this proceeding were PSNH, BIA, the Consumer Advocate, CAP, CLF, SAPL, CRR and Calcogen.²⁸⁽⁴⁷⁾ The parties adopted diverse positions and rationales on the multiple issues presented to the Commission in this proceeding, whether or not they were in favor of granting or denying the PSNH position. Thus, we will in this section provide an overview of the position taken by each individual party. The evidence and argument used by the parties to support their respective positions on a particular issue will be described in more detail in the course of the Commission's analysis of the issues.

B. Position of PSNH

PSNH, the Petitioner in this proceeding, took the position that the Commission should rule that the financing as proposed is in the public good and, accordingly, the requested financing authority should be granted. PSNH addressed itself to the issues defined by the Commission.

1. Terms, Conditions and Amount

PSNH presented evidence and argument which it claimed demonstrated that the proposed financing is reasonably related to the circumstances under which the Company must operate. The proffered evidence included the testimony of the Company's financial Vice-President, Mr. Charles Bayless and the testimony of the three Underwriters: Mr. Robert G. Hildreth, Jr. of Merrill Lynch Capital Markets; Mr. Jon M. Jetmore of Drexel, Burnham and Lambert; and Mr. Eugene W. Meyer of Kidder Peabody and Company, Inc. (Underwriters).

After providing a detailed description of the proposed financing (See e.g., Exh. 105), the Company witnesses described the market for PSNH securities. Although the success of the \$425 million Unit financing in December, 1984 indicated an improved market perception of PSNH securities, the market perceived risks associated with the Company remain substantial. Thus, the proposed cost of the financing is reasonable given the state of the market for PSNH securities (See e.g., 27 Tr. 4855).

The Company supported the deferred interest feature of the DIBs by arguing that it eliminates the need to prefinance the interest which would accrue prior to the commercial operation date of Seabrook Unit I. To the extent that the need to prefinance has been reduced or eliminated, the revenue required to support the securities over their financial life will be lowered. With respect to the PCRBS component of the financing, the Company argued that the tax-exempt feature of the securities would lower the overall cost of the debt. In addition, the Company claimed that it would only issue and sell PCRBS to the extent that they have the positive effect of reducing Company costs. Thus, the granting of the requested authority would give the Company the flexibility to reduce costs without the risk of allowing the Company to engage in higher cost financing.

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The Company also believed that the third mortgage security interest was reasonable in view of the circumstances confronting PSNH. The third mortgage significantly enhances the marketability of the proposed financing because investors had previously been advised that the next PSNH financing would be secured. Additionally, the use of secured debt eliminates the need to amend the unsecured debt limitations contained in the Company's Articles of Agreement. The Company further claimed that the third mortgage is preferable to second mortgage G&R security because it allows PSNH the flexibility to issue additional G&R bonds in the future.

2. Purpose

It is uncontested that the purpose of the proposed financing is to prefinance the construction of Seabrook Unit I to commercial operation. Thus, one of the central issues in this proceeding is whether PSNH's continued participation in the Seabrook project is in the public good. It is PSNH's position that Seabrook Unit I represents the best alternative for meeting the Company's obligation to supply power into the foreseeable future. In support of its position, the Company presented the testimony of Mr. William Derrickson, Mr. Frederick Plett, Mr. Wyatt Brown and Mr. Joseph Staszowski. Mr. Derrickson is the Senior Vice President of the New Hampshire Yankee Division of PSNH. The purpose of his testimony was to provide the incremental cost estimate of completing Seabrook Unit I and the estimated commercial operation date of

Seabrook Unit I. At the time that Mr. Derrickson provided his testimony, he believed that the incremental cost of completing Seabrook Unit I would be \$830.3 million, excluding AFUDC (Exh. 2 at 2). This corresponded to a commercial operation date of October 1986. Because Mr. Derrickson was incorrect in his assumption that full funding of Seabrook construction would commence as of January 1, 1985, he subsequently revised his incremental cost estimate to \$882 million. See e.g., 2 Tr. 212; PSNH Brief at 16.²⁹⁽⁴⁸⁾

Mr. Staszowski is a PSNH System Planning Engineer. The purpose of his testimony was to present the results of an evaluation of the long-term alternatives to completion of Seabrook Unit I. Mr. Staszowski developed two generation expansion plans: the first based on the assumption that Seabrook Unit I would be completed and the second based on the assumption that Seabrook Unit I would be cancelled. Exh. 4, Table IV-8. The stream of incremental revenue requirements associated with each generation expansion plan was discounted to present dollars and compared. The base case net present value (NPV) figure resulting from Mr. Staszowski's analysis showed that the incremental cost of completing Seabrook was less than the cancellation generation expansion plan. Mr. Staszowski then performed a sensitivity analysis of his results by using more pessimistic assumptions for his completion case. In each of sixty-four variations from his "base case," Mr. Staszowski found that the completion case is more advantageous than the cancellation case. Exhibit 136, Attachment A.

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Although it did not present any direct testimony on the subject, PSNH argued that Mr. Staszowski's analysis enhanced the value of the cancellation alternative because that alternative did not reflect the uncertainties of bankruptcy. PSNH asserted that a denial of its financing Petition and a subsequent Seabrook cancellation would inevitably result in a reorganization under Chapter 11 of the bankruptcy code. See e.g., PSNH Brief at 92. Due to the substantial level of uncertainties inherent in the bankruptcy of a major public utility and, more particularly, due to the risk that those uncertainties would be resolved in a manner adverse to the interests of the Company's ratepayers, the Company argued that a bankruptcy proceeding would be the least attractive of alternatives. Those uncertainties include, inter alia: 1) whether Commission regulatory jurisdiction would be preempted by federal bankruptcy law; 2) whether PSNH will continue to have access to financial markets to meet its obligations as a public utility; 3) whether PSNH would be capable of engaging in sufficient construction, operation and maintenance activities to maintain requisite service standards; 4) whether PSNH assets would be revalued by the bankruptcy court and the effect of such a revaluation on rates; 5) whether PSNH would continue to have the ability to meet its property tax requirements; and 6) whether PSNH might be forced to sell assets that otherwise would economically serve the New Hampshire ratepaying public.

Mr. Plett and Mr. Brown developed several of the critical inputs to both Mr. Staszowski's as well as the financial feasibility analysis of Mrs. Kathleen Hadley discussed infra at Section VI.C. (Analysis of Revenue Requirement to Support Capital Investment). Mr. Plett is the Company's Director of Corporate Strategic Planning. He developed the cost of capital assumptions employed by Mr. Staszowski and Mrs. Hadley in their projection of future Company revenue requirements. Mr. Plett also developed a range of consumer discount rates which was employed

by Mr. Staszowski to discount his alternative streams of revenue requirements to current dollars. Mr. Brown is an Energy Management Engineer in the Company's Energy Management and Research Department. He developed the Company's load forecast which was used by Mr. Staszowski and Mrs. Hadley to compute, inter alia, future generation needs, the costs associated with those generation needs and the manner in which those costs will affect rates.

After an analysis of Mr. Staszowski's study and the critical assumptions that formed a foundation for that study, PSNH argued that the completion of Seabrook is more advantageous to the Company and its ratepayers than the alternatives.

3. Financial Feasibility

PSNH took the position that the proposed financing is financially feasible because it is marketable, it will produce a capital structure consistent with proper utility standards and it will not require unjust or unreasonable rates to support the resulting capital structure. In support of its argument, PSNH presented the testimony of Mr. Robert Harrison, Mr. Charles Bayless, the

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Underwriters and Mrs. Kathleen Hadley.³⁰⁽⁴⁹⁾

The underwriters offered testimony on the marketability of the proposed financing. It was their firm belief, based on experience, that if the Commission approves the financing as proposed, investor acceptance of the securities will be high.

Mr. Harrison is the Company's President and Chief Executive Officer. In the twilight of the evidentiary phase of the proceedings, Mr. Harrison revealed that the Company was no longer willing to commit to a cost cap based on a total project cost of \$4.5 billion. While he acknowledged that the Company had committed to just such a cost cap in July of 1984, he stated that the Company had made its commitment subject to certain conditions and that it construed the time it took to obtain necessary regulatory approvals as being inconsistent with one of its conditions. Thus, the Company could not support the imposition of a cost cap in this proceeding. However, once the requisite regulatory approvals are obtained, the Company may be willing to commit to a new cost cap.

Mr. Bayless testified as to several of the policy assumptions that were used in Mrs. Hadley's financial scenarios.

Mrs. Hadley presented a series of computer generated financial scenarios which formed a comprehensive financial model of the Company into the future given certain assumptions. Thus, the Company was able to provide detailed projected 20 year data on, inter alia, capitalization, capital structure, cash flow, additional borrowing requirements and revenue requirements (both overall and on a cents per kwh basis). The scenarios generated by Mrs. Hadley reflected a broad range of assumptions including, inter alia, differing Seabrook costs, differing Seabrook capacity factors, inclusion or exclusion of the load of Concord Electric Company and Exeter and Hampton Electric Company (jointly Unitil), differing treatments of Seabrook Unit II and differing treatment of Seabrook in rates (e.g., phase-in or immediate full rate base inclusion). The combination of assumptions modeled showed PSNH's financial condition under a variety of scenarios ranging from PSNH's view of how the future would look (PSNH Base Case, Exhibits

99-A and 99-B) through several intervenor views of how the future may look (See, e.g., Exhibit 174) to how the future may look without Seabrook recovery (See e.g., Exhibit 76).

On the basis of the above testimony, the Company asserted that the revenue requirement necessary to support the Seabrook capitalization will be just and reasonable because it will be based only on the prudent costs incurred in providing service. PSNH further asserted that those rate increases, in real terms (constant dollars or increase after inflation) will not be excessive over the life of the facility. In addition, the proposed financing will be marketable and will not result in undue risks to either investors or ratepayers. Thus, according to PSNH, the evidence supports the granting of the financing authority sought.

C. Position of BIA

The BIA did not present any witnesses; however, it actively participated in

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the proceedings and summarized its position in Brief. Generally, the BIA supported PSNH on all issues except the issue of whether there should be a cap on Seabrook costs for ratemaking purposes.

The BIA asserted that the case for completion of Seabrook Unit I is compelling. If the State is to have continued economic growth, the need for power will exist and Seabrook I represents the best and most reliable alternative for PSNH to meet its service obligations. The BIA believes that it would be unwise to depend on alternative power supplies such as conservation, Canadian power or small power production to an extent greater than already relied upon by PSNH for capacity planning purposes. The BIA also supports the PSNH position that bankruptcy is not an appropriate alternative to engaging in the proposed financing. The BIA asserted that bankruptcy would expose ratepayers to a high level of uncertainty, significantly increase the cost of subsequent construction of base load capacity and be generally contrary to the public interest. With respect to the comparative costs of completing Seabrook Unit I and an alternative thermal generation expansion plan, the BIA believes that Mr. Stasowski's incremental cost analysis clearly establishes the completion of Seabrook Unit I as the preferable alternative.

While the BIA supports the PSNH current policy of reflecting a phase-in of rates as its "base-case", it parts company from PSNH on the issue of the cost cap. The BIA asserted that the Commission has in this proceeding the authority to impose a cap on the total cost of the Seabrook project for ratemaking purposes. Further, the evidence of record in this proceeding supports the imposition of a cost cap at the current projected total cost of Seabrook Unit I.

The BIA believes that the proposed financing will be sufficient to permit PSNH to fund in advance its share of completing Seabrook Unit I; that the completion of Unit I is a lawful and proper corporate purpose; and that the terms of the proposed financing are reasonable under the circumstances. Accordingly, the BIA takes the position that the Commission should conclude that the proposed financing is in the public good.

D. Position of the Consumer Advocate

The Consumer Advocate took the position that the proposed financing should be denied. The Consumer Advocate's position was based on his assertion that there exist lower cost alternatives

to Seabrook on an incremental cost basis and that the level of revenues which will be necessary to support a completed Seabrook will be too high to be reasonable.

In support of his position, the Consumer Advocate presented three witnesses: Mr. Amory Lovins, Mr. Paul Chernick and Representative Roger Easton.

Mr. Amory Lovins is the Director of Research of the Rocky Mountain Institute in Old Snowmass, Colorado. The purpose of Mr. Lovins' testimony was to demonstrate that conservation is the least cost alternative to meeting PSNH power needs on both an incremental and total cost basis.

Mr. Lovins testified that new conservation technologies are being developed at a rapid rate. Mr. Lovins characterized those conservation technologies as

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"negawatts". Conservation negawatts represent a form of electricity generation capacity in that an investment that will save a megawatt of electricity is the same as an investment that will generate the same amount of electricity. Thus, it does not make economic sense to continue to anticipate steady levels of load growth and plan to meet that projected load through the construction of large thermal generation units. Instead, Mr. Lovins recommended that the Company be the party making the investment in negawatts rather than its individual customers. In this way the Company would capture the economic return on those investments and restore itself to financial health. Mr. Lovins contended that sufficient potential negawatts exist to offset the need for Seabrook Unit I and that they can be developed for a cost low enough to allow PSNH to recover both the cost of developing negawatts and the sunk cost of Seabrook Unit I at rates which would be less than the incremental cost of completing Seabrook Unit I.

After addressing himself to the conservation alternative, the Consumer Advocate then turned to the Company incremental cost analysis. The Consumer Advocate contended that Mr. Staszowski's incremental cost analysis was based on assumptions that are too optimistic for financial planning purposes. In support of that position, the Consumer Advocate presented the testimony of Mr. Paul Chernick and Representative Roger Easton.

Mr. Chernick is a Research Associate at Analysis and Inference, Inc. of Boston, Massachusetts. Mr. Chernick provided testimony on the cost and schedule of Seabrook Unit I. In particular, Mr. Chernick analyzed when the unit is likely to become operational, how much it will cost to complete, how much it will cost to operate and how much power it can be expected to produce. The type of analysis employed by Mr. Chernick was statistical. He initially gathered a data base quantifying various types of experience of other nuclear generating units in the United States. He then performed a regression analysis to determine the particular factors that affect construction cost, schedule, operating cost and capacity factor and applied that analysis to the particular factors pertinent to Seabrook. Thus, Mr. Chernick's analysis examined how Seabrook relates to the nation's nuclear experience; it did not examine the particular engineering judgments that support the PSNH estimates.

As a result of his statistical analysis, Mr. Chernick predicted that the total cost of Seabrook would be between \$6 and \$8 billion; that the unit would not become operational until August of 1988 at the earliest; that the operation cost of Seabrook would be higher than predicted by PSNH

because PSNH understated the cost of fuel, nonfuel operation and maintenance, capital additions, insurance, carrying charges and decommissioning; and that the capacity factor should be in the 50% to 55% range rather than the 72% figure projected by PSNH.

Representative Easton is an Electrical Engineer who examined the economic feasibility of Seabrook Unit I. Based on his analysis, Representative Easton concluded that Seabrook power would be more costly than the alternatives of Canadian power, conservation, cogeneration and the development of renewable energy resources. See generally, Exh. 57 and Attachments.

As a result of the foregoing analysis, the Consumer Advocate contends that

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Seabrook Unit I is not the most advantageous alternative on an incremental cost basis.

The Consumer Advocate also addressed the issue of financial feasibility. It was the Consumer Advocate's position that under any set of reasonable assumptions, the rates necessary to support Seabrook Unit I would be unreasonable per se. This is because such rates will exceed present rates to such an extent that ratepayers will find them too painful. The Consumer Advocate contends that it is not necessary to determine at what point the rates become unreasonable because the Seabrook rates so clearly exceed that point by a wide margin.

For the foregoing reasons, the Consumer Advocate took the position that the financing authority requested by PSNH be denied.

E. Position of CAP

CAP took the position that the financing as proposed should be denied. CAP's position is different from that of other intervenors in that it does not take the position that Seabrook Unit I should be cancelled. Although, CAP believes that PSNH has overstated the advantages and minimized the risks to its investors and ratepayers of continued construction, it has offered no analysis nor argument showing that continued construction is the less economic alternative. In response to the high projected costs, however, CAP recommends that the financing be conditional so that the ratepayer exposure is minimized. Additionally, CAP believes that the financing could be restructured to lower the cost of the debt. Thus, CAP recommends that the proposed PSNH financing be rejected and that the Company be given leave to resubmit a new financing plan consistent with the Commission's Order.

With respect to its position on Seabrook, CAP argued that Mr. Staszowski's analysis was unduly optimistic because it does not accurately nor realistically compare long-term alternatives. In particular, Mr. Staszowski adopted an overly optimistic estimate of the time between core load and commercial operation, capacity factor, load growth and the cost of capital. These optimistic estimates had the effect of overstating the advantages of completion and understating the risk of higher rates to be imposed on low-income ratepayers. In addition, CAP believes that conservation is a long-term alternative that will best meet the energy needs of PSNH. The Company should therefore engage in aggressive conservation programs so that further construction after Seabrook Unit I will be unnecessary.

With respect to the structure of the financing CAP argued that the cost of the proposed debt will be higher because of the third mortgage security provisions. Since PSNH has the ability to

issue additional second mortgage G&R Debt, it should not have proposed higher cost third mortgage financing.

As a result of the foregoing analysis, CAP recommends that the Commission adopt several conditions to the financing which will have the effect of lowering ratepayer exposure. Those conditions include a cost cap, specific programs to mitigate rate shock by reducing rates for low income customers, an investigation of specific conservation and load management programs, and an immediate investigation of rate shock/phase-in approaches. Additionally, CAP recommends that the Commission only approve the lowest cost

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financing package. Thus, the third mortgage financing should be rejected and the Company should be given leave to resubmit a lower cost second mortgage financing proposal.

F. Position of CLF

CLF took the position that the proposed financing should be denied. CLF's position was based on the argument that the choices presented to the Commission represent two mutually exclusive energy futures and that no middle ground is available. CLF went further than other parties recommending denial by also recommending that the Commission seek legislation to amend RSA 378:30-a (the so-called Anti-CWIP law) so that the Commission will have the ability to allocate fairly between ratepayers and investors the cost of the abandoned Seabrook facility.

According to CLF, the choice of granting the Petition means that the Commission is accepting a high cost energy future dependent on centralized generation, including the expenditure of billions of dollars of the State's resources on a facility which will, at best, produce electricity at many times the cost of readily available alternatives. CLF also believes that there exists a serious risk that the Seabrook facility will never produce any electricity even if the financing authority sought in this docket is granted. The above assertions are based on CLF's analysis of the evidence under both an incremental and a total cost standard. CLF's argument is grounded on the assumption that the completion of Seabrook Unit I will crowd out lower cost alternatives. This is because the cost of constructing and operating the facility is such that the Company will have an incentive to reduce conservation so as to increase sales. Additionally, CLF contends that the granting of the Petition will reward supply planning methodologies that have not worked in a manner consistent with the public good.

Under existing law, CLF believes that the choice of denying the Petition will result in bankruptcy. However, the risks of bankruptcy are outweighed by the benefits of relieving Company's financial burdens, thus rehabilitating the Company's ability to engage in least cost energy supply alternatives. In support of its argument, CLF presented the testimony of Robert Viles, the Dean of the Franklin Pierce Law Center and an academic expert in bankruptcy law. Dean Viles did not in his testimony advocate that the Commission put PSNH in a position where bankruptcy is necessary; rather, he advocated that the Commission fully consider all alternatives including bankruptcy. His testimony went on to describe particular policies and provisions of the bankruptcy code. According to Dean Viles, the underlying rationale of the reorganization provisions of the bankruptcy code is to provide financial relief to the debtor and to allow the

debtor to emerge from reorganization as a more viable financially stronger entity. Dean Viles testified that this rationale would govern the Court in resolving uncertainties and, thus, the bankruptcy alternative could have a positive effect on the Company and its ratepayers.

CLF's argument acknowledges that bankruptcy may have adverse consequences. Thus, CLF believes that the Commission's denial of the proposed financing should carry with it a recommendation to the legislature that RSA 378:30-a be amended to permit recovery of prudent investments in

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cancelled plant. Such an amendment would provide the Commission with the regulatory authority to take actions to obviate the risks of cancellation such as bankruptcy, so that the benefits can be fully captured.

G. Position of SAPL

SAPL took the position that the proposed financing should be denied. While SAPL fully participated in the proceedings, it did not present any direct testimony. Thus, SAPL's position is based on its analysis of the record evidence.

SAPL's emphasis is on the framework of analysis necessary to determine whether the proposed financing is in the public good. SAPL contends that the Commission should apply total cost analysis to its consideration of alternatives to Seabrook Unit I. While an incremental cost analysis may be appropriate to the jurisdictions of other Seabrook joint owners, it is not appropriate to New Hampshire. This is because RSA 378:30-a prohibits recovery from ratepayers of the sunk costs of construction if the plant is cancelled. Thus, from the ratepayer perspective, the difference between Seabrook Unit I and the alternatives will be reflected in rates on the basis of a total cost analysis; that is, if Seabrook is cancelled none of the costs may be reflected in rates and if Seabrook is completed the total of all prudently incurred costs may be reflected in rates. SAPL contends that the Commission must evaluate the proposed financing from the point of view of ratepayers. Thus, a total cost analysis is appropriate.

SAPL also argued that the evidence should lead the Commission to conclude that PSNH has overstated the benefits of completing Seabrook Unit I and understated the benefits of cancellation. In particular, SAPL contends that the total cost of the Unit will be between \$6 and \$8 billion, the plant capacity factor will be 55%, the plant operating life should be assumed to be 25 to 30 years for planning purposes, the nuclear fuel cost will rise from 1.22 cents per kwh in 1984 to 8.91 cents per kwh in 2016, the cost of capital additions will range between \$500 million and \$1 billion in nominal dollars over the life of the unit, PSNH's estimate of operation and maintenance expenses is 20-25% too low, decommissioning will cost approximately \$300 million in 1984 dollars rather than the \$170 million assumed by PSNH, and the discount rate should equal PSNH's cost of capital which should be calculated to be at least 15.5%) for the years 1985-1994 and not less than 18% for the years 1995-2003. Those factors all have the effect of reducing the benefits of completion. SAPL further contends that the Commission should accept the testimony of Mr. Lovins on the Company's load forecast and the conservation alternative and Mr. Hilberg (discussed, *infra*, at p. 192) on the potential of Cogeneration. If accepted, that testimony should lead the Commission to conclude that Seabrook is the most

costly supply alternative.

SAPL also took a position on the bankruptcy issue. After noting that PSNH presented no affirmative evidence on this issue, SAPL argued that the evidence does not warrant a finding that the adverse consequences of a bankruptcy outweigh the adverse consequences of completion. In particular, SAPL agrees with the CLF position that the range of uncertainty is not as broad as portrayed by PSNH and that the

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uncertainties that do exist are likely to be resolved in favor of PSNH's ratepayers.

SAPL also contends that PSNH did not meet its burden of proving that the terms, conditions and amount of the proposed financing are in the public good. This is because SAPL believes that the proceeds of the proposed financing will not be sufficient to fund the construction of Seabrook Unit I to completion given SAPL's cost assumptions, the 24.11% cost of the financing is too high and the rates necessary to support the financing will be too high under either a rate shock or a phase-in methodology. SAPL notes that the proposed phase-in would involve significant amounts of future financings even if the Unit becomes commercial.

For the above reasons, SAPL contends that the proposed financing should be denied. SAPL also argued that if the financing is to be permitted to go forward over its objection, certain conditions should be imposed. Those conditions include an immediate rate reduction, a buy-back of the common stock warrants issued as a part of the unit financing, full funding of plant maintenance, the introduction of a conservation program and denial of PSNH's request to apply \$30 million of the proceeds of the unit financing to the proposed financing.

H. Position of CRR

CRR took the position that the proposed financing be denied. In support of its position, CRR presented the testimony of two witnesses: Dr. Richard A. Rosen, a Senior Research Scientist at Energy Systems Research Group, Inc.; and Gregory A. Palast, a Senior Associate with Union Associates of Chicago, Illinois.

Dr. Rosen's testimony was a description of his study which analyzed the economic costs and benefits of continued investment in Seabrook Unit I from the perspective of the ratepayers of PSNH. Dr. Rosen's study methodology was similar to the approach taken by PSNH's Mr. Staszowski. Both methods calculate a stream of revenue requirements for a completion scenario and a cancellation scenario and discount those revenue requirements to a current dollar NPV figure. In Dr. Rosen's study the cancellation NPV was lower than the completion NPV, thus leading to a conclusion that more economic benefits will flow from cancellation. The difference between Dr. Rosen's results and Mr. Staszowski's results are caused by the different input assumptions used by each analyst. Dr. Rosen's assumptions were generally derived by a statistical analysis of the experience at other nuclear units in the United States and a judgmental application of that statistical analysis to the particular factors applicable to Seabrook. Thus, Dr. Rosen projects a capital cost of approximately \$5.5 billion, a capacity factor of 52.5%, O & M costs ranging from \$32.96 million to \$99.41 million in 1980 real dollars (\$50.29 million in 1987 and \$821.84 million in 2016 in nominal dollars), total capital additions costs of \$7,223.03 million over the life of the plant in nominal dollars, nuclear fuel costs which range from 1.22

cents per kwh in 1987 to 8.91 cents per kwh in 2016 and nuclear decommissioning costs of \$300 million in 1983 dollars. Dr. Rosen also uses his own assumptions pertinent to the cost of replacing Seabrook power in the cancellation case.

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As indicated, Dr. Rosen concluded that the economics favored cancellation. In his testimony, Dr. Rosen suggested that under his analysis, the benefits of Seabrook completion would equal the benefits of cancellation if the capital cost did not exceed \$3.5 billion. Thus, Dr. Rosen recommended that if the Commission approved the proposed financing, it set a cost cap for ratemaking purposes at this \$3.5 billion "breakeven" cost.

Mr. Palast testified on the issue of bankruptcy. Mr. Palast recommended that the Commission perform a full study of what would take place during a Chapter 11 bankruptcy proceeding. According to Mr. Palast, PSNH's failure to present evidence on bankruptcy left the Commission with insufficient information to assess the probable consequences of bankruptcy. Mr. Palast believed that the probable results of a rational reorganization of the Company would be rates that are lower and service which is more reliable than what would result from acceptance of the PSNH proposed financing plan.

Based on its arguments that the economics favor the cancellation scenario and because further study is necessary to assess fully the probable consequences of bankruptcy, CRR recommended that the PSNH Petition be denied.

I. Position of Calcogen

In brief, Calcogen took the position that the proposed financing should be denied. Calcogen's recommendation is based on its analysis of the record data pertinent to the costs associated with completion and cancellation. It is also based on the testimony of John Victor Hilberg, the President of Calcogen.

With respect to its cost analysis, Calcogen contends that PSNH's assumptions understate the cost of Seabrook Unit I and overstate the benefit of completion. Calcogen agrees that the PSNH assumptions pertinent to plant service life, nuclear fuel cost, O & M cost, capital additions and decommissioning are reasonable for planning purposes. For other factors, however, Calcogen believes that PSNH should have employed different assumptions, including a cost to complete of \$1.2 billion, a commercial operation date of April 30, 1987, a capacity factor of 60% and a consumer discount rate of 15%. Calcogen also believes that the cost of Seabrook alternatives, such as oil fired generation, will be lower than projected by PSNH.

Mr. Hilberg offered testimony on the cogeneration alternative to Seabrook. Based on his experience as a developer of cogeneration energy and capacity, Mr. Hilberg concluded that an aggressive utility program to develop cogeneration could result in the construction of sufficient cogeneration capacity to replace Seabrook Unit I. According to Mr. Hilberg, the cost of such a program would be significantly less than the total cost of constructing the first unit of the Seabrook facility.

On the basis of the above analysis Calcogen, Inc. contends that PSNH failed to meet its burden of proving that its current construction program is more economic than the alternatives.

Thus, Calcogen recommended that the Commission deny PSNH the requested financing authority.

J. Testimony of Staff and Commission Witnesses

As noted earlier, the Commission

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engaged a consultant to aid it in the analysis of the complex data presented in this docket. In addition, the Attorney General sought expert assistance in providing advice to the Commission on the possible consequences of a PSNH bankruptcy. Lastly, several Staff members provided testimony and certain background analysis on the need for power and alternatives to Seabrook Unit I. In all cases, the Staff did not take an advocacy position. Thus, what is set forth here cannot be construed as a position of a party. However, since record information was presented through Staff and Commission witnesses, the testimony and recommendations of those witnesses will be summarized here.

Mr. Donald J. Trawicki, partner in the firm of Touche Ross & Company (Touche Ross) provided testimony pursuant to a contract between the Commission and Touche Ross. The firm was retained by the Commission after this docket was initiated to assist the Commission in its assessment of the potential effects of the proposed financing on PSNH and its ratepayers.

Touche Ross reviewed the financial model and scenarios presented by PSNH with its most recent estimates of Seabrook costs and completion dates and accepted that filing as PSNH's "base case". Touche Ross then developed two cases to bracket the base case: 1) an "optimistic case" and 2) a "pessimistic case". To accomplish the above, certain sensitive key assumptions were identified, those with the greatest impact on rates and on PSNH's financial condition, and alternative assumptions to provide planning parameters were developed.

Two other special cases were developed. A variation on the pessimistic case which reflects the impact on PSNH's ratepayers if power currently sold at full cost is later sold at reduced rates and a special case that explored the implications for PSNH and its ratepayers if the proposed financing plan were not implemented.

Touche Ross also reviewed the PSNH testimony that assumed the impact of Seabrook on rates could be phased in over a five year period. It also assumed a two year phase-in and a twelve year phase-in.

Touche Ross also considered the possibility that some part of Seabrook costs might be excluded from rate base. Each scenario was analyzed, the base case, the optimistic case and the pessimistic case to estimate the maximum amount of cost which could be excluded from rate base without causing PSNH to be unable to meet its contractual payment obligations when due. For example, under the base case scenario, the Commission could exclude \$1 billion from ratebase out of total PSNH Seabrook costs of approximately \$1.7 billion without causing the Company to be unable to meet cash payments when due. Touche Ross did not make recommendations about whether particular amounts should or should not be excluded from ratebase; its analysis was addressed solely to the issue of how much could be excluded from ratebase consistent with the Company's financial survival.

Each of the various scenarios was evaluated to determine the impact on PSNH in terms of whether the occurrence of the assumed conditions would impair the Company's ability to meet its contractual obligations when they became due.

In looking at the impact on ratepayers, the results were expressed in terms of the average rate that would be required given the specific case

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assumptions and regulatory treatment. The average rates were examined in absolute terms, nominal rates in each year, in relative terms over time, percentage increases, and in comparative terms in comparison to rates in nearby areas.

Touche Ross recommended that the Commission approve the financing unless it is convinced that there is a better financing alternative available, the financing proposed cannot be implemented successfully or that the amount of financing sought is inadequate to reasonably assure PSNH's survival during the construction period and completion of the plant.

Mr. Trawicki had an opportunity to review PSNH's new DIB proposal as presented by the underwriters. That review reinforced Mr. Trawicki's original conclusions. Mr. Trawicki concluded that the revised filing is a better financing proposal which improves the chances of successful implementation.

Mr. Mark W. Vaughn is an attorney with the law firm of Devine, Millimet, Stahl and Branch, P.A. Mr. Vaughn is the co-author of a September 18, 1984 study prepared for the Office of Attorney General and the Commission entitled The State of New Hampshire and Public Service Company of New Hampshire (Exh. 9); a report which analyzed the then current financial situation of PSNH and certain possible consequences to the State of New Hampshire of a PSNH bankruptcy filing. Mr. Vaughn testified that the report highlights and outlines certain issues raised by a bankruptcy which should be of concern to the Commission. In particular, the report discussed the possible conflict in jurisdiction between the Commission and the bankruptcy court; the ability of the Attorney General to intervene in bankruptcy proceedings; the financial circumstances of PSNH for the purpose of examining PSNH's assets, creditors and the applicable security arrangements; the filing procedure and subsequent adjudicatory process of a Chapter 11 bankruptcy; and particular stresses placed on a utility debtor which is in a Chapter 11 situation. The report concluded that bankruptcy is no panacea for the problems of PSNH. Further, the report concluded that since PSNH itself was already taking many of the steps that would be taken in a Chapter 11 proceeding (e.g., restructuring debt), there was no reason for the Company to seek bankruptcy protection at this time. 20 Tr. 3642-43.

Mr. Bruce B. Ellsworth is the Commission's Chief Engineer. The purpose of Mr. Ellsworth's testimony was to provide the Commission with information on the need for power and to evaluate the alternative sources of available capacity. Mr. Ellsworth discussed the obligation of a public utility to provide service and reviewed PSNH's projections of the need for electric service and the available generation to meet that need. In particular, Mr. Ellsworth examined the alternatives of conservation, small power production and Canadian hydroelectric power. Mr. Ellsworth concluded that it is worthwhile to support the development of all of the listed alternatives; however, even if such development occurs, the level of capacity will be insufficient

to meet PSNH's capability responsibility. Thus, Mr. Ellsworth concluded that the Commission continue to consider Seabrook Unit I to meet New Hampshire's future energy needs.

Dr. Sarah P. Voll is the Commission's Chief Economist. The purpose of Dr. Voll's testimony was to provide certain back-up data and analysis for Mr.

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Ellsworth's estimate of the potential contribution of small power producers to New Hampshire's energy needs.

K. Summary

As is appearant from the foregoing discussion, the record contains the testimony of several witnesses supporting inconsistent assumptions pertinent to Seabrook cost and operational characteristics. The Table on p. 196 summarizes the position taken by PSNH and witnesses Rosen and Chernick.

IV. NEED FOR POWER

A. Load Forecast

[1,2] The approval or disapproval of this financing depends on a finding that there is a need for the power to be generated by Seabrook Unit I.

A public utility has an obligation to continually evaluate and anticipate the need of present and potential customers in order to meet reasonable demands for utility service. New Hampshire law (and Commission rules) require that utilities plan for the maximum probable demand under possible adverse conditions. See, *Re Public Service Co. of New Hampshire*, 41 NHPSC 16, 29 (1959); see also, RSA 162-F:1.

Electric load forecasting is the process by which utilities project the demand for electricity at various points of time. The forecasts are then used by utilities to decide the amount of resources needed to meet projected demand.

Until the late 1960's forecasting electricity demand was generally a simple exercise, consisting of straight line projections of historical consumption trends. With stable prices and economic growth, these power forecasts proved to be reasonably accurate and provided the information that utilities needed to plan and develop new resources. With the coming of the 1970's this changed as inflation, higher fuel and capital costs, longer resource development lead times, and declining economic growth combined to dramatically alter historic consumption patterns and to introduce new uncertainty into load forecasting. In addition, the same factors increased the risks associated with over or under development of resources increasing the utility's need for accurate forecasts.

The need to forecast future electrical demand flows directly from the characteristics of the electric utility industry. A utility must maintain adequate power resources. If it were possible to purchase generating facilities or conservation programs "off shelf" and plug them into the system on short notice, then meeting electric demand would pose no problem. Utilities would develop new resources on an "as needed" basis with limited risk. However, virtually all types of generating facilities require substantial lead times for planning, licensing, and construction. The

process of licensing and building a coal-fired plant takes 8 to 10 years — a nuclear plant takes longer. It may take consumers several years before they fully implement and accept conservation programs. Therefore, it is necessary to anticipate the need for new resources several years in advance.

The purpose of demand forecasting is to produce information utilities need to reduce their resource-development risks. Good forecasts reduce the risk of developing inadequate and unnecessary resources to meet customer needs. The high cost of new resources also makes it incumbent that utilities accurately

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

DF 84-200 SUMMARY OF POSITIONS
FOR PSNH, DR. ROSEN AND MR. CHERNICK

Project Capital
Cost including AFUDC

Commercial Operation
Date (COD)

Fuel Load to COD

Capacity Factor
(mature)

O & M

Capital Additions

Decommissioning

Nuclear Fuel Cost

Plant Life

Note #1 - (OLIS) Operating License Issuance.

Note #2 - In 1984 dollars, escalating at 7.5%/year in actual terms.

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predict future power demand and develop only those resources necessary to meet that demand. If the projected demand does not materialize, billions of dollars may be invested as fixed costs in resources which prove to be unneeded. These costs must then be borne either by the consumer through higher rates or by a utility's stockholders through reduced profits. Conversely, if future demand is under projected, utilities may be forced to rely on high cost resources, such as oil and gas turbines, which can be developed in a short time frame.

For the most part, individual utilities do their own load forecasting for their service area primarily because resource development programs are developed and implemented on a service area level. A utility will first forecast what it expects its system's loads to be and then will develop on its own or acquire from other utilities resources to meet those loads. In some instances, a utility will include the service area of a smaller utility in its forecast and its power planning process.

Due to the increased costs and risks associated with over and under forecasting described above, some state public utilities commissions' have taken a more active role in the load forecasting process. This Commission conducted an extensive investigation in DE 81-312 wherein it set forth specific guidelines to PSNH. See *infra*.

PSNH evaluates its present and future demand for power by preparing annual load forecasts and introduced its 1984 Load Edition Forecast as Exh. 31 and 1985 Load Edition as Exh. 131. The peak demand and energy sale of the forecast provide the underlying data for PSNH's "base case" i.e., a demand growth of approximately 2.2% and energy growth of approximately 3.3% over the study period (33 Tr. 6213). The Company suggests that loads equal to or greater than those presented in the 1984 load forecasts have been used by the Commission in Docket DE 83-62, DR 84-128 and DR 84-354. It is the Company's position that the 1984 Edition Forecast is consistent with the Commission findings on load forecast issues in DE 80-47 and DE 81-312, although PSNH's loads are actually running higher than the forecasts. Specifically, in DE 81-312, the Commission found that load forecasts should contain certain basic elements including (a) end use detail; (b) sufficient disaggregation to facilitate comprehensive analysis; (c) an econometric foundation driven by a material forecast; (d) a reflection of price elasticity; (e) part of an integrated planning approach; (f) a recognition of conservation and load management; and (g) adequate assumptions and data.

In determining the validity of the PSNH load forecasts, it must be noted that load forecasting is essentially an art and not a science; it is only a tool to use for predicting future events. Thus, the primary emphasis in this analysis is the reasonableness of the methodology employed by PSNH in projecting future loads.

As stated above, PSNH is required by RSA Chapter 162:F to plan for the maximum probable demand. In so doing, it prepares an annual peak load forecast. The 1984 Load Forecast and the preliminary 1985 Load Forecast were introduced in this proceeding as Exhibits 31 and 130 respectively. These were the only two forecasts submitted in the record. We therefore will examine them to determine whether they should be accepted as the basis for

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determining the need for additional power.

The 1984 Load Forecast was used by Mr. Stazowski in his revenue requirements analysis and by Mrs. Hadley in the preparation of her financial scenarios. Specifically, the peak demand and energy sales projections of the 1984 Load Forecast provide the underlying data for PSNH's "base case" in Mr. Stazowski's revenue requirements analysis: a demand growth of approximately 2.2% and energy sales growth of approximately 3.3% over the study period. (33 Tr. 6213). The results of 1984 Load Forecast are also consistent with Commission findings in

DE 81-312. As PSNH points out in its brief at 47, "the growth rates in the 1984 Load Forecast for the 1983-1992 period are 1.4%/yr. for peak load and 2.1%/yr. for energy. In DE 81-312, the Commission found 1.5% load growth over the next decade "to be an acceptable planning measure with the caveat that considerable downside risk exists, unless the price effects of Seabrook can be significantly lessened" (DE 81-312, Report at IV-7). More importantly, the reasonableness of PSNH's load forecasting methodology is highlighted by a comparison with the actual results of 1984. The peak load for 1984 was 1307 MW (Testimony of Joseph Stazowski, (33 Tr. 6252), an 8.9% increase over the preceding year (Exh. 88A) and 5.73% greater than that forecasted in the 1984 Load Forecast (1304 MW v. 1238 MW). Furthermore, as PSNH stated in its brief, output for January, 1985 exceeded the previous year by 8.4% (PSNH Brief at 47). Energy sales were also greater than that projected (4.05% -6159.1 GW v. 5919 GW).

After review, we find that the 1984 Load Forecast provides a reasonable basis for projecting PSNH's demand in future years. As mentioned above, the forecast methodology utilized therein is the only forecast methodology submitted in this docket; none of the intervenors proffered any alternative.³¹⁽⁵⁰⁾ Its methodology is consistent with Commission findings in prior dockets, specifically DE 81-312. As Mr. Wyatt Brown, PSNH's Energy Management Engineer, testified, PSNH incorporated inter alia "income elasticity" in the forecast's computer model in the 1984 Load Forecast in response to the Commission's recommendation in DE 81-312 (35 Tr. 6634). In addition, another "enhancement" incorporated in the model as a result of DE 81-312 was "efficiency elasticity" (35 Tr. 6638-6640).

[3] CAP asserts that appliance saturation should be a function of rate levels (CAP brief at 17). We find to the contrary Rate effects are incorporated in the utilization of appliances, which include the purchase of more efficient appliances. When CAP argues that "an inefficient appliance may be replaced with a more efficient appliance" because of rate increases, CAP admits that the saturation of that appliance should not change since it is being replaced with another like it, only more efficient.

[4] The process of preparing an annual forecast is not a static one. As new data become available, forecasts are updated and projected resource requirements are adjusted. In preparing a load forecast utilities use a variety of techniques to forecast future electric demand. Forecasting today, because of its sophisticated and detailed nature, requires substantial data on many explicit variables. Major variables are concerned

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with economic and population growth, conservation programs and practices, fuel and electricity prices, and technical-engineering factors such as saturation rates and usage data. Presently most utilities use two complex techniques - the econometric approach and end-use approach.

The econometric methodology mathematically forecasts future demand by examining how past demand was influenced by historic economic and demographic conditions.

An end-use forecast predicts future demand for electricity by examining how electricity was actually used and projecting it into the future.

In addition to the variables that are specific to the econometric and end-use methodologies, a number of variables are common to all forecasting techniques: population, economic activity, electricity rates, conservation measures.

There are usually 4 key assumptions that drive load forecasts.

- price elasticity of demand
- correlation between economic growth and growth in electricity consumption
- impacts of switchovers from alternative fuels
- impacts of conservation and new technologies

Conservation-induced load reductions are also incorporated in the econometric and end-use modeling techniques employed in the 1984 Load Forecast. Recognized are the following: the wrapping of water heaters, the implementation of off-peak systems, time-of-day and interruptible programs and information to customers (Testimony of Mr. Brown, 35 Tr. 6640-51). More importantly, the modeling of price elasticity recognizes further energy reduction. According to Mr. Brown, the actual data suggests that the PSNH model may even overestimate the load reduction which may result from price increases. (35 Tr. 6630-45.)

Witness Staszowski takes into account variations of the load forecast estimates and assumes in his pessimistic case that growth in peak demand and energy are held to 1.5%. These assumptions are expressed in Staszowski's scenarios 4, 7 & 8. Loss of the UNITIL load is included in the results depicted on Exh. 176, Attachment B.

Witness Chernick's testimony was not supported by any study or analysis.

CLF witness Rosen acknowledged the need for power and would substitute a coal plant in Seabrook's place.

Representative Easton took issue with the use of historical trends for load forecasting. His testimony underscored egregious errors by PSNH in overestimating future loads. Exh. 57 at 5, figures 1-5. The 1984 load forecast has adjusted historical trends based on qualified judgment of measurable economic growth of New Hampshire, price elasticities, NEPOOL requirements and other adjustments discussed herein.

In the light of manifest deficiencies in load forecasts, we apply load forecasts as a reasonable guide to determine need for power — rather than accept any load forecast as an immutable prophesy of the future.

[5] Based on the substantial evidence on the record of this proceeding, we find that the 1984 load forecast is a reasonably acceptable base for determining PSNH's need for additional power from Seabrook.

B. Price Elasticity and Conservation

As mentioned price elasticity of demand is a key assumption in the preparation of a proper load forecast. Exhibit 42 sets forth the elasticities that were assumed in the 1984 Edition Load Forecast as follows:

The price elasticity for electricity is defined as the percent change in the quantity consumed divided by the percent change in the real price of the electricity.

The 1984 Edition Load Forecast utilizes a combination end use/econometric model which means that customer response to electricity price changes are captured in two ways. First, the end use portion captures customer response by utilizing time trends of data, explicit recognition of appliance efficiency improvements and explicit recognition of certain energy management programs, such as the "One Stop" service program. Second, additional customer response is captured through econometric modeling using price elasticity procedures.

Price elasticity is modeled in considerable detail. Short and long run elasticities and the electricity prices are specified for each end use of electricity to reflect the time lag response by customers to price changes through the use of an elasticity aging function. Attachment 2A displays the short and long term own price elasticities by end use (page 147 of the Working Papers). The aggregate long term system impact of these elasticities is about -0.5. In other words, a 10% real price increase will reduce loads by 5% from the levels that would otherwise occur. Again, it is important to appreciate the combination end use/econometric model and that the -0.5 own price elasticity is therefore consistent with values considerably larger which would be utilized in a pure econometric approach.

The 1984 Edition Load Forecast also recognizes certain other elasticities which are less significant. These include:

- 1) cross price elasticity of oil for space heating penetration,
- 2) income elasticity with respect to certain appliance saturations,
- 3) efficiency elasticity which recognizes the potential for increased consumption when customer costs are reduced by efficiency measures.

The 1984 Edition Load Forecast addresses the input of price (Exh. 31 at 2-3) and reflects that the difference between it and the 1983 edition forecast is primarily due to the input of price elasticity of demand resulting from the assumption of increases in future real electricity prices. The total price sales forecast section (Exh. 31, Section 6 at 6-2) shows the forecast is most influenced by two major considerations, the expected path of economic growth and the future price of energy. While State economic growth is expected to exceed that of the nation, the economic growth will be more moderate than in the recent past. The price of electricity is assumed to increase in real terms in the mid 1980's before declining at a fairly rapid rate in the late 1980's and early 1990's. The 1984 Edition has been bolstered by a higher economic scenario than last year's, but is depressed by the concurrent assumption of higher electricity prices after 1988 than used in last year's forecast. This difference in assumed electricity prices is the

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leading cause of the difference between the 1983 forecast and the 1984 forecast.

The ten year growth in Total Prime Sales would be higher were it not for the expected ownership of Seabrook capacity by the NHEC and the subsequent loss of prime sales to that utility.

The 1985 preliminary edition of the load forecast shows "total prime sales will grow by an average annual rate of 2.0% over the ten year period 1984-1994. Annual peak load grows by 1.3% per year over the same period indicating an improvement in system load factor within that time. Over the twenty year period 1984-2004 sales and peak load grow by 3.1% and 2.1% per year respectively. Obviously, growth in the last ten years of the forecast is higher than the growth in the first ten years (1984-1994). The reason for this phenomenon is the price of electricity." (Exh. 130 at 2-2).

For price elasticity response, the Company employed end use short and long run elasticity coefficients for 30 categories of sales across the classes of service. Since different classes grow at different rates, an aggregate measure of elasticity could not be measured exactly. However, the short and long run elasticities approximate -.2 and -.5 respectively (Exh. 130 at 2-3).

The impact of changes in real energy prices account for most of its differences between the 1984 edition and the 1985 edition of the forecast. The following graph illustrates in 1984 dollars the projected real electricity prices in the 1985 edition compared to the 1984 edition.

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Real electricity prices are not expected to change until 1986, and then to increase from 1987 through 1992, crossing 1984 price forecast in 1990. After 1992, real prices decrease until the price of electricity in the year 2004 is eventually equal to the price of electricity in 1984. The increase in real prices retards energy growth in the 1987 to 1992 time period. Conversely the decline in real prices after 1992 encourages energy growth. This explains the higher growth rates in the last 10 years of the forecast compared to the first 10 years of the forecast.

The load forecasts offer substantial evidence of prospective demand upon which to predicate the need for future capacity. No other comprehensive load forecasts were offered by other parties.

The Company's load forecasts were supported by workpapers which were filed with the Commission on March 23, 1984.

Witness Lovins originally unaware of the existence of the workpapers did examine them over night and commented that the workpapers "apparently treats price response in term of how much an appliance is used separately from its technical efficiency" (11 Tr. 1956). However, witness Lovins apparently neglected to review section 7 of the 1984 edition load forecast stating "... use per appliance is explicitly adjusted for efficiency of new appliances in the stock, efficiency elasticity, price elasticity, adjustment for household size, and utility sponsored energy efficiency programs" (Exh. 31 at 7-6 and 7-7). Other comments by witness Lovins also prove incorrect and therefore his testimony regarding the load forecast cannot be accepted.

Neither the 1984 nor the 1985 load forecast assumed sales explicitly based on price behavior under a so called rate shock scenario. Rather, both load forecasts explicitly modeled sales based on price assumptions in relation to a so-called phase-in scenario. However, comparative analysis reveals that use of the 1984 forecast does not result in overstating sales in Mrs. Hadley's rate shock scenarios in Exh. 124. Instead, the analysis indicates that the 1984 load forecast

consistently provides sales lower than sales which are produced when the prices of the Hadley rate shock scenarios are assumed in the load forecast model. See, Exh. 143 for a thorough analysis of the results of the three load scenarios which are expressed in graph form as follows.

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE 15 Feb. 1985
 Comparison of the 1984 Edition and
 Exhs. 124 D and 124 F (Phase-in)
 UNITIL is out in every case

Year

1984							
1985							
1986							
1987							
1988	5334.0	5488.6	5976.3	154.6	642.3	2.90	12.04
1989	5380.4	5531.7	6048.0	151.3	667.6	2.81	12.41
1990	5475.0	5632.5	6076.4	157.5	601.4	2.88	10.98
1991	5632.1	5819.2	6107.9	187.1	475.8	3.32	8.45
1992	5868.3	6029.7	6129.8	101.4	261.5	2.75	4.46
1993	6132.7	6313.7	6161.9	181.0	29.2	2.95	0.48
1994	6423.4	6618.4	6189.0	195.0	-234.4	3.04	-3.65
1995	6691.0	6955.5	6382.7	264.5	-308.3	3.95	-4.61
1996	6973.8	7245.9	6647.1	272.1	-326.7	3.90	-4.68
1997	7292.2	7554.0	6938.6	261.8	-353.6	3.59	-4.85
1998	7627.8	7911.5	7259.6	283.7	-368.2	3.72	-4.83
1999	7963.3	8260.3	7577.6	297.0	-385.7	3.73	-4.84
2000	8293.5	8644.2	7929.1	350.7	-364.4	4.23	-4.39
2001	8610.1	9086.7	8347.5	476.6	-262.6	5.54	-3.05
2002	8953.9	9490.9	8751.0	537.0	-202.9	6.00	-2.27
2003	9282.3	9872.5	9152.2	590.2	-130.1	6.36	-1.40%
2004	-	10271.9	9572.2				

Nominated Electric Prices

1984	81.70	7.99	7.96	-0.7	-0.7	-8.16%	-8.51%
1985	9.90	8.26	8.26	-1.6	-1.6	-16.57	-16.57
1986	11.30	9.47	8.57	-1.8	-2.7	-16.19	-24.16
1987	12.90	15.86	9.92	3.0	-3.0	22.95	-23.10
1988	14.70	16.17	12.05	1.5	-2.6	10.00	-18.03
1989	16.80	17.86	13.96	1.1	-2.8	6.31	-16.90
1990	18.00	18.88	15.99	0.9	-2.0	4.89	-11.17
1991	17.80	18.62	18.33	0.8	0.5	4.61	2.98
1992	17.60	18.74	21.21	1.1	3.6	6.48	20.51
1993	17.60	18.02	24.05	0.4	6.5	2.39	36.65
1994	17.80	17.65	27.05	-0.2	9.3	0.84	51.97
1995	18.50	17.38	25.98	-1.1	7.5	-6.05	40.43
1996	19.00	17.95	24.60	-1.1	5.6	-5.53	29.47
1997	19.50	18.69	24.28	-0.8	4.8	-4.15	24.51
1998	20.00	19.14	24.03	-0.9	4.0	-4.30	20.15
1999	21.30	20.30	24.49	-1.0	3.2	-4.69	14.98
2000	22.60	21.26	24.98	-1.3	2.4	-5.93	10.53

2001	24.00	21.61	24.82	-2.4	0.8	-9.96	3.42
2002	25.50	23.02	25.78	-2.5	0.3	-9.73	1.10
2003	27.00	25.18	27.48	-1.8	0.5	-6.74%	1.78%

Source: Exh. 143.

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We believe that the prices assumed in the 1984 load forecast are reasonably consistent with prices calculated under various assumptions in the scenarios evaluating the relative economic cost of Seabrook I. See, Exhs. 97, 31 at 2-8, 143.

Witness Brown testified that PSNH's elasticity estimates come from NEPOOL formulation and studies. However, the PSNH model uses lower elasticity numbers than would be expected in a purely econometric model (NEPOOL) because it takes into account the efficiency of end uses and conservation methods that are being used in the end use (35 Tr. 6638).

PSNH explained how conservation is reflected in the 1984 Edition Load Forecast in Exh. 43 request 3.

Conservation can be defined as the level of consumption which occurs when customers respond to prices which reflect the marginal costs of the resources utilized. Conservation is aimed at eliminating wasteful use but not minimizing total use. To the extent conservation is meant to imply reduced use, reductions in energy consumption are captured in the forecast in several ways (see response to Oral Data Request #2).

Among the programs assumed in the forecast are the following:

- 1) New or expanded energy information and audit programs to all classes of customers.
- 2) Energy efficiency service programs such as the "One Stop" service program.
- 3) Rates to encourage the use of high pressure sodium lighting. Page 10-6 at the 1984 Edition Load Forecast shows the impacts on Street Lighting contained in the forecast relative to historical data and the 1983 Edition.
- 4) Off-peak space and water heating programs.
- 5) Interruptible and time-of-day programs.
- 6) The peak alert program known as Clockwatch 6.
- 7) Recognition of customer owned generation particularly peak load reductions due to small power producers.
- 8) Appliance efficiency improvements.

The 1984 Edition does not reflect programs such as "DIRC" (Development Incentive Rate Contract) which can be used to improve the optimum use of facilities particularly in the near term through appropriate marginal cost pricing practices.

Quantifying the effects of conservation is extremely difficult. Since conservation is captured in several ways, quantification would require a reference to some unknown base perhaps reflecting no programs and no price changes. However, to illustrate that the total impacts are substantial, uncontrolled water heating is projected to decline by 26.0 percent from 3600 KWH

per customer (actual 1983 value) to 2660 KWH per customer in 1990.

CAP erroneously infers that some flaw exists in PSNH's capacity expansion forecast (CAP brief at 11). However, since the 1984 Edition Load Forecast has a lower growth rate in the near term than the 1.5% forecast, capacity must be added sooner under the 1.5% load forecast. The 1984 Edition Load

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Forecast does have a higher overall long term growth rate than the 1.5% forecast and does require 540 MW more capacity to be added over the study period (Exh. 4, Attachment Staszowski 12 at IV-17 to IV-18). The lower short term growth rate in the 1984 Edition Load Forecast simply results in delayed capacity requirements as compared to the 1.5% forecast.

CLF (CLF brief at 27) and SAPL (SAPL brief at 39) imply that Mr. Staszowski did not include conservation and load management in his analysis. However, conservation and load management were included, as discussed.

Also, in the cancel case, load was reduced by an additional 25MW because NHEC will not get Seabrook Unit I power in the cancel case. Without this reduction, the load in the cancel case would be higher than the load in the complete case. Moreover, if the addition of Seabrook Unit I to rate base results in short term price increases which might not occur until a later period of time in the absence of Seabrook Unit I, the cancellation case loads are understated in the near-term due to the lack of short term price response which would otherwise result.

As in the case of price elasticity of demand, the impact of future conservation cannot reasonably be quantified. However, the load forecast captures reasonably predicted effects in the absence of further substantial evidence. The conservation analysis reduces the load forecast.

Conservation and load management impacts were included in the 1984 load forecast and in various scenarios using a 1.5% load forecast (Exh. 4 at 9). The two forecasts reflect a difference in loads due to conservation and load management. The difference is equivalent to the entire energy supplied to customers by PSNH in 1983 (8 Tr. 1409-1410).

In summary the load forecasts were modeled within the methodologies accepted in the industry. The forecast contained key assumptions regarding economic growth and the future price of energy. This also complied with the requirement set forth by this Commission in DE 81-312. The forecast was adequately backed by working papers filed with this Commission in March 1984. No parties took exception to this data other than witness Lovins who admittedly did so overnight. The load forecast was substantially the same as the NEPOOL Forecast although modified because of the end use analysis. Other assumptions may be made; however, one must go beyond the record in this proceeding, which is improper.

The intervenors also assert that PSNH has not anticipated "negative load growth". Again Exh. 143 expresses that annual sales under the 1984 forecast will not return to the level actually experienced in 1984 until the mid 1990's. Such action by customers is a response to price.

We accept the price assumption and resulting loads based on 1984 Load Forecast (Exh. 143) as reasonable. The intervenors' argument that the load forecast overstates sales and that the forecast was based on prices inconsistent with those determined by the financial model ignores

Mr. Brown's sensitively [sic] analysis (Exh. 143). The PSNH load model substantiates that loads in excess of those based on the 1984 load forecast are justified using prices of the "rate-shock" scenarios without the UNITIL load. The study demonstrates that if changes were to

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be made to the load forecast loads would increase rather than decrease.

PSNH's price elasticity assumptions are appropriate. It must be clearly understood that the -0.5 PSNH elasticity factor is a calculated value reflecting an array of elasticity factors and proper system weighting of higher and lower elasticities in various sectors (Exh. 42).

The intervenors suggest use of raw energy elasticities without any recognition of the need to adjust them for use in a combination end use/econometric model, for cross elasticity effects, for income effects, for short and long term distinctions, for "own-electric price" modeling, for New Hampshire versus national circumstances, and for the dynamic changes of load growth occurring due to a demonstrated superior state economy. We find PSNH's elasticity factors are properly applied and are consistent as developed with the higher elasticity factors which have been used in different types of models.

Based on our review of the record evidence, we conclude that PSNH's 1984 load forecast is a reasonable basis for evaluating the economics of completing Seabrook relative to alternatives.

C. Need for Seabrook Power

Bruce B. Ellsworth, Chief Engineer of the New Hampshire Public Utilities Commission, recommended that Seabrook I be completed to meet the Company's capacity needs. (Exh. 67 at 22; 25 Tr. 4625-26.) It is essential to use a planning horizon of 10-15 years for added bulk power generation facilities. See, RSA Chapter 162-F. New capacity requirements must be identified early enough to allow for regulatory review of the need for the plant and to assure sufficient lead time for the plant to be completed on schedule when needed. Without the inclusion of Seabrook I in capacity, the Company's load growth assuming a 1.5% growth rate shows that customer demand exceeds the Company's capacity to serve prospective demand in the power year 1988-1989. Exh. 67, Attachment 3 at 11. If the 5.7% near term growth rate was applied to the forecast, power shortages will emerge even sooner. Exh. 67 at 11.

PSNH is obligated to carry its public utility duty of providing electric service at reasonable rates as may reasonably be demanded by its customers. RSA 374:1; Exh. 67 at 3. Adequate generating facilities to meet customer needs must be provided for PSNH to meet its franchise obligations. Capacity must be on line not only to serve increased loads from added customers or added usage, but also new capacity must displace scheduled future retirements of plant. We are not prescient; however, we must determine by a rational process based on our analysis of the evidence the necessity of capacity to meet forecasted need for power over a time frame of more than a decade. By the year 2000, PSNH plans to retire five Schiller units, two Merrimack jets and combustion turbines at White Lake and Lost Nations, totaling 265 MW of power. Exh. 67 at 8, Attachment A. In addition, 116 MW of Merrimack I capacity will be retired increasing projected aggregate retirements to 381 MW. Offsetting these retirements, it is forecasted that there will be 100 MW of the Merrimack II plant originally committed to Central Vermont Electric Company, parent of Connecticut Valley Electric Company (the VELCO contract). Exh.

67, Attachment 1 at 10. In 1986-1987, after Seabrook

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goes on line, the Company plans to reduce its capacity purchases by about 160 MW no longer required to meet its capability, responsibility to NEPOOL. The 160 MW consists of 93 MW of Brayton Point 4, 56 MW of Yarmouth 4 and another 11 MW of purchased capacity from Coleson Cove. Exh. 65, Attachment 1 at 11.

Dr. Rosen recognized that in the event Seabrook I is not completed, PSNH will need capacity as soon as possible in order to maintain reserves at about 20% given the current Company demand forecast. Exh. 46, Attachment RAR 2 at 86-88. Since new capacity requires 8-10 years to go on line, it would be desirable to build required new capacity sooner. Id.; 13 Tr. 2311, 2312.

The 1984 load forecast and the NEPOOL study of Long Range Plans for Bulk Power Supply Facilities (Exh. 67, Attachment 1) assume a 20% reserve factor for PSNH. There was testimony that the reserve level could be 25% or even higher, based on modest improvement over historical values. Exh. 4 at 8.

The table on p. 209 shows the effect on capability responsibility of a 25% reserve factor and the resulting reduction in projected excess capacity.

A 25% reserve factor is roughly equivalent to the megawatt capacity of 409 MW to be added by Seabrook, or to the 423 MW of Newington capacity. For reliability purposes, a reserve of no less than 25% or equal to the Company's largest generating unit is not unreasonable. Re Public Service Co. of New Hampshire, 41 NH PSC 16, 29-30 (1959) aff'd, Public Service Co. of New Hampshire v. New Hampshire, 102 N.H 150, 30 PUR3d 61, 153 A.2d 801 (1959).

1. Alternatives to Seabrook

The alternatives to Seabrook are not adequate in terms of predictability and available and reliable capacity to meet future energy needs. Exh. 67 at 22; 17 Tr. 3158-59; 25 Tr. 4624-26. Analysis of alternative sources of power were made by Mr. Ellsworth on small power production—cogeneration (in conjunction with Dr. Voll - Att. 4, Exh. 67); Canadian energy; conservation efforts (Exh. 67 at 17; 26 Tr. 4505-09) continuation of existing contract and purchases within New England. 17 Tr. 3148.

2. Small Power Producers - cogeneration

[6] Neither small power producers nor cogeneration offer a reliable base to serve future power needs of New Hampshire ratepayers. The best estimate of capacity from small power producers and cogeneration on the record of this case is 130-135 MW for 1996. Dr. Voll, Exh. 67, Att. 4 at 1, 5. No estimate was presented beyond 1996 because of limitations in the model used for market penetration analysis by Glidden, Hewett and High in DE-312. Att. 4, pp. 1 and 5, Ex. 67. Use of an escalation factor in avoided cost of 4.30 or 5.05% based on the Company PROSIM model rather than the 7.95% used by Glidden would reduce the cumulative total from hydro electric and cogeneration to 128.31 MW in 1996. Forecasts of small power and cogeneration are undependable in the following respects:

1. Expenses may escalate beyond rate support for the project.

2. Operating characteristics may not

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

REVISION EX. 67, ATT 1, BASED ON 25% RESERVE MARGIN IN CAPABILITY RESPONSIBILITY

	86/87	87/88	88/89	89/90	90/91	91/92	92/93	93/94		
A Total Resources			1742.2	1743.8	1716.5	1717.8	2128.3	2084.8	2090.0	2091.2
B Est. Load	1251	1265	1251	1262	1291	1327	1376	1423		
C Est. Capability Responsibility (Taken at 25% Reserve)		1567	1581	1564	1578	1614	1659	1720	1779	
D Excess (Deficiency)	175.2	162.8	152.5	139.8	514.3	425.8	370	312.2		
	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04
A Total Resources	2044.4	2045.5	1987.5	1953.2	2009.4	1864.6	1853.5	1854.6		
B Est. Load	1463	1503	1548	1594	1636	1676	1714	1755	1796	1841
C Est. Capability Responsibility (Taken at 25% Reserve)	1829	1879	1935	1992	2045	2095	2142	2194	2245	2301
D Excess (Deficiency)	215.4 (339.4)	166.5 (389.3)	52.5 (445.3)	(38.8)	(35.6)	(230.4)	(288.5)			

C = B (1.25)

D = A - C

NOTE ON ATTACHMENT #1, Percent Reserve = $\frac{[A-B]}{B} [100]$

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be as favorable as the design of the small power project may predict.

3. Operating and maintenance costs may exceed estimates.

4. Design lives may not endure as planned.

Unlike a utility, small power producers may provide a source of generation for electric service only so long as it may be economically justified to do so. When economical forces prevent compensation for errors of investment small power producers may cease production subject only to whatever contractual restraints imposed by the paying utility may be enforceable. Exh. 67 at 15. There is no probative evidence that diversity of ownership will assure capacity to serve need.

We recognize the desirability of enhanced small power production largely for hydro electric and cogeneration. However, the amount and reliability of future capacity from these sources are

not adequate to compensate for loss of Seabrook I.

3. Canadian Energy

Phase I of Hydro-Quebec styled "La Grande Project" should enable PSNH to receive 7.6% of 690 MW or 52 MW of hydroelectric power from this source. PSNH's entitlement is based on a percent equal to its percent of NEPOOL requirements. Exh. 67 at 20. Mr. Ellsworth testified: "It is critical we realize that Phase I power cannot be considered as capacity power for planning purposes." Id. There is no guarantee under the contract that power will be available to meet peak loads. In terms of planning and peak demand, HydroQuebec I power is not a reliable source. Id.

Hydro-Quebec Phase II proposes to expand the Phase I project from 690 MW to 2000 MW and to extend a 450 KV high voltage direct current transmission line from Comerford, New Hampshire south to a point of interconnection with the existing 345 KV system in Massachusetts. While informal reports project a completion date in the fall of 1990, this date may be illusory. An application must be presented to and cleared by the Bulk Power Site Evaluation Committee before the high voltage line can be constructed. No application has yet been presented to that Committee. Id. Environmental and construction considerations, as well as multiple regulatory approvals, may cause considerable delay in placing this project on line.

Theoretically, PSNH would be entitled to 7.6% of 2000 MW, or a total of 152 MW of hydro power (100 MW more than the 52 MW entitlement for Phase I). It is unclear whether the power from Phase II when available will be peak power. The prospects of effectively using Phase II for peaking are, however, superior to Phase I utilization. Thus, according to Mr. Ellsworth, Phase II power may be tentatively and conditionally considered in reviewing the Company's future power needs. Based on the evidentiary record, we do not believe we can rely on Phase II as a dependable source of capacity up to 152 MW by the 1990 time frame. We do not accept Phase II as a substitute for Seabrook capacity, but rather we may consider it as a supplemental source of power when available.

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4. Conservation

[7] This Commission and public policy support conservation as a strategic least-cost supplement to central generation of power. The time frame for conservation to reduce load to the extent that Seabrook capacity can be discounted or abandoned is too long term to consider conservation as a substantial offset to the need for capacity to serve demand. Conservation is not a realistic alternative to completion of Seabrook because of the unpredictability of customer action to reduce electricity use or actual load shedding as the result of the impact of higher priced electricity on demand. We can only speculate on price elasticity of demand and its impact on a long-range load forecast.

Mr. Ellsworth concluded that the aggregate of all alternatives will not replace Seabrook I's capacity. By 1996, PSNH will be 800 MW short of meeting its capability responsibility if Seabrook I were cancelled. (17 Tr. 314647). By 1998, PSNH would still be 470 MW short of meeting its capability responsibility even if 135 MW from small power producers, 52 MW from HydroQuebec Phase I and 152 MW from Hydro-Quebec Phase II totalling 339 MW became available and could be included as capacity. 17 Tr. 3163-64.

5. NEPOOL needs Seabrook

[8,9] The completion of Seabrook is required to serve the public interest of New Hampshire consumers and is a necessary capacity addition to serve the interest of the New England power region through NEPOOL. Mr. Staszowski, PSNH System Planning Engineer, testified that without Seabrook I, New England will be short of capacity between 1992 and 1994. Exh. 4 at 4, Att. 2.

Assuming 950 MW of unit life extensions with Seabrook I completed, New England will require between 1900 MW and 3800 MW by the year 2000. These estimates are based on the 1984 NEPOOL load forecast. NEPOOL's summer peak of 1984 exceeded its forecasted 1986 summer peak; energy consumption is at a level two years ahead of the forecast. If these trends continue, NEPOOL could experience a capacity shortage before 1992. Purchase of capacity from existing economically efficient oil fired plants is not a reliable substitute for Seabrook in view of predicted capacity deficiencies to serve New England loads in the NEPOOL area.

Another important consideration bearing on the public good is the impact of Seabrook in balancing generation from discrete power sources and the diversification of supply. The following table compares PSNH generating capacity by fuel source in 1984-1985 pre-Seabrook and generating capacity by fuel source post-Seabrook:

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

PSNH GENERATING CAPACITY BY FUEL SOURCE (Exh. 67, Att. 1)

1984-1985 MW CAPACITY				
HYDRO	NUCLEAR	OIL	COAL	TOTAL MW
62.5	12.3	28.7	121.6	
35.5	29.1	423.0	243.8(*)	
19.0	115.0	44.7		
38.0	3.1	48.0		
	19.5	49.1		
	8.3			
	56.0			
	56.8			
101.	98.4	710.4	507.2	1417
7.2%	6.9%	50.1%	35.87%	100%
1986-1987 MW CAPACITY				
HYDRO	NUCLEAR	OIL	COAL	TOTAL MW
65.5	409.0	28.7	121.6	
2.0	12.3	423.0	243.8(*)	
2.0	29.1	115.0	44.7	
39.2	19.0	19.5	48.0	
	38.0	49.1		
	32.7			
108.7	540.1	586.2	507.2	1742.2
6.2%	31.0%	33.7%	29.1%	100%

In 1984-1985, generating sources are heavily weighted by oil fired generation — 710.4 MW out of 1417 MW of total capacity or 50.1%; coal represents a capacity of 507.2 MW or 35.8% of total capacity; nuclear is only 6.9% of capacity and hydro is 7.2%. After Seabrook goes on line

in the 1986-1987 timeframe, the Company's generating capacity to serve load is balanced and diversified. Nuclear generation increases to 540.1 MW by the addition of Seabrook I's 409 MW and Millstone III's 32.7 MW; oil capacity reduces to 33.7% of the total from 710.4 MW to 586.2 MW by terminating purchase capacity from Coleson Cove, Brayton Point and Yarmouth and the retirement of some diesel capacity; coal is 29.1% of capacity and hydro 6.2%. The total generating capacity increases from 1417 MW in 1984-1985 to 1742.2 MW in 1986-1987. The generating capacity by fuel source based on the preceding table is shown in graph form below.

[Graphic Not Displayed Here]

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[Graphic Not Displayed Here]

An energy source in New England is subject to the control of regulatory agencies whose primary concern is to serve the public interest of their respective jurisdictions. Undue reliance on Canadian energy sources may subject future power supply to changes in contract commitments. The contracts for Canadian power are between HydroQuebec, an agency of the provincial government of Quebec and United States utilities. If the policies of the central Canadian government compel changes in contract commitments, the obligation of the provincial agency to perform will cease over a span of years. We cannot rely on performance, particularly because there is no obligation of treaty between the United States and Canada to enforce the sanctity of contracts between New England utilities and provincial agencies.

The impact of acid rain legislation in the United States and Canada to reduce sulphur output will increase the cost of coal-and-oil fired plants in comparison to nuclear generation. The diversification of power sources is an important force in determining whether Seabrook I will contribute to the reliability of PSNH's generation resources. Clearly, a balanced capacity with less long term reliance on imported oil and coal resources is a valid objective of power planning.

D. Summary

In summary, we find that the 1984 and preliminary 1985 forecasts were prepared in accordance with the requirements of this Commission expressed in DE 81-312, the current methodology known in the industry and is acceptable for determining PSNH's need for additional power. The Commission finds that the Company to meet its capacity needs for present and future customers must have additional generation capacity and Seabrook is the only reliable project. We have examined all other alternatives presented to the Commission and find the completion of Seabrook is the most preferable and reliable. We have specifically reviewed the record in this proceeding regarding price elasticity and its effect on load and find that price elasticities have adequately been captured in PSNH's load forecast model. Consequently, we accept the conclusion that Seabrook is necessary from a need for power consideration.

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V. ON AN INCREMENTAL COST BASIS COMPLETION OF SEABROOK UNIT I IS THE LEAST COST OPTION TO SERVE THE PUBLIC GOOD

A. Standard of Analysis

[10] In the course of the proceedings and in brief, the parties took differing positions on the standard of analysis which should be employed by the Commission in evaluating the various issues placed before it. The argument centers on whether an incremental cost or a total cost standard should be employed. The difference in the two approaches is significant and, accordingly, it is important to set forth how the standards are defined, which standards will be applied to the issues and the Commission's rationale in selecting a particular standard.

It is important initially to define the terms. An incremental cost analysis ignores those costs which have already been spent on the project (sunk costs) and looks only at the costs which will be required to be spent from this day until completion. When an incremental cost analysis is applied to Seabrook Unit I for the purposes of the proposed financing, the Commission is evaluating the \$1 billion "to go" cost which the proceeds of the proposed financing will fund. This cost translates into a cost of approximately \$870 per installed kw of Seabrook capacity. A total cost analysis is an evaluation of the sum of the sunk costs and the incremental costs. In the context of the instant proceeding, PSNH's base case total cost figure is \$4.7 billion. This translates into a cost of approximately \$4,087 per installed kw of Seabrook capacity. Obviously, when evaluating issues such as alternatives to Seabrook or ratepayer and investor exposure, it is important to be clear about whether a \$870/kw or a \$4,087/kw figure is being assigned to the Seabrook alternative.

In our Report and Third Supplemental Report No. 17,343 (69 NH PUC 679) in this docket, we adopted a preliminary analysis of the cost standard issue. There, we provided that the incremental standard is appropriate for comparing Seabrook Unit I with alternative methods of meeting future power needs and the total cost standard is appropriate for assessing the financial feasibility of the proposed financing. That Order stated (69 NH PUC at pp. 681, 682):

Several intervenors have argued that it is inappropriate to evaluate the alternatives to Seabrook on the basis of incremental cost alone. PSNH has objected on the basis of: 1) the appropriateness of an incremental cost standard; and 2) the fact that the incremental cost standard was noticed in the Commission orders.

After review, we will sustain PSNH's objection. Our Order of Notice stated that the issue includes: "an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of ... incremental cost ..." we have been presented with insufficient reason to vary from that standard. A finding of public good for the purpose of reviewing a proposed financing involves an evaluation of the circumstances as they exist today. The costs which have already been "sunk" will exist in any event and should be treated in a consistent way in comparing alternatives.

However, it should be explicitly

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noted that the incremental analysis described above does not prescribe any particular assumption about how sunk costs should be treated (apportioned) for revenue requirements analysis; nor does it carry with it any presumption about how sunk costs ultimately will be treated for ratemaking purposes. That matter must await adjudication in an appropriately noticed proceeding.

Further, it must be stated that a total cost analysis is appropriate to an evaluation of "Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Seabrook Unit I." Ratepayer and investor exposure cannot be assessed on the basis of incremental cost alone. To the extent that PSNH's objection to the use of a total cost standard was intended to proscribe our evaluation of this issue (i.e., Issue #3), it is overruled. As noted above, we are not engaged here in a ratemaking determination. Any evidence on total cost will be reviewed for the purpose of assessing ratepayer and investor exposure and any other matters related to the public good.

In argument, several parties contended, at least by implication, that the above analysis is incorrect. PSNH and BIA agreed that an incremental cost analysis should be applied to the evaluation of Seabrook alternatives; however, their argument also implied that such an incremental cost analysis should also be applied to the issue of financial feasibility. SAPL, CRR and CLF agreed that it is appropriate to apply a total cost standard to the issue of financial feasibility; however, those parties also implied that such a total cost standard should be applied to the issue of alternatives to Seabrook Unit I. After a review of the evidence in this proceeding, we conclude that our initial analysis was correct. Accordingly, we will continue to apply an incremental cost standard to the issue of alternatives to Seabrook and the total cost standard to the issue of financial feasibility. An expanded statement of the rationale which leads us to the incremental cost conclusion follows. The rationale for applying the total cost standard to a financial feasibility analysis will be discussed *infra* at Section VI.A. (Standard of Analysis).

In our Order of Notice we stated that we would be evaluating:

Whether the purpose of the proposed financing is in the public good, including, *inter alia*: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternative to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders. (Order of Notice, August 2, 1984) (Emphasis supplied).

The language contained in the Order of Notice was the subject of appeal. In SAPL I, it was argued that the Commission unlawfully narrowed the scope of the proceedings when it deferred an incremental cost analysis of alternatives to the instant docket. In holding that such a deferral was proper under the circumstances, the Court commented:

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As we noted above, in its order of July 30, 1984, the commission explicitly recognized that the opinion of this court in *Re Easton*, *supra*, made it appropriate for the commission to evaluate 'the long term alternatives to completion of Seabrook Unit I in the context of the ... incremental cost [of completion] and the assumptions found by the Commission to be reasonable. ...' SAPL I, 125 N.H. 468, 482 A.2d 509. (Emphasis supplied).³²⁽⁵¹⁾

In its decision in SAPL II, the Court reaffirmed its holding that it was proper for the Commission to defer certain issues to the instant proceeding. The Court went on to caution that the Commission's consideration of the deferred issues in this docket must include a

determination of "... the relative economic desirability of allowing or disallowing the company's continuing participation in construction of the first Seabrook reactor ..." (125 N.H. 465, 482 A.2d 509.) Given the nature of the Court's evaluation of our Order of Notice in SAPL I, the Court's language must be construed to permit an analysis of the relative economic desirability of the completion and cancellation scenarios on an incremental cost basis.

Having concluded that an incremental cost analysis is legally permissible, we turn to an analysis of the reasons why the incremental standard is to be preferred in our evaluation of alternatives in the instant proceeding. As we stated in our December 6, 1984 Order, the sunk costs already exist; they cannot be recaptured. The only issue therefore is how those sunk costs are to be allocated.

Regardless of whether the costs are borne by ratepayers or investors, they remain costs ... Re Commonwealth Edison Co., 50 PUR4th 221, 258 (Ill. c.c.1982).

The relevant cost is the incremental cash cost to completion, plus AFUDC accrual. There is no dispute that the "sunk" costs, or costs expended to date are irrelevant in the analysis. Those costs must be borne whether Seabrook is completed or not and therefore have no bearing on whether to continue with the project from this point forward." Re Seabrook Station Units 1 and 2, 59 PUR4th 131, See also, Pierce, "The Regulatory Treatment of Mistakes in Retrospect: Cancelled Plants and Excess Capacity", 132 U. Pa. L. Rev. 497, 510-11 (1984); Turvey and Anderson, *Electricity Economics: Essays and Case Studies*, 255-56 (1977).

The Intervenor's arguing in favor of a total cost standard recognize that an incremental cost analysis may be appropriate in other jurisdictions. They contend, however, that such an analysis is not appropriate in New Hampshire due to the existence of RSA 378:30-a, the so-called Anti-CWIP law. Since that statute prohibits recovery from ratepayers of the cost of cancelled plant, Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984), the ratepayer will see either the total of prudently incurred costs in the completion case or no costs at all in rate base in the cancellation case. Thus, a ratepayer perspective requires a total cost analysis.

It is true that RSA 378:30-a would mandate that all of the sunk costs be allocated to investors in the

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cancellation case.³³⁽⁵²⁾ However, a legislative requirement of particular ratemaking treatment in the event of cancellation does not undermine the incremental cost rationale that in terms of the cost to society and the efficient allocation of economic resources, sunk costs exist equally whether the alternative of cancellation or completion is selected. Moreover, this Commission is required to consider a broader perspective than that of the ratepayer alone. RSA 33:17-a provides:

Commission as Arbiter. The Commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.

SAPL in brief recognized the Commission's responsibilities to act as arbiter, but contended that even an arbiter must enter a correct decision based on the evidence. SAPL went on to argue that any consideration of the interests of the regulated utility ignores the issue of corporate responsibility. According to SAPL, consideration of the evidence on corporate responsibility should require the Commission to allocate all sunk costs to the investors. We cannot accept the SAPL analysis because it assumes that in this docket we can make the kind of prudency findings that will allow us to allocate costs between ratepayers and investors for ratemaking purposes. Such prudency issues have not been properly noticed RSA 541A:16 III (Supp. 1983); N.H. Admin. Rules, Puc 203.01; Re Public Service Co. of New Hampshire, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982) and, accordingly, we cannot conclude that the parties had an opportunity to aid us in developing the record necessary to support such findings. When a prudency proceeding is opened, SAPL may renew its corporate responsibility arguments that sunk costs must be allocated to investors.³⁴⁽⁵³⁾ It is inappropriate, however, for us to prejudge here where that prudency record will ultimately lead us. Rather than making judgments about what had occurred in the past, it is necessary to engage here in a forward looking evaluation of "the relative economic desirability of allowing or disallowing the company's continuing participation in construction of the first Seabrook reactor ..." in determining whether the proposed financing is in the public good. SAPL II, *supra*; RSA 369:1. Such a forward looking evaluation may only be conducted on the basis of an incremental cost analysis of Seabrook Unit I and the alternatives.

B. The Seabrook Alternative

The comparison of the completion case with the cancellation case requires that we define the assumptions to be used in calculating the cost of Seabrook

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Unit I. There was significant disagreement about many of those assumptions including, *inter alia*, the cost of Seabrook Unit I, the probable commercial operation date (COD), the period of time between fuel load and COD, the capacity factor, the cost of operating and maintaining the facility, the cost of capital additions, the cost of decommissioning the facility, the cost of nuclear fuel and the probable useful life of the plant. See e.g., Table, *supra* at Section III.K. (Summary). We have examined the evidence bearing on the validity of the various assumptions adopted by the parties and we have made findings as to the proper assumptions to be used by the Commission for the purpose of evaluating the proposed financing. Those findings with accompanying analytic support follow. It is important to emphasize, however, that uncertainty always exists when projecting the likelihood of future events. Thus, we have generally defined a range of values that form a reasonable basis to evaluate the completion alternative. Additionally, we believe it is useful to identify a particular value to be used in our decision making process. However, such pinpointed values should be seen for what they are: the point which we believe has the highest probability of occurring within a range of values all of which have a likelihood of occurring.

1. Description of the Project

Seabrook Unit I is the first unit of a two unit nuclear facility which is presently under

construction in the Town of Seabrook, New Hampshire. The Company is proposing in this docket to finance the remaining construction of the first unit and common facilities.³⁵⁽⁵⁴⁾ Seabrook Unit I is a nuclear fueled Westinghouse pressurized water reactor (PWR) which will generate a busbar output of 1150 MW. The reactor utilizes ocean water for condenser cooling purposes.

PSNH was granted a Certificate of Site and Facility pursuant to RSA Chapter 164-F on January 29, 1974. Re Public Service Co. of New Hampshire, 59 NHPUC 127 (1974). At that time, the total cost of the two units was projected to be less than \$1.3 billion and the scheduled commercial operation date of Unit I was November, 1979. Exh. 63 at 124. PSNH was granted a construction permit by the NRC on June 29, 1976. Exh. 69.

Since the project was conceived, it has been subject to continued cost overruns and schedule slippage. For example, in December of 1976 Unit I was projected to come on line in November of 1981 at a total cost of \$1.007 billion. By April of 1981, the plant was scheduled to come on line in February of 1984 at a total cost of \$1.735 billion. In December of 1982, the schedule slipped to December of 1984 with an associated total cost of \$2.54 billion. In March of 1984, PSNH released a new cost and schedule estimate which projected an on line date of July, 1986 at a total cost of \$4.55 billion. See generally, Exh. 63 at 124.

Following the announcement of the substantial increase in the projected cost of the project in March of 1984, the Company's commercial banks indicated that they would not allow the Company to utilize a \$160 million line of

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short term credit. This triggered the Company's Spring, 1984 liquidity crisis which, in turn, caused the Company to suspend Seabrook construction activities in April of 1984. At that time, the Company had already invested more than \$1.2 billion. Exh. 173 at 3, 4, 9-11. In July of 1984, the Company was able to resume construction at a reduced cash flow level of \$4 million per week.³⁶⁽⁵⁵⁾ Exh. 173 at 3-4. In fact, the Joint Owners have been able to accomplish their reduced construction goals at a cost which is less than \$5 million per week. Accordingly, the Joint Owners are increasing the level of construction expenditures to utilize the cash which has not been spent in a manner which is consistent with an average overall cash flow of \$5 million per week. See e.g., Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110) in this docket. Presently, the Company is projecting that the plant will come on line in the last quarter of 1986 at a total cost of approximately \$4.7 billion. This is based on the assumption that the Joint Owners can ramp up the construction expenditures to the level of \$10 million per week commencing on April 1, 1985. See e.g., Exh. 11. To the extent that this assumption is incorrect, the project will experience further delay and cost increases. Id.

2. Projected Capital Cost and Schedule

The cost of Seabrook is one of the more critical factors to be evaluated when comparing completion and cancellation scenarios. PSNH based its analysis on a projected total cost of \$4.6 to \$4.7 billion. See e.g., 2 Tr. 212; Exh. 11 at 3. CRR witness Rosen testified that the plant would cost \$5.5 billion. See e.g., Exh. 46 at 29. Consumer Advocate witness Mr. Chernick testified that the total cost of Seabrook would range between \$6 and \$8 billion. Exh. 63 at 54-63.

The analysis of capital costs necessarily involves an analysis of the projected schedule of completion. 2 Tr. 375. This is because a high proportion of the cost is determined by time and the accrual of AFUDC; a one month delay increases total project cost by approximately \$50 million. Exh. 103.³⁷⁽⁵⁶⁾ The earliest projected completion date of October, 1986 was proffered by PSNH. 2 Tr. 212; Exh. 11 at 3. Dr. Rosen believed that the plant would be operational in mid 1987 (Exh. 46 at 28) and Mr. Chernick estimated that the plant would not be operational before August of 1988 (Exh. 63 at 38, 53).

PSNH supported its estimate of Seabrook Unit I cash costs and completion schedule through the testimony of Mr. Derrickson. Mr. Derrickson's projections were based on a comprehensive engineering based construction management analysis. In essence, Mr. Derrickson has developed a detailed engineering plan to complete the plant. Thus, the tasks necessary to complete the project have been defined and the man-hours and costs associated with those tasks have been calculated. The assumptions underlying those calculations have also been identified. For

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example, Mr. Derrickson accounted for inflation at a rate of 5% compounded monthly over the period of time remaining when inflation exposure exists. 2 Tr. 306. The man-hours were assumed to take place on a 5 day week, eight hour day basis. 2 Tr. 250. Thus to the extent that the schedule slips, the Company will have the flexibility to utilize a second shift or weekend overtime. *Id.* In addition, Mr. Derrickson has added to his estimate an amount of \$170 million for allowances and contingencies. Exh. 12 at 15.³⁸⁽⁵⁷⁾ The contingency portion of the cost estimate amounts to 18% of the exposed budget, or approximately \$115 million. 2 Tr. 365-67.

After review, we find that Mr. Derrickson's estimate of the schedule to the point of fuel load should be accepted. We are aware of the fact that PSNH's past construction estimates have been lamentably inaccurate. See e.g., Exh. 63 at 124. However, there are elements in the current estimate that give us a high level of confidence; elements that had not been present in past estimates. Those elements include, *inter alia*:

1. The experience of Mr. Derrickson in successfully managing the construction of nuclear facilities. See e.g., Exh. 1 at 2-5. See also, Exh. 66.
2. The experience, structure and accountability of the management team assembled by Mr. Derrickson. See e.g., Exh. 1 at 8-11, Attachment WBD-5; 2 Tr. 296, 324; 3 Tr. 397, 488-89, 494, 507.
3. The timely accomplishment of significant construction milestones. See e.g., Exh. 10-F; 38 Tr. 7509-10.
4. The fact that the plant is close enough to completion to render the task of estimating the remaining work manageable.
5. The fact that the engineering is 98% complete. 2 Tr. 312-313.
6. The fact that all material has already been procured. 2 Tr. 311312, 3 Tr. 509.
7. The use of a one shift assumption which allows sufficient flexibility to recover from schedule slippage. 2 Tr. 296-97.

8. The availability of an 18% contingency See e.g., Exh. 12 at 15; 2 Tr. 365-67.³⁹⁽⁵⁸⁾

9. The existence of fixed cost contracts for a significant portion of the remaining work. See e.g., Exh. 1, Attachment WBD-6.

10. The confidence reported by MAC after an intensive review of the cost and schedule estimates. Exh. 106.

Both Dr. Rosen and Mr. Chernick presented analysis which indicated that Mr. Derrickson's projections are optimistic. However, both witnesses relied on a statistical analysis of the nuclear construction experience in the United States. 13 Tr. 2235. Neither witness is a professional engineer, 16 Tr. 2878, and neither witness undertook an analysis of the PSNH engineering assumptions which formed the basis of the Company estimate, 16 Tr. 2874-76. We recognize that such a statistical analysis is

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an accurate reflection of the experience of other utilities who have been engaged in nuclear construction and not necessarily applicable to Seabrook I's completion. We also accept that such analysis has predicted Seabrook cost over-runs in the past. However, when such analysis is balanced against a detailed and unchallenged engineering management plan which has new elements that appear to address past deficiencies, we believe that the management plan deserves to be assigned greater weight. Management responsibility and accountability as a regulated utility for effective implementation of the plan within predicted cost levels is another important element bearing on the weight of proffered testimony. Accordingly, we find that the PSNH estimate of construction cost and schedule starting at the present time and ending at the point of fuel load is a reasonable assumption for the purposes of the analysis in this Order.⁴⁰⁽⁵⁹⁾

As is apparent in the above discussion, our acceptance of the PSNH estimate has not been applied to the time interval between fuel load and COD. This issue has been the subject of previous Commission analysis. In *Re Public Service Co. of New Hampshire*, 68 NH PUC 257 (1983) the Commission concluded that the applicable time interval would range between 6 months and 11.5 months and selected 8 months as the most likely interval for planning purposes. It is noteworthy that this is one of the key assumptions from previous Commission Orders which PSNH did not accept. Exh. 4, Table IV-11 at IV-20. Instead, the Company, through Mr. Derrickson, presented testimony to support a 4 month interval.⁴¹⁽⁶⁰⁾ Mr. Chernick asserted that a 13.5 month interval is more appropriate for planning purposes. See e.g., Exh. 36 at 45.

In support of its position, Mr. Derrickson pointed to his experience at Florida Power and Light Company's St. Lucie II nuclear unit; a unit that became operational 4.1 months after fuel load. 3 Tr. 401-02; Exh. 12. Mr. Derrickson also noted that the reactor manufacturer's manual and PSNH's schedule of activities prescribe a duration of slightly less than 3 months. In view of this, a 4 month planned schedule, which allows an additional 30 days, is reasonable and achievable in Mr. Derrickson's judgment.

Offsetting Mr. Derrickson's judgment is the fact that many of the variables controlling the duration are outside the control of the utility. One example of an important external variable is the licensing process of the Nuclear Regulatory Commission (NRC); a process that involves,

inter alia, the approval of an evacuation plan. Mr. Derrickson acknowledged that agreement from various municipalities is necessary and that the Company has experienced some

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difficulty in obtaining such agreement. 3 Tr. 403-04. However, Mr. Derrickson stated his belief that such matters will fall into place:

We have experienced some difficulties with some municipalities. I don't believe at this point it will cause a delay in the project because we have the time available to work these difficulties out, and it has been our philosophy for the last decade or so that a problem is just an opportunity and we will work it out. There are no problems that man has made that man has not yet solved I don't believe. 3 Tr. 404.

We have confidence that Mr. Derrickson will bring his considerable talents to bear on those matters that are within his control. In this light several factors which have extended the duration between fuel load and commercial operation at other nuclear facilities are not applicable to Seabrook Unit I. Those include:

Delays resulting from equipment failures may be minimized because of the immediate availability of Unit 2 for replacement. The probability of operator error is reduced because of the above average experience levels of the operating team and their planned degree of participation in the test program. The project's positive performance record in meeting quality related requirements should minimize any delays in approval to proceed with the power ascension program. Exh. 106 at 18.

However, due to the multiple factors outside the control of Mr. Derrickson's team and the lack of a specific detailed plan for addressing such matters, we cannot accept the Company's 4 month estimate without reservation.

In such a circumstance, statistical evidence which compares Seabrook to other nuclear projects deserves consideration. Mr. Chernick's analysis revealed that the average duration is 13.5 months. Management Analysis Company (MAC) also looked at industry experience:

In comparing Seabrook to industry experience, and using the definition for CO utilized in our evaluation the period from Fuel Load to CO has ranged from 5 to 15 months, with an average of 10 months for first units of two-unit sites that have gone into operation since TMI. The range of approximately 7 to 10 months identified for Seabrook in our evaluation reflects our assessment of a well trained and experienced operating staff. MAC, Seabrook Unit 1 - Assessment of the August 30, 1984 Project Cost and Schedule Estimate, November 5, 1984, Exh. 106 at 18.

We note that MAC's 7 to 10 month range is bracketed by the 6 to 11.5 month range utilized by this Commission in DE 81-312. We believe that the presence of the new management team and the assumption of responsibility for completion of Unit I by the Joint Owners through a new management structure allows us to be more optimistic than was previously justified. We believe substantial weight should be assigned to the four month estimate of that management team. Accordingly, we find that the 6 month figure at the low end of the Commission's range is optimistic, but achievable. Since the

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four month duration results in an October, 1986 COD, the two month additional time projected by this Commission would allow the project to be brought on line by December of 1986; the date which is the latest in the Company's range. We also believe that the duration between fuel load and COD may be longer than 6 months. Such slippage will have the effect of delaying the project and adding to its cost.

The possibility of delay has impact on both the amount of the financing to be approved and the assessment of whether Seabrook Unit I is a preferred alternative.

With respect to the amount to be financed, we note that the Company is requesting financing based on a \$1 billion cost to go rather than the \$882 million estimate of Mr. Derrickson. We believe that the difference in the \$1 billion cost to go and the \$882 Company estimate provides sufficient financial flexibility so that the Company will be able to meet its construction costs even if it fails to meet the December 1986 COD by several months.⁴²⁽⁶¹⁾ We therefore find that the amount of proposed financing, which is based on a construction cost to go of \$1 billion is reasonable and in the public good.

With respect to our evaluation of alternatives, we note that Mr. Staszowski's pessimistic case assumes that the facility will not be completed until April of 1987 and that the to go cost will be \$1 billion. See e.g., Exh. 43 at 2.⁴³⁽⁶²⁾ Those assumptions are more pessimistic than those utilized by the Commission for this Order by an amount which is approximately consistent with the 11.5 month high end of the range of duration between fuel load and COD adopted by the Commission in DE 81-312. Even when those pessimistic duration assumptions are incorporated, Mr. Staszowski's revenue requirement analysis continues to show a NPV economic advantage to the completion of Seabrook Unit I.

In summary, we find that a \$1 billion cost to go is reasonable for financing purposes. We also find that the Company's December, 1986 COD is attainable; although there is a possibility of schedule slippage. Such schedule slippage within a reasonable time frame should not be sufficient, in and of itself, to cause us to change our conclusion that the completion case is consistent with the public good; the cancellation case is not.

3. Capital Additions

As a part of the analysis of the economics of completing Seabrook Unit I, it is important to estimate the cost of capital additions. Capital additions are those costs which occur after COD which are appropriately capitalized and, to the extent such expenditures are prudent, added to rate base. Such expenditures occur for a variety of reasons including new regulatory requirements.

As a part of its revenue requirements analysis, PSNH projected that capital additions will cost \$15 million in 1984 dollars escalating at a nominal rate of 7.5% per year. This is equivalent to a real escalation rate of 1.5 to 2.0%. Exh. 4 at IV-3. The cost figure was developed by PSNH's Vice President - Nuclear Production. Id. The escalation rate was taken from recent Commission Orders. Exh. 4 at IV-20.

Testimony on capital additions was also submitted by Dr. Rosen and Mr. Chernick. Both witnesses based their testimony on a statistical analysis of historic nuclear plant data. Dr. Rosen projects that capital additions will total \$7.22 billion in nominal dollars. Exh. 46 at 68. Mr. Chernick believes that capital additions will cost \$30.6/kw-year in 1984 dollars. Exh. 63 at 85-86. Thus, the total plant cost would be \$35.19 million.

After review, we find that PSNH's projection of the cost of capital additions is reasonably acceptable for the purposes of this Order. We recognize that this is an estimate which involves a high degree of uncertainty. We note that Dr. Rosen acknowledges that his statistical projection of the cost of capital additions may be off by plus or minus 100%. 13 Tr. 2283. Here again, we have decided to give more weight to the Company's estimate rather than to a statistical estimate.

In addition to balancing of statistical analysis against the more credible company analysis, we also encountered difficulty with several of the particular points of Dr. Rosen's and Mr. Chernick's testimony. Dr. Rosen's analysis assumes that past trends are applicable to Seabrook Unit I and that such past trends will continue on a linear basis in the future. As PSNH argues, the cost of capital additions in the industry peaked in 1981 and has dropped since. Additionally, many capital additions of other nuclear plants have been incorporated into Seabrook's design. PSNH Brief at 37. We believe that these PSNH arguments are persuasive. With respect to Mr. Chernick's analysis, the record indicates that there were serious flaws in his data base. See e.g., 16 Tr. 2940-52. This is an additional reason to give more weight to the PSNH analysis.

Accordingly, we find that PSNH's capital additions estimate is reasonable for the purposes of this Order.

4. Capacity Factor or Availability Factor

[11] One of the critical elements in assessing the economics of Seabrook Unit I is the projected capacity factor of the plant.⁴⁴⁽⁶³⁾ To the extent that the plant provides a benefit by displacing higher cost oil, a plant which is on line a higher percentage of the time will displace more oil than a plant that is plagued with continued outages. PSNH assumed that the mature capacity factor of Seabrook Unit I would be 72%. See e.g., Exh. 4 at IV-3. Certain Intervenors argued that this assumption is too optimistic. In support of that argument, they presented the testimony of Dr. Rosen who recommended that the Commission assume a 52.5% capacity factor (Exh. 46 at 40-41) and Mr. Chernick who recommended that the Commission assume a 55% capacity factor (Exh. 63 at 76).

In *Re Public Service Co. of New Hampshire*, 68 NH PUC 257, the Commission set forth its analysis of the probable Seabrook capacity factor based

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on the record in that case. There, the Commission found it appropriate to assume for planning purposes that Seabrook will have a 60% capacity factor. Report at II-37. PSNH elected not to accept this finding for the purpose of basing its analysis on the assumptions found by the Commission to be reasonable in recent Orders. Exh. 4 at IV-20. Instead, it decided to continue to assume that the mature capacity factor will be 72%. It asserted that this assumption is consistent with the Commission's recent Order in *Re Small Energy Producers and Cogenerators*, 69 NH

PUC 352, 61 PUR4th 132 (1984). Id. However, an examination of that Order indicates that the Commission did not necessarily accept the 72% mature capacity factor which was part of several of the scenarios presented to the Commission. The Order reflects that the Commission utilized three scenarios to reflect various Seabrook options (69 NH PUC at pp. 363, 364, 61 PUR4th at p. 143):

Case 2 with both Seabrook units (7/86, 12/90) Case 1 with one Seabrook unit (7/86) Case 0 with no Seabrook units

The Commission stated (69 NH PUC at p. 364, 61 PUR4th at pp. 143, 144):

Several other scenarios such as different in-service dates for Seabrook, high and low fuel price scenarios, and other modifications of assumptions were discussed by the parties. The parties agreed, and the Commission accepts, that by applying various weights to each of the three scenarios (Cases 0, 1, and 2), impacts under other assumptions and scenarios (e.g., a completion date later than July 1986 in Case 1) could be considered, and these are ultimately reflected in the final weighted series of values shown in the Stipulated Case. The Stipulated Case reflects a weighting of 25% for Case 2, 50% for Case 1, and 25% for Case 0. (Footnote omitted).

We do not believe that any inference can be properly drawn about what particular Seabrook assumptions were accepted or rejected by the Commission from such a blend of scenarios. The only Order where the capacity factor issue was the subject of direct Commission analysis was in Docket No. DE 81-312, *supra*. Accordingly, the 60% capacity factor finding contained in that order is an appropriate reference point for our incremental cost analysis herein.

In support of its capacity factor estimate, PSNH presented the testimony of Mr. Staszowski.⁴⁵⁽⁶⁴⁾ Mr. Staszowski stated that the assumption of a 72% capacity factor is based on: 1) recent Commission Orders; and 2) the estimate of Mr. Thomas as discussed in Docket DE 81-312, 9 Tr. 1497-1500. Mr. Staszowski also testified that he ran a sensitivity analysis utilizing the 60% assumption in DE 81-312 and that with that assumption, Seabrook I continues to be economic.

We have examined the PSNH testimony and the testimony of Dr. Rosen and Mr. Chernick. We continue to believe, as we did in DE 81-312, that the level of uncertainty in projecting capacity factors is high. In fact, Mr. Chernick's data in Exh. 63, Appendix E bears out our conclusion that one of

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the more important observations is the randomness of capacity factors. We will therefore reject Dr. Rosen's recommendation that we utilize a 52.5% capacity factor because his statistical analysis indicates that his figure has poor explanatory power and cannot credibly be supported. Mr. Chernick's recommended capacity factor of 55% will be rejected for the same reason. We will recognize both Dr. Rosen's and Mr. Chernick's analysis, however, for the purpose of establishing an acceptable range. PSNH's analysis will be accepted for the purpose of establishing the high end of the range. We note that National Economic Research Associates' average projection of capacity factors is 65.3%. Exh. 63 at 70. With respect to a particular point within the range, we note that Mr. Chernick's regression analysis of historic data lead him to

conclude that a Seabrook type PWR would have a capacity factor in the range of 50% to 60%. We believe that substantial evidence supports a finding that Seabrook is a state of the art unit which has not been subject to the quality assurance problems experienced by other reactors. See e.g., Exh. 106. We therefore find that a capacity factor of 60% is a reasonable assumption for the purposes of this Order. The 60% capacity or availability factor is about at the midpoint of PSNH's proposal and the low end of Mr. Chernick's range. Accordingly, we find that the Seabrook mature capacity factor will fall within a range of 52.5% to 72%. For the purposes of the analysis in this Order, we use 60% as the applicable capacity factor for Seabrook Unit I.

5. Operating Costs

[12] The economics of Seabrook Unit I are dependent on the assumptions about what the plant will cost to operate. Thus, the parties proffered estimates about the cost of nuclear fuel, operation and maintenance expenses (O&M) and decommissioning costs. For the purposes of this financing Order, we will accept the following assumptions:

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

ITEM RANGE FINDING

Nuclear Fuel .94/kwh

46(65) in 1984 1.41/kwh in
dollars to 2.4/kwh in 1986 to 2.4/kwh

47(66)2005 in 2005

O&M \$69 million escalating \$69 million
at 0-4% 1 year in real escalating at
terms

48(67) 1.5-2.0%/year in
real terms

49(68)
Decommissioning \$170 million in 1984 \$170 million in
dollars to \$311 million 1984 dollars

50(69)in 1984 dollars

51(70)

The reasons for each of the above findings will be discussed in turn.

For the purposes of this Order, we have accepted PSNH's evidence on likely nuclear fuel costs. Exh. 4 at IV-6. These costs were developed by Yankee

confidence in this estimate is supported by the inclusion in the estimate of the total nuclear fuel cost, rather than incremental fuel cost,⁵²⁽⁷¹⁾ and nuclear waste disposal cost. 9 Tr. 1538-52. We note further that there is some interrelationship in the fuel markets. Thus, if actual nuclear fuel costs escalate at a rate greater than projected, it is likely that there will be similar cost escalation in the fossil fuel markets. Thus, it is reasonable to find that Seabrook fuel savings will be roughly as projected even if there is some variation within the range. We have rejected Dr. Rosen's estimate because it included some double counting of carrying charges. 15 Tr. 2780-81. Mr. Chernick's projections have been accepted for the purpose of establishing a range.

We have also accepted PSNH's O&M projections. As noted previously, PSNH assumed that O&M costs would be \$65 million escalating at 7.5% per year in nominal terms. Translated into "real" escalation (increase above inflation), PSNH is assuming that O&M costs will escalate at 1.5% to 2.0% per year. In DE 81-312, we accepted a real escalation rate range of 0-4%. We have been presented with no reason to depart from that here. Thus, PSNH's assumption, which falls in the mid-part of the range, is reasonable. The \$69 million per year assumption was developed based on an engineering estimate. Exh. 4 at IV-2; 8 Tr. 1492-94. We will accept the estimate for the purpose of this Order. Dr. Rosen's and Mr. Chernick's O&M analysis will be rejected as an assumption for this Order because the statistical comparison with other nuclear units deserves less weight than an engineering analysis of factors applicable to Seabrook. The high level of sensitivity of the statistical analysis in the O&M area to certain judgmental inputs is supported by the changes between the witnesses' testimony proffered in this and other proceedings.

Decommissioning expenses add to the per kwh cost of the plant because they are included in rates from COD. RSA 162-F:14 et seq. In essence, this expense represents a negative salvage value of the plant after it has been fully depreciated which is normalized over the life of the asset. Since few, if any commercial reactors have been decommissioned, this is an expense where the level of uncertainty is exceedingly high. In support of a \$170 million assumption, PSNH presented the testimony of Mr. Staszowski. Mr. Staszowski did not perform an independent study of the matter; rather, he adopted Northeast Utilities' estimate of the decommissioning costs for Millstone III. Millstone III, like Seabrook, is a 1150 MW PWR currently under construction. 9 Tr. 1534. Mr. Staszowski was unable to specify how the Northeast Utilities estimate was calculated other than to say that the number includes a 25% contingency. 12 Tr. 2100. Mr. Staszowski also testified that his estimate is consistent with those applicable to other New England nuclear facilities. 9 Tr. 153435. Because the PSNH estimate is consistent with other accepted New England estimates, we will accept it as the low end of the range and as the assumption to be used in this Order. The

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high end of the range is based on the testimony of Mr. Chernick who stated that his nationwide statistical analysis lead him to conclude that decommissioning will cost \$311 million. Exh. 63 at 89. We therefore believe that Mr. Chernick's analysis is acceptable for establishing the high end of the range. We have not utilized the high end as an assumption however, because it is not tied as closely to accepted New England estimates as Mr. Staszowski's. As noted previously, the level of uncertainty is high. It is important also to note that sensitivity analysis demonstrates

that the economics of Seabrook are affected only minimally by varying the decommissioning assumption (See e.g., 13 Tr. 2304).

6. Plant Life

In examining the economics of Seabrook, it is important to estimate the useful life of the facility. This is because we are not examining the costs and benefits of Seabrook in one particular year; rather, those costs and benefits are being evaluated over the life of the plant. In addition, to the extent that book life is shorter, certain fixed costs such as depreciation are spread over a fewer number of years with associated rate effects.

PSNH assumed a 40 year plant life. Exh. 4 at IV-4. This estimate was developed by Mr. Thomas, PSNH's Vice President - Nuclear Production. See e.g., 34 Tr. 6333. The 40 year assumption has been used by PSNH at least since 1979, 9 Tr. 1604; however, in the Seabrook proceedings before the Bulk Power Site Evaluation Committee pursuant to RSA Chapter 162-F, PSNH employed a thirty year life assumption. See, Exh. 35, 34 Tr. 6334. Dr. Rosen and Mr. Chernick believed that the assumption of a 40 year life is too high. Dr. Rosen testified that the Commission should assume a useful life of 30 years. Exh. 46 at 13, 15. Mr. Chernick recommended that the Commission employ a 25 to 30 year assumption. Exh. 63 at 40, 77.

This is another assumption which involves a high level of uncertainty. The nuclear industry is relatively young and most operational plants have not yet been on line for the time period necessary to apply actual experience to an estimate of useful life. Thus, it is possible to argue that no large commercial nuclear power plants have yet reached their 40th year of operation, 34 Tr. 6334, but those same facilities are, for the most part, operational and, thus, may reach their 40th years. Given this level of uncertainty, we have decided to accept Dr. Rosen's and Mr. Chernick's 30 year recommendation as the low end and PSNH's 40 year estimate as the high end of a range of estimated useful life. For the purposes of this Order, we will assume that the midpoint of 35 years will be the useful life of Seabrook.⁵³⁽⁷²⁾

Having determined that a 35 year life is an appropriate assumption, it must be noted that resolution of this issue does not materially affect our incremental cost analysis. Mr. Staszowski testified that a change in useful life from 40 to 30 years produces no change in the present worth of

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cumulative revenue requirements. 34 Tr. 6337-38. The data support Mr. Staszowski's analysis. In Exhibit 137, PSNH presents the cumulative present worth of Seabrook as compared to a cancellation alternative for each year of a 40 year operational life under a variety of assumptions. In each instance where the completion case shows a favorable net worth over a 40 year life, it is also favored by approximately the same amount on the 30th year of the curve.

7. Cost of Capital

As a part of a revenue requirements analysis of alternatives, it is important to establish assumptions about the cost of capital. The return on capital invested in either Seabrook Unit I or an alternative facility is a significant element in the revenue requirements formula. For the purpose of its incremental cost analysis, PSNH assumed that the overall cost of capital would be

15.4%. Exh. 146 at 21. The debt component of the cost of capital was calculated by averaging the overall cost of debt in several alternative financial forecasts; a cost of debt that included the proposed financing.⁵⁴⁽⁷³⁾ See, Exh. 146 and the underlying scenarios at Exhs. 124-A, 124-B, 124-D and 124-E. The capitalization ratio was calculated in the same manner. Id. For the purpose of estimating the cost of equity, the Company started with a cost of 16.1%.⁵⁵⁽⁷⁴⁾ The cost then drops to 15% in 1987 and 14% in 1989. Exh. 146 at 2. The drop in the cost of equity is designed to reflect the reduced risk perceived by investors after Seabrook Unit I becomes operational. 4 Tr. 607, 6 Tr. 974.

Witness Trawicki and Dr. Rosen also utilized specific cost of capital assumptions in their analysis. Mr. Trawicki believed that the overall cost of capital would be within a range of 16% to 17.5%. Exh. 199. Dr. Rosen's assumptions lead him to conclude that the weighted average cost of capital should be somewhat lower than that assumed by the Company. 15 Tr. 2789. A lower cost of capital increase the benefits of completing Seabrook Unit I. 4 Tr. 644.

After review, we have decided to accept the Company's 15.4% cost of capital. We believe that this finding is reasonable in view of the particular assumptions that went into it (Exh. 146), its relative insensitivity to changes in assumptions (See e.g., Mr. Plett's calculation of a 15.46% cost of equity at Exh. 146 based on the Company's base case set forth at Exh. 99-B) and the testimony of other witnesses which indicate that 15.4% is the approximate mid-point of a reasonable range. We also find that the use of the 15.4% assumption in both the completion and cancellation case biases the analysis toward the cancellation case. This is because the cost of capital would likely increase in a cancellation case due to heightened perceived risk by investors caused by uncertainty over recovery of Seabrook sunk cost. RSA 378:30-a; Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

8. Discount Rate

The revenue requirements analysis employed by Mr. Staszowski and Dr. Rosen compare a stream of revenue

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requirements over a period of years under both a completion and cancellation alternative. Since those revenue requirements occur at different times, it is necessary to reduce the stream of revenue requirements to a Net Present Value (NPV) so that an appropriate comparison may be made. In calculating a NPV, it is necessary to discount future dollars to present dollars to reflect the time value of money and foregone investment opportunities. See generally, 4 Tr. 676, 678. The discount rate is the rate used to discount a future revenue stream to determine present value. Id. In the revenue requirements analysis used by Mr. Staszowski and Dr. Rosen, a higher discount rate will decrease the benefits of completing Seabrook. 4 Tr. 589, 649-50.

For the purposes of its revenue requirements analysis, PSNH believed that the discount rate should reduce the stream of revenue requirements to a NPV applicable to ratepayers. Thus, instead of using its own cost of capital, it used a ratepayer discount rate. PSNH estimated that the time value of money for residential ratepayers is 10% and, thus, utilized that figure as a base case assumption. Exh. 5 at 3; 3 Tr. 528. The Company also selected a discount rate of 15% to use to test the sensitivity of its analysis to a higher discount rate. PSNH asserted that this sensitivity

discount rate is higher than the opportunity cost of alternative ratepayer investments. Exh. 5 at 3.

Our review of the evidence leads us to find that the appropriate consumer discount rate is within a range of 10% to 15.42%. For the purpose of testing PSNH's base case, we will assume that the appropriate consumer discount rate is 15%.

The low end of the range is the 10% rate utilized by PSNH. The high end of the range is PSNH's assumed cost of money. This is consistent with the Company's approach in Re PSNH, Docket DE 81-312 (69 NH PUC 257). 4 Tr. 583. It is also roughly consistent with the 12% to 18% range proffered by Mr. Trawicki, 22 Tr. 4057-58; a witness with considerable expertise and experience in this type of analysis. 22 Tr. 3995-96.

A 15% consumer discount rate at the high end of a reasonable range of discount rates may more accurately reflect the time value of money and the risks and uncertainties associated with predicting future events. A 15% discount rate is a conservative assumption applicable only to PSNH's residential ratepayers. If one were to include PSNH's industrial, commercial and other classes of customers, as is appropriate, the discount rate would be higher than 10%. 4 Tr. 577-79.⁵⁶⁽⁷⁵⁾ The use of the higher 15% discount rate may also be justified as a reflection of future uncertainties. It is undisputed that the further one looks into the future, the higher the degree of uncertainty. See e.g., 12 Tr. 2070. The record also indicates that in the early years of the life of Seabrook, the NPV benefit to ratepayers is negative — ratepayers do not derive a positive NPV benefit until the later years of the life of the unit. 12 Tr. 2109; Exh. 137. Since a higher discount rate accords more weight to earlier benefits and less weight to the benefit in later years. (See e.g., comparative

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curves in Exh. 137) and since the later years are the years in which the level of present uncertainty is highest, it may be appropriate to select a higher discount rate for the incremental cost revenue requirements analysis. Accordingly, we will assume a 15% discount rate for the purposes of our incremental cost analysis in this Order, recognizing that discount rates may range from 10% to 15.4%.

C. Seabrook Is The Preferred Alternative

We have previously determined that there is a need for power. We have defined the Seabrook alternative. Having determined the appropriate assumptions to be employed in that completion alternative, it remains to compare that case with the cancellation alternatives to determine which is the preferred alternative. Our review of the record, as discussed herein, leads us to find that the completion of Seabrook Unit I is the preferred alternative. Accordingly, we will conclude that the purpose of the proposed issue and sale of securities is consistent with the public good.

The initial step will be to define the cancellation alternatives which will be compared with the completion alternative. We will then conduct the comparison. For the purposes of this Order, the cancellation alternatives are defined as: 1) conventional thermal generation (See e.g., Exh. 4 at IV-17); 2) conservation (See e.g., Exh. 36); and 3) Cogeneration (See e.g., Exh. 73).⁵⁷⁽⁷⁶⁾

1. Conventional Thermal Generation

Two witnesses presented testimony which compared the completion of Seabrook with

cancellation scenarios involving conventional thermal generation. PSNH presented the testimony of Mr. Staszowski for the purpose of establishing the relative benefit of completing Seabrook I in comparison to cancellation. According to Mr. Staszowski, the base case net benefit of completing Seabrook I on an incremental cost basis will approximate \$2.3 billion. Exh. 136 at Attachment A. The range of benefits was calculated by comparing Mr. Staszowski's completion generation expansion plans with those applicable to the cancellation scenarios. Mr. Staszowski presented two generation expansion plans applicable to a cancellation alternative: 1) a base case plan assuming that the Company load forecast is correct (Exh. 4 at IV-17); and 2) a "pessimistic" generation expansion plan which assumed low growth rates for demand and energy (Exh. 4 at IV-18). In comparing Mr. Staszowski's cancellation generation expansion plans with his completion generation expansion plans, it is important to note that he kept certain assumptions constant. Thus, in both the completion and cancellation case, Mr. Staszowski assumed that the Company would be entitled to 148 MW of Hydro-Quebec capacity starting in 1990 and 237 MW of Hydro-Quebec capacity starting in 2000. *Id.* Additionally, Mr. Staszowski's assumptions about the contribution of small power producers and cogenerators were held constant for both the completion and cancellation alternatives.⁵⁸⁽⁷⁷⁾

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Generally, Mr. Staszowski's cancellation case assumes that the need for power will be met through purchases of oil powered capacity, the construction of jet generation⁵⁹⁽⁷⁸⁾ in the mid-1990s and the construction of coal units in the early 2000s. Exh. 4 at IV-17 to IV-18. Dr. Rosen also presented a cancellation generation expansion plan. Dr. Rosen's plan also assumed oil based purchase power until the mid 1990's. Exh. 46 at 87; 13 Tr. 2305. In 1995, Dr. Rosen assumed an addition of 809 MW of coal fired capacity. Additional plant additions are assumed in 1998/99 (100 MW), 1999/00 (400 MW), 2004/05 (400 MW), 2007/08 (400 MW) and 2013/14 (400 MW). *Id.* We do not believe that the two cancellation generation expansion plans are significantly different in terms of the costs.⁶⁰⁽⁷⁹⁾ However, given the lead times necessary to construct large thermal units and the uncertainty about Dr. Rosen's assumed generic costs for his alternative units (13 Tr. 2309-33), we find that it is reasonable to use Mr. Staszowski's generation expansion plan for the purposes of the analysis in this Order.

As noted previously, Mr. Staszowski calculated the revenue requirements caused by each generation expansion plan using both "optimistic" and "pessimistic" assumptions. Those revenue requirements were reduced to NPV figures which were then compared. In virtually all alternative cases, there was a benefit to completing Seabrook Unit No. I. See generally, Exhs. 136 and 137. See also, Exh. 102; 36 Tr. 6778-6802.⁶¹⁽⁸⁰⁾

We have examined Mr. Staszowski's methodology and the manner in which that methodology was used in Mr. Staszowski's analysis. We find that Mr. Staszowski properly used an incremental cost standard.⁶²⁽⁸¹⁾ We further find that Mr. Staszowski's data presents suitable data to analyze the NPV benefits of completion or cancellation under a variety of alternative assumptions.

For the purposes of evaluating the proposed financing we have made findings of Seabrook costs and benefits. The validity of PSNH's incremental cost analysis was affirmed by a

conservative sensitivity analysis incorporating adverse assumptions at the lower end of a zone of reasonably predictable effects;

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including, a cost to complete of \$1 billion, an in service date of April 1987 and unit availability of 60%. See, Staszowski Exhs. 43 and 136. Scenario 6 is labeled: "High Unit I cost and delayed in-service; Low unit availability and low fuel prices." Exh. 136 at Attachment A. Using a 15.40% cost of money and a 15% discount rate, the NPV benefit from completing the plant is \$323 million; a 10% discount factor will produce a NPV benefit of over \$1 billion. (Exh. 136 at Attachment A). A review of the benefits over the life of the Seabrook investment reveals that there is no significant difference in the NPV benefit if a 35 year useful life is assumed. Exh. 137 at 14. Our finding that completion is the preferred alternative is supported by the fact that even under Scenario 8 - a Scenario utilizing substantially more pessimistic assumptions than adopted by the Commission, including demand and energy growth at 1.5% - the NPV benefit from completion is just under \$262 million. Exh. 136 at Attachment A; Exh. 137 at 16.

It is noteworthy that in the more than 60 scenarios run by Mr. Staszowski, the positive NPV from completion ranged from \$235 million to \$942 million, using a discount factor of 15% and a cost of money of 16.94%. If a 10% discount factor is assumed, the NPV ranges from \$1 billion to \$2.3 billion. Exh. 136, Attachment A. Only one scenario (which we reject) showed that the cancellation case is to be preferred (a negative NPV of minus \$70 million). That case used all of Mr. Staszowski's pessimistic assumptions plus the additional assumptions of 100% loss of the UNITIL load and 100% life extensions of existing generation. Exh. 136 at Attachment B. We have already indicated that we have not accepted all pessimistic assumptions. In addition, we cannot accept the assumptions of 100% loss of UNITIL load and 100% life extensions.

With respect to the UNITIL load, it is important to distinguish between the loss of PSNH's capability responsibility applicable to UNITIL and the loss of the ability to sell energy that otherwise would be committed to UNITIL. We believe that PSNH will not be required to adhere to a capability responsibility for the UNITIL load as of the effective date of the termination of the contracts between PSNH and the UNITIL Companies.⁶³⁽⁸²⁾ However, Mr. Staszowski's pessimistic scenario was framed in terms of the total loss of the sales that otherwise would have supplied the UNITIL companies. That is an assumption we cannot accept.

Mr. Staszowski testified that a market would exist for the power. If UNITIL is not the buyer, than another company would purchase the power. 33 Tr. 6218-19. Mr. Trawicki also testified that if PSNH did not sell the power to UNITIL, it would find other markets. Mr. Trawicki further stated his belief that whether the alternative markets included UNITIL or not, the Company would probably receive a lower price for the power. Mr. Trawicki computed what that lower price would be. See Exh. 95 at Schedules 1-5, 3 and Exh. 119. Based upon this evidence, we find that PSNH is unlikely to lose 100% of the sales that otherwise would have been committed to the UNITIL companies. We accept Mr. Trawicki's assumption of the loss of the capacity portion of the price as the most likely scenario for the purposes of this Order. Id.

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With respect to life extensions, the record does not support a finding that PSNH will be able to realize 100% of the life extension possibilities. Mr. Staszowski testified that the decision to extend the life of a particular unit depends on the circumstances as they will exist at the time. Mr. Staszowski believed that those circumstances will warrant extending the lives of some units, but they will not warrant extending the lives of others. Thus, an assumption of 100% life extensions is unrealistic. 28 Tr. 6220. We accept Mr. Staszowski's testimony qualifying life extensions.

Accordingly, for the reasons set forth herein, we find that the completion of Seabrook Unit I is the preferred alternative to the cancellation cases of Mr. Staszowski and Dr. Rosen.

2. Cogeneration

[13] The Cogeneration alternative was presented by Calcogen through the testimony and exhibits of John Victor Hilberg. Mr. Hilberg proposed that PSNH and other New England utilities engage in efforts to develop the cogeneration resource. Mr. Hilberg presented analysis for the purpose of demonstrating that the Cogeneration alternative would cost less than Seabrook Unit I.

After a complete review of Mr. Hilberg's proposal, we find that Seabrook Unit I continues to be the preferred alternative. Our difficulty is centered on a fundamental deficiency of Mr. Hilberg's testimony — it is based on a total cost analysis. 18 Tr. 3343. Mr. Hilberg has not and cannot demonstrate that his alternative cost less than the completion of Seabrook Unit I under an incremental cost standard. Accordingly, we conclude that the Calcogen proposal is not a substitute for the continued construction of Seabrook. We further find that power supplied by cogeneration is not a reliable substitute for Seabrook capacity both as to the amount of available capacity and the time track of cogeneration capacity to supply forecasted demand.

3. Conservation

[14] The Consumer Advocate, through the testimony of Mr. Lovins, argued that the conservation alternative is to be preferred over the continued construction of Seabrook Unit I. Mr. Lovins testified that an aggressive conservation program involving utility investment in and recovery for conservation measures is a least cost alternative to meeting future energy needs.

After review, we find that Mr. Lovins proposal is not to be preferred over the continued construction of Seabrook Unit I. The difficulty we have with Mr. Lovins analysis is that it is dependent on new technologies which have not been proven in the marketplace and because we do not believe that sufficient conservation capacity will be developed to meet the needs of the Company in the early 1990s.

With respect to the issue of technological development, Mr. Lovins testified that many of the conservation technologies on which he relied have only been developed in the last year. See e.g., Exh. 36 at 17-25. In addition, Mr. Lovins testified that his projected conservation savings (Exh. 36 at 89) are based on what is theoretically possible rather than on what is probable. See e.g., 11 Tr. 1853-62.

With respect to the need for power, we have found that Seabrook Unit I is required to meet additional capacity

and energy requirements of the Company. We do not believe that the potential of conservation, even if it is there, will be developed in time to meet the need for power requirements in as timely a manner as Seabrook Unit I under an incremental analysis. Ironically, if Mr. Lovins testimony were to be accepted completely at face value, it would raise additional need for power issues because the fantastically lower prices he projects would have the effect of stimulating demand, thus exacerbating any power shortages. Accordingly, we conclude that Mr. Lovins conservation alternative is not to be preferred over the completion of Seabrook Unit I.

4. Summary

We have found that the completion of Seabrook Unit I is an alternative to be preferred over the cancellation alternatives. Specifically, we have found that completion is to be preferred over a conventional generation expansion plan, cogeneration and conservation. It should be stated directly, however, that our findings are based on an incremental cost standard and the timing of when alternative power can be on line. Mr. Hilberg's and Mr. Lovins' testimony deserve serious consideration when applied to future generation needs beyond Seabrook Unit I. In that context, an incremental standard and the timing differences should be further analyzed to determine whether cogeneration and/or conservation offer realistic least cost alternatives. We disagree with CLF's argument that completion and cancellation are two mutually exclusive alternatives as far as the development of the cogeneration and conservation alternatives are concerned. We believe that those technologies should be evaluated on a continuing basis to serve the interests of New Hampshire ratepayers compatibly with the public interest.

VI. FINANCIAL FEASIBILITY

A. Standard of Analysis

[15] As stated in our December 6, 1984 Order, the decision to employ an incremental analysis to the economic comparison of Seabrook Unit I with its alternatives does not carry over into the financial feasibility analysis. A conclusion that Seabrook Unit I cost less than its alternatives on an incremental basis does not automatically mean that the capital structure as it will exist after Seabrook Unit I becomes operational will be in the public good nor that the Company will be able to recover the revenues necessary to support that capital structure. A capitalization which results in rates too high to be recovered is not in the interest of either the ratepayers who make the economic decision not to buy as much electricity or the investor who will not be able to recover the full investment.

There is no question that this Commission has a responsibility to engage in a searching investigation of the ratepayer and investor exposure which results from the proposed capitalization reflecting the aggregate financing costs. See e.g., SAPL II (125 N.H. 708, 482 A.2d 1196) quoting with approval from *Re New Hampshire Gas & E. Co.*, 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl. 602 (1936) ("the primary public interest may be found to be affected injuriously" "if it appears, upon all the evidence, that the capitalization sought is so high that the utility, because of [its]

inability to earn operating costs, depreciation and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled ..."). See also, *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984). In this context, Intervenor arguments about the effect of RSA 378:30-a are persuasive. Since Seabrook costs cannot be reflected in rates until the plant is operational, the before and after difference perceived by ratepayers will be calculated on the basis of the total cost of the project. Thus, for the purposes of a financial feasibility analysis which focuses particularly on what ratepayers will be asked to pay so that investors may recover a reasonable return on prudent investment in property used and useful in the public service (RSA 378:27-28), total cost is the measure of reasonableness. Accordingly, we have received evidence on the total cost effect of the completion of Seabrook Unit I (See e.g., the financial scenarios filed in this docket many of which are indexed at Exh. 6-B) and in this Order we are applying a total cost analysis to the financial feasibility issues.

B. Marketability

The Company presented a panel of three financial experts, Eugene W. Meyers of Kidder Peabody & Co., John M. Jetmore of Drexel Burnham Lambert and Robert G. Hildreth of Merrill Lynch Capital Markets (Exh. 109) to describe the revised third phase financing proposal. The general terms and structures of the financing are as follows: PSNH will issue two types of securities, deferred interest bonds (DIBs) and, to the extent possible, tax exempt pollution control revenue bonds (PCRBs). The DIBs will be a direct issue of PSNH. The PCRBs will be issued by the Industrial Development Agency of N.H. (IDA). Both types of securities will be secured by a third mortgage on PSNH's property in New Hampshire. For a detailed description of the financing as proposed, see *supra* at 178-181.

The panel was confident that the securities in the form and amount contemplated can be sold successfully.

During cross examination it was developed that the savings associated with this financing over the original proposal result from the fact that substantially less capital must be raised.

The panel was questioned extensively regarding the necessity of this financing being secured by a third mortgage on property in New Hampshire. The panel responded that although the third mortgage lien did not reduce the terms of the financing (27 Tr. 5046-50), it was part of the complete financing plan designed for the company after the liquidity crisis (27 Tr. 5064).

We did the unsecured obligation before and we told everyone that the next time we sold we would do a security obligation. And we think that if we did not do that we would lose a good deal of interest just because we went down to an unsecured debenture. 27 Tr. 5048.

It was Mr. Hildreth's opinion that if a third mortgage was not approved as security for the financing, "... it is going [sic] narrow the market considerably and it is either going to result in not being able to raise the total dollars we want or it could result in a great deal more cost because we omit this term." (27 Tr. 5058) Mr. Meyers stated that "... if the Commission were

to say no mortgage bonds and I think that that is a serious removal of flexibility that could

turn out to be costly. ..." (27 Tr. 5059)

All members of the panel recommended the Commission adopt the plan (27 Tr. 5086) and all members of the panel stated that a cost cap would have a negative effect on the saleability of the securities.

None of the intervenors seriously questioned the marketability of the securities in their briefs. CAP disputed the structure of the financing with regard to the third mortgage aspect, and the Consumer Advocate argued that the conditions appear to be a product of competitive markets and diligent effort on behalf of PSNH and its underwriters.

It was the opinion of Mr. Trawicki that the financing as proposed is better than the original plan and that the chances of it being successfully implemented are substantially greater (29 Tr. 5359) because there are now three significant investment bankers behind the plan and the amount to be raised is lower.

All of the underwriters stated that the third mortgage feature will allow PSNH to raise the necessary funds at the lowest cost possible. (27 Tr. 5048). While none of the panel could quantify the savings in terms of basis points, all agree that eliminating this form of security would increase the costs of the financing (27 Tr. 5046-48). Moreover, the panel also maintained that the third mortgage provision is needed to attract and maintain the interest of potential investors. The panel was of the opinion that there is a broader market for the third mortgage bonds than for the unsecured debentures. This is so because the mortgage bonds offer some security. (27 Tr. 5048).

In addition to a higher cost and a reduced market, limiting PSNH to the issuance of unsecured debentures would result in other complications. Currently, PSNH's Articles of Agreement contain limits on the issuance of unsecured debt. The \$425 million unit financing placed PSNH at or near these limits. (27 Tr. 506). Thus amendments to the Articles would have to be obtained.

It is uncertain whether such amendments could be obtained and, if so, how long that would take. Apart from cost considerations therefore, the issuance of unsecured debentures is not desirable because of these uncertainties.

Lastly, the use of third mortgage bonds will allow PSNH to preserve its ability to issue bonds under its General and Refunding Mortgage Indenture as a contingency. It in effect provides a cushion if PSNH encounters further financial difficulties (27 Tr. 4776).

On the basis of this testimony, we conclude that the ability of PSNH to successfully complete this financing at the lowest possible cost is dependent upon the third mortgage provision.

We further conclude that the securities with the third mortgage provisions are marketable and can be successfully sold.

C. Analysis of Revenue Requirement to Support Capital Investment

Analysis of the scenarios posited by the Company's base case, 99-A or 99-B, by the Intervenor's Exhibit 174 and by Company responses to Commission or Staff requests in the Exhibits 124-A to F series, and the 167-A, B and E series, as well as Trawicki Exhibit

119-A-B-D, is essential to determine whether the level of revenues and per KWH support capital investment resulting from completion of Seabrook I.

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

COMPARISON OF CENTS PER KILOWATT-HOUR BY VARIOUS SCENARIOS

The following table represents a comparison of cents per kilowatt-hour by years 1984 through 2000-03:

Exhibit		1984	1985	1986	1987	1988	1989	1990	1991	1992										
Scenario	Name No.																			
NB 545**	99-A	8.23	8.49	8.69	9.62	11.62	13.40	16.42	17.64	20.55										
PSNH Base **	99-A	8.23	8.49	8.68	9.56	11.61	13.40	15.39	17.65	20.52										
PSNH Base-RS*	99-B	8.23	8.49	9.59	14.44	16.49	16.86	6.80	16.62	16.89										
KD-NU-R \$1.0B*	167-A	7.96	8.26	9.72	18.36	20.54	20.29	19.64	19.09	19.31										
KD-NU-R Phase \$1.0B**	167-B	7.96	8.26	8.57	9.92	12.05	13.96	15.99	18.33	21.21										
1985 KD-NU-R \$1.0B*	167-E	8.34	9.87	17.90	18.96	18.32	18.08	18.04	18.65											
1984 KD-U-NR*	124-A	7.99	8.19	9.36	14.66	14.88	16.77	17.30	17.11	17.20										
1984 KD-U-R*	124-B	7.99	8.19	9.50	16.24	17.83	17.73	17.36	17.08	17.61										
1984 KD-U-NR Phase**	124-C	7.99	8.19	8.42	9.42	11.23	13.02	14.99	17.15	19.89										
1984 KD-NU-NR*	124-D	7.96	8.26	9.47	15.86	16.17	17.86	18.88	18.62	18.74										
1984 KD-NU-R*	124-E	7.96	8.26	9.68	17.84	20.13	19.92	19.27	18.76	19.07										
1984 KD-NU-NR Phase**	124-F	7.96	8.26	8.57	9.92	12.05	13.96	15.99	18.33	21.21										
1985 KD-NU-NR*	126-B	8.34	9.33	14.74	15.27	17.29	17.34	17.03	17.25											
Request 10*	174-B	8.25	8.60	8.74	11.48	18.22	18.79	20.73	21.45	21.39										
Base* 119-A		8.27	8.54	10.60	14.45	15.96	15.60	15.42	15.42	15.64										
Pessimistic* 119-B		8.27	8.54	8.54	13.05	16.96	18.35	18.96	18.65	18.73										
Base 15% (5 years)**	119-D	8.27	8.54	9.08	10.44	12.00	13.80	15.87	18.25	20.99										
Average Rates, reduced 119-B					13.43	17.86	19.23	19.81	19.45	19.46										
[not available]																				
		1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003								
		24.10	22.92	21.95	21.76	22.19	22.40	23.34	23.94	23.88	25.10	25.36								
		22.76	24.26	22.97	22.79	23.07	22.68	23.32	23.86	23.74	25.08	24.91								
		16.72	17.23	17.57	18.32	19.25	18.53	19.71	20.49	20.81	22.54	24.89								
		19.05	18.76	18.51	18.78	19.20	19.50	20.64	21.58	21.87	23.25	25.41								
		24.05	27.61	30.94	32.92	31.67	30.67	30.50	30.35	29.43	29.75	30.96								
		18.89	18.12																	
		14.88	16.79	16.66	17.21	18.26	18.78	20.06	21.11	21.34	22.73	25.12								
		17.50	17.53	17.54	17.90	18.45	18.94	20.27	21.24	21.47	22.82	25.15								
		22.07	24.55	23.04	22.26	22.49	22.57	23.32	23.87	23.68	24.63	24.62								
		18.02	17.65	17.38	17.95	18.69	19.14	20.30	21.26	21.61	23.02	25.18								
		18.77	18.56	18.27	18.54	18.97	19.27	20.35	21.29	21.65	23.11	25.35								
		24.05	27.05	25.98	24.60	24.28	24.03	24.49	24.98	24.82	25.78	27.48								
		17.22	17.00																	
		20.42	20.15	20.03	20.43	20.46	20.79	21.70	22.65	22.85	24.03	26.10								
		15.46	15.60	15.33	15.34	15.72	16.81	17.76	18.58											
		18.01	17.71	17.17	17.19	17.56	18.55	19.42	20.17											
		20.20	21.57	20.15	19.57	19.49	20.06	20.53	20.90											
		18.66	18.29	17.68	17.63	17.94	18.87	19.67	20.36											

KD- Kidder Drexel; U - Unitil; NU-NO Unitil; R - Recovery of Seabrook 2; NR - No Recovery; * - Rate Shock; ** - Phase In.

The Company's base case, Exhibit 99-A, contains the following assumptions: in-service date of October 31, 1986 at a total project cost of \$4.6 Billion; \$525 Million DIBs to be issued on May 1, 1985 to prefinance PSNH's remaining Seabrook expenditures assuming \$882 million to

go as of January 1, 1985; interest capitalized for two years; cost of money of 15.4%, a 15% phase-in of rates; inclusion of the Unitil load; and initial capacity factor of 59% rising to a mature capacity factor of 72%. Exhibit 99-B is the Company's rate shock scenario with no phase-in. All other Exh. 99-A assumptions are incorporated. Until 1991 on the assumption of 15% per year phase-in, per KWH revenue requirements in Exhibit 99-A are lower than the revenue requirement for no phase-in in scenario Exhibit 99-B. The reason for the differential is that during the phase-in period, the Company accumulates deferred revenues which by 1992 aggregate \$2.065 Billion. Exhs. 99-A at 5 (labelled Deferred Operating Revenues) and 13 (line labelled Operating Revenue Deferred).

During the decade following 1992, i.e., 1993-2003, the Company recovers deferred revenue and earns a return on the unrecovered balance. During this period in the phase-in scenario, Exh. 99-A, revenue requirements in per KWH are higher than those of the non-phase-in scenario, Exhibit 99-B. Thereafter, revenue requirements in per KWH would converge. There is a revenue requirement of \$2.9 Billion greater under the phase-in reflected in Exhibit 99-A than under the rate shock (or no phase-in) Scenario in Exhibit 99-B.

The substantial differential between phase-in versus no phase-in is further demonstrated in comparing Exhibits 124-C (reflecting the Company's financing plan, Unitil load, no recovery of the investment of Unit Two) with Exhibit 124-A reflecting the same assumptions without phase-in. The difference between aggregate revenue requirements over the period 1984 to 2003 is a \$2.6 Billion greater revenue requirement for the phase-in scenario than the no-phase-in. PSNH Exh. 168. At a 10% discount rate, phase-in costs consumers a net of \$435.4 Million; at a 15% discount rate phase-in costs a net of \$109.7 Million.

A further comparison in Exhibits, excluding Unitil load, with no recovery of Seabrook II reflecting the Company's new financing proposal with phase-in (Exh. 124-F) and without phase-in (Exh. 124-D) results in an additional revenue requirement of \$3.3 Billion. Exh. 168. At a 10% discount rate, the 20 year phase-in costs consumers a net of \$586.2 Million; at a 15% discount rate, the net cost to consumers is \$185.5 Million.

The rates escalate in the phase-in scenario in the 1992-1993 time frame when deferred revenues start to be amortized. In the rate shock scenario rates double by 1988 (16.49 versus 8.23 in 1984) and then remain relatively level until 1993, trending upward to 24 in the year 2000.

In contrast base case rates escalate from 8.23 in 1984 to 17.65 in 1991, gradually increasing to 24 in the year 2003. Similarly, Exhibit 124-C phase-in reflects gradually increasing rates until rates double in 1990.

Compared to rate increases in a no phase-in scenario, Exhibit 124-A shows rates doubling by 1989 and gradually increasing to the year 2003 to the 24 level. If we exclude the Unitil load with

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phase-in, Exhibit 124-F, at an assumed availability factor of 60%, rates double by the year 1990 and gradually increase to a 27 level in the year 2003. In contrast Exhibit 124-D, no phase-in, 60% availability factor, no Unitil load, shows rates doubling in the year 1987 then showing a 1 to 2 increase until the year 1998, increasing to 25 in the year 2003.

Exhibit 126, based on the 1985 load forecast, without Unitil load, 60% capacity factor, low fuel, write-off of Seabrook Unit Two and Pilgrim II without recovery, a \$525 Million face value third mortgage bond issue, a Seabrook Unit I in-service date of October 31, 1986, and a total project cost of \$4.6 Billion ("882 million" as of August 1, 1984) for the 10 year time frame, 1985-1994 shows rates doubling from 8.34 to 15.27| in 1988-1989 and remaining relatively constant through 1994 at 17.

The intervenors Data Request No. 10 is reflected in Exhibit 174. The assumptions incorporated in this 20-year scenario are:

- (1) Construction costs based on \$1.3 Billion to-go as of July 1, 1984, total project value of \$5.5 Billion, a Unit One in-service date of October 1, 1987.
- (2) \$525 Million DIB issue on May 1, 1985 to prefinance PSNH's remaining Seabrook expenditures assuming "\$1.0 billion to-go" as of January 1, 1985, (interest is capitalized for two years).
- (3) Seabrook Unit I availability at 55%;
- (4) Mid-range fuel costs;
- (5) Seabrook Unit II and Pilgrim Unit II written off October 1, 1987 with no recovery from rate-payers;
- (6) Total loss of Unitil;
- (7) Stock warrants exercised in 1988.

Under the assumptions in Exhibit 174, rates double in 1987 to 1988 to an 18Kwh level increasing to 20 Kwh to 21 Kwh until 1999, and 23Kwh to 24Kwh thereafter. Even though all assumptions in this scenario cannot be accepted by the Commission, the exhibit illustrates that the level of projected rates is not substantially different from the projected level of rates in Exhibit 124-D.

The foregoing comparison of rates by various scenarios is based on nominal dollars, reflecting inflationary impact at approximately 5% per year over the period of time indicated for each scenario. The increase in per KWH in real or constant dollars (deflated by changes in the Consumer Price Index) is, of course, far less than the impact reflecting inflation. By way of illustration the per KWH prices in Exhibit 124-A show an increase from 8 Kwh in 1984-1986 to 12.9Kwh in 1989 and then a downward trend to 11Kwh in 1992, 9.5Kwh in 1994, and approximately 8.5Kwh thereafter until the year 2003. Exh. 175. Inflation may reduce projected expenses in 1991 by approximately 21% and in the year 2003 by 54%; gross plant would reduce by 4% in 1991 to 23% in the year 2003. Id.

We do not determine in this proceeding whether or not phase-in or no phase-in should be ultimately adopted.

That determination must await a rate proceeding and a determination of the prudent investment upon which ultimate rates will be predicated. However, analysis of the rate impact of

phase-in in contrast to no phase-in scenarios is important to determine whether the rate level may approach the outer limits of reasonableness under either scenario to support the capital structure resulting from the overall investment in Seabrook, including the \$525 Million proposed to be financed by authorizing order of this Commission in this proceeding. As a matter of first impression, it would appear incontrovertible that phase-in may eliminate the rate burden initially up to a seven to ten year span, but in the aggregate consumers will be called upon to pay \$2 to \$3 Billion more in rates over a 20-year period with phase-in as opposed to no phase-in.

Mr. Trawicki's base case assumed the PSNH's share of Seabrook I cost will be \$1.7 Billion (based on a \$4.5 Billion total cost of Seabrook), a Seabrook inservice date of August 1, 1986, Seabrook availability of 72% and sales based on the 1984 Company load forecast.

Mr. Trawicki's pessimistic case assumed PSNH's share of Seabrook I cost will be \$2.1 Billion (based on a \$5.5 Billion total investment in Seabrook), a Seabrook in-service date of October 1, 1987, Seabrook availability of 60% and sales based on the Company's 1984 load forecast reduced by an average of 4.8% each year after Seabrook goes into service. Comparison of Mr. Trawicki's base case with rate shock with the Company's base case with rate shock produces the following comparison:

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

Primes Sales, Cents Per Kilowatt-hour
Base Case Comparison, Without Phase-In

Exhibit 95-B
Exhibit 99-B Supplemental Schedule 2
at 33-34 (Numbers from Ex. 119-A)

Year	PSNH Base-RS	Trawicki Base -RS
1984	8.23	8.27
1988	16.49	15.96
1994	17.23	15.60
2000	20.49	18.58

Source: Exh. 95 at 13.

Assuming a 15% per year phase-in, the comparison of base case scenarios results in the following:

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

Exhibit 95-B
Exhibit 99-A Supplemental Schedule 2
at 33-34 (Numbers from Ex. 119-D)

Year	PSNH Base	Trawicki w/15% Yr. Phase-In
1984	8.23	8.27
1988	11.61	12.00
1994	24.26	21.57
2000	23.86	20.97

In his supplemental testimony, Mr. Trawicki provided a comparison of average rates under the base and pessimistic cases (assuming rate increases are phased in over five years) with:

1. Average 1983 Consolidated Edison rates, projected average New England rates based on the "NEPOOL Forecast of New England Electric Energy and Peak Load 1984-1999" (April, 1984), and average rates under the optimistic case with no phase-in.
2. Average 1980 PSNH

rates increased for inflation, average actual PSNH rates 1980-1983, and the average rates under the base, optimistic and pessimistic cases with no phase-in. 3. Average rates assuming the Newbrook Plan is not implemented and average rates under the base and pessimistic cases with no

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phase-in. Exh. 95-B - Trawicki Supplemental Testimony.

Schedules 1, 2 and 3 demonstrated the results of these comparisons. Mr. Trawicki summarized the comparisons as follows:

1. By 1990, the phased-in rates under the base and pessimistic cases would begin to exceed the 1983 Consolidated Edison rates. By 1990 these phased-in rates would be about equal to the projected NEPOOL rates for New England. Under the optimistic case with no phase-in, average rates would be slightly higher than the 1983 Consolidated Edison rates for the years 1988-1991. 2. From 1980 to 1983 PSNH actual rates increased faster than inflation in the general economy. Base case phased-in rates grow at a much faster rate than the assumed 6 inflation through 1992, but then remain fairly constant through the year 2000. 3. Phased-in rates would be significantly higher than No Newbrook rates beginning in 1989. However, as mentioned earlier in my testimony there is a high probability that actual No Newbrook rates would be greater than those indicated.

Id.

D. Legal Standards Applicable To Financial Feasibility

[16,17] The controlling standard governing the reasonableness of the proposed financing is articulated in SAPL II (125 N.H. 708, 482 A.2d 1196). The holding in *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984) "... will require the commission to determine the relative economic desirability of allowing or disallowing the company's continuing participation in construction of the first Seabrook reactor, before it rules on the anticipated third or Newbrook financing request."

The Court further repeated the standard in *Re New Hampshire Gas & E. Co.*, 88 N.H. at p. 57, 16 PUR NS at p. 329:

... if it appears, upon all the evidence, that capitalization sought is so high that the utility, because of [its] inability to earn operating costs, depreciation and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled, then the primary public interest may be found to be affected injuriously."

Otherwise stated in *Re New Hampshire Gas & E. Co.*, the Court said (88 N.H. at p. 55, 16 PUR NS at p. 327):

... [a] prime test is not to permit the capital issue to exceed, at least so much as to affect the public interest materially, the fair cost of the property reasonably requisite for present and future use. ..." (Emphasis supplied).

The *New Hampshire Electric & Gas* case involved recapitalization by the utility of a ten-year-old financing without regard to deflation or depreciation in the property proposed to be

financed. This was a case of inflated capitalization, which could not be used as a reasonable basis for rates. The Court emphasized that the capital must fairly

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reflect " ... the fair cost of the property reasonably requisite for present and future use. ..." Id.

If the capital issue exceeds the fair cost of the property by failing to take into account deflation, the resulting rates will be excessive since they would support more than the fair cost of the property.

The instant case does not involve costs in capitalization which are inflated. The capitalization reflects costs incurred. Whether the costs were prudently incurred is a separate question to be determined in a future rate proceeding when the Commission determines the appropriate rate base treatment of Seabrook I, upon which future rates will be established.

PSNH argues that the Court has not directed the Commission to determine this case based on the level of reasonable rates upon completion of Seabrook I or over the life of the plant and states the impossibility of making such a determination at this point. PSNH brief at 112. PSNH further argues:

... the Commission must determine whether the "Units" financing and the present financing, along with completion of Seabrook I will in the long term result in reasonable capitalization and reasonable capital structure, in relation to future revenue requirements, under all of the circumstances.

Id.

PSNH has not properly interpreted the legal standards to which we are held by Easton and its progeny. While we cannot definitively determine in this proceeding the level of reasonable rates to support a prudent capital investment for the total cost of Seabrook Unit I, we must examine whether the approximate rates to support the resulting capital structure of the financing under various assumptions in multiple scenarios are within a zone of reasonableness to provide electric utility service to ratepayers.

The capitalization ratios between common stock, preferred and debt in varying amounts between 1987 and 2003 are within the guidelines of capital structure, which have been supported by the Court in previous decisions, including SAPL II. The capitalization ratios resulting from PSNH's base case with and without rate shock, Exhs. 99A and 99B, various scenarios in Exhs. 124-A — 124-F, Exh. 126, Exh. 167 — Attachments A, B and C, and Exh. 174 are compared at page 124 of PSNH's brief. The cents per KWH, capitalization and capitalization ratios from selected financing scenarios are reproduced on the following page.

The future capital structures resulting from these scenarios appear to be within the zone of reasonableness for

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

CENTS/KWH, CAPITALIZATION AND CAPITALIZATION RATIOS
FROM SELECTED FINANCIAL SCENARIOS

Exhibit No.	/KWH	Capitalization			Capitalization Ratio			1987	1994	2003	1987	1994	2003
		1987	1994	2003	1987	1994	2003						
		*C	33.86	41.50	41.53								
		*P	8.91	5.97	13.88								
99A	PSNH BASE		9.56	24.26	24.91	3,358,312	3,438,810	2,917,707	*D	57.23	52.53	44.59	
		*D	34.47	42.56	42.27								
		*D	9.82	9.70	7.70								
99B	PSNH BASE-RS		14.44	17.23	24.89	3,046,035	2,130,243	2,742,068	*D	55.71	47.74	50.03	
		*D	29.33	43.94	43.80								
		*D	10.59	10.55	17.44								
124D	KD-NU-NR		15.86	17.65	25.18	2,824,428	1,947,445	2,185,228	*D	60.08	45.51	38.75	
		*D	35.80	44.81	42.81								
		*D	9.62	9.93	14.10								
167 (ATT. A)	KD-NU-R, \$1.0B		18.36	18.76	25.44	3,109,356	2,076,075	2,313,328	*D				
54.58	45.26		43.09										
		*D	34.98	43.32	43.07								
		*D	8.47	4.10	11.64								
167 (Att.B)	KD-NU-R PHASE, \$1.0B		9.92	27.61	30.96	3,549,727	5,042,746	2,653,634					
*D	56.55		52.59	45.29									
		*D	30.88	43.57	42.80								
		*D	10.62	10.27	15.87								
174	REQUEST 10		11.48	20.15	26.10	3,041,405	2,245,083	2,472,356	*D	58.50	46.17	41.33	

*C = Common, P = Preferred, D = Long-term Debt

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the purpose of prescribing rates. The capital structures conform to the approximate ratios common, preferred, and long term debt approved by this and other commissions. PSNH's common equity ratio is above the 35 to 40% industry average reflecting increased risk in investments in PSNH. A higher equity component reduces pressure on debt and should result in sales of debt at a lower interest rate than under a lower equity ratio.

The company's proposed program of common stock buy-back will be the subject of intensive evaluation in a subsequent rate proceeding to determine whether the benefit of a reduced equity component will outweigh the cost of market purchases of common, requiring additional financing by PSNH. From the standpoint of rate support of the capital investment in the range of \$4.6-\$4.7 Billion, we find that the capital structure resulting from this financing may be supported by future rates designed to yield a reasonable return on prudent investment in property of the utility used and useful in the public service less accrued depreciation. RSA 378:27, 378:28. Any disallowance of investment in plant not includable in rate base to be supported by reasonable rates may be absorbed by the equity owners of common stock without impairing the adequacy of service to ratepayers or injuriously affecting the ability of PSNH to earn operating costs, depreciation and other charges. Additionally, it does not appear that the capital issue will exceed the fair cost of the property reasonably requisite for present and future use to supply reliable electric service in the future to New Hampshire ratepayers and its economy. Re Easton,

supra; Re New Hampshire Gas & E. Co., supra. By way of illustration, Exh. 99-A, PSNH Base Case in 1987 shows capitalization of \$3.3 Billion compared to rate base of \$2.6 Billion; in 1994 capitalization of \$3.4 Billion versus \$3.1 Billion. Similarly Exh. 174 shows capitalization in 1994 of \$2.245 Billion versus a rate base of \$2.198 Billion, and in 2003, \$2.47 Billion versus \$2.38 Billion in rate base. Differences between rate base and capitalization are largely attributable to write-off or non-recovery of investment in Seabrook Unit 2 and Pilgrim Unit 2 (not included in rate base), whereas funds necessary to construct the units will be included in total capitalization; the use of a 13 month average balance of net plant to compute rate base compared to computing capitalization in the scenarios as of the end of the period; and the fact that balance sheet working capital investments are not fully reflected in rate base.

The capitalization ratios and capital structure fall within a zone of reasonableness for the purpose of rate determination. Even if capitalization ratios and capital structure are reasonable in the relative equity, preferred stock and debt components, the total invested dollars represented by the capital structure may or may not be appropriately supported by rates.

Substantial evidence in this proceeding shows that the rate level represented by the revenue requirement in the various scenarios is in nominal dollars double and triple present rate levels over time. In real dollars without the impact of inflation, the rate levels do not skyrocket per se. The increase in rates, whether phased or not, will create hardship, some economic disruption and may result in the loss of future load as the result of conservation measures and development of alternative

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energy resources.

We do not adjudicate in this proceeding that the projected rates will be ultimately determined to be reasonable. We find that for purposes of completing Seabrook the projected investment resulting from this and associated financings may be supported by a level of rates based on prudent investment in a subsequent rate proceeding, which will enable PSNH to earn operating costs, depreciation and other charges to enable consumers to receive service at reasonable rates. If in a subsequent rate proceeding it is found that part of the capital investment in Seabrook I is imprudent so as to cause excessive and burdensome rates not economically justified, the Commission may disallow part of the Seabrook investment.

In fact, there was testimony that the Commission may disallow investment up to a magnitude of \$1 Billion without impairing the ability of PSNH to earn operating costs, depreciation and other charges if there is an appropriate finding of improvidence. (\$1 Billion in the base case, \$1.1 Billion in the optimistic case and \$800 Million in the pessimistic case. Schedules 9, 10, 11 - Trawicki, Exh. 95.) In each case, projected cash flow appears to be sufficient to fund operating expenses, debt service and construction requirements when due. Trawicki - Exh. 95 at 31.

There is substantial economic leverage to establish a rate level that will not be oppressive to consumers or the New Hampshire economy or which is unfair to stockholders in the event of disallowance of any portion of the capital investment on the basis of imprudence.

The commission is not bound by law to the service of any single formula or a combination of formulas in determining a proper rate base. *New England Teleph. & Teleg. Co. v. New*

Hampshire, 95 N.H. 353, 357 78 PUR NS 67, 64 A.2d 9 (1949); *Chicopee Mfg. Co. v. Public Service Co. of New Hampshire*, 98 N.H. 5, 10, 98 PUR NS 187, 93 A.2d 820 (1953); *Federal Power Commission v. Natural Gas Pipeline Co. of America*, 315 U.S. 575, 42 PUR NS 129, 86 L.Ed. 1037, 62 S.Ct. 736 (1942). *Re New England Teleph. & Teleg. Co.*, 98 N.H. 211, 218, 99 PUR NS 111, 118, 97 A.2d 213.

It is also established law in New Hampshire that the Commission may legally determine a just and reasonable rate of return although a capital structure different from the actual structure of the Company was determined at the time the case was adjudicated. *New England Teleph. & Teleg. Co. v. New Hampshire*, 98 N.H. at 220, 99 PUR NS 111. Reasonable rates on a just and reasonable rate base cannot be finally prescribed without a prudency determination of the capital investment in rate base.

To turn a financing hearing into a prudency determination that could affect future rates, without proper notice, is not in conformity with due process. *Re Public Service Co. of New Hampshire*, 122 N.H. at 1073, 51 PUR4th at p. 304.

We cannot prejudge the reasonableness of rates or make a definitive finding that rates resulting from the capital investment in Seabrook are unduly burdensome without first finding the prudent investment to which they relate. We are not legally empowered to impose a cost cap on the PSNH investment in Seabrook as a condition of this

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proposed financing.⁶⁴⁽⁸³⁾ We are bound by the New Hampshire and Federal Constitutions to assure that ultimately PSNH will receive just compensation through rates on prudent investment. New Hampshire Constitution, Pt. I, Art. 12, *Re PSNH*, supra; Articles V and XIV, U.S. Constitution; See, *Missouri ex. rel. Southwestern Bell Teleph. Co. v. Missouri Pub. Service Commission*, 262 U.S. 276, 289, 290, PUR1923C 193, 67 L.Ed. 981, 43 S.Ct 544 (1923) Brandeis J. dissenting. See Also, RSA 378:27 and 28. While there are constitutional guarantees of the opportunity to earn a fair return, rates may not be "prohibitive, exorbitant, or unduly burdensome to the public." (262 U.S. at p. 290, footnote 2, PUR1923C at p. 201, footnote 2.) The essential reconciliation of prudent investment and reasonable, not unduly burdensome rates may be accomplished in a rate proceeding when PSNH seeks rate support for the addition of Seabrook to its rate base. A prudency investigation should be initiated by the Commission on a timely basis to assure an in-depth analysis of prudent investment and the reasonable rate level for a fair return to investors without unduly burdening ratepayers.

VII. BANKRUPTCY WILL NOT SERVE THE PUBLIC GOOD

[18] We have determined that the public good requires approval, subject to certain conditions, of the \$525 million financing proposed by Public Service Company of New Hampshire. In so finding, we necessarily considered that the public interest would be better served by completing Seabrook than by abandoning the project. Correlatively, failure to grant the financing will preclude the completion of the construction of Seabrook, with the result that PSNH will probably be compelled to file either voluntarily or involuntarily for a Chapter 11 reorganization in bankruptcy under the Bankruptcy Code of the United States. Currently, largely as the result of our Order in DF 84-167, PSNH is not insolvent either by the "balance sheet test,"

i.e., insufficiency of assets to cover debt, or by the "equity test", i.e., inability to pay debts as they mature. See, Exh. 84 at 3.

Substantial evidence affirms our conclusion that a denial of the proposed financing and cancellation of Seabrook Unit One without recovery of the investment of \$1,282,700,000 will compel a Chapter 11 reorganization.

Exhibit 76 demonstrates that PSNH would be unable to pay its full obligations to creditors after 1985. Some payments must be deferred in 1986 and by 1987 the company will be unable to pay debt maturities and all of its interest payments. The financial condition continues to deteriorate notwithstanding an assumed rate of return progressing from 16% to 40% in the cancellation of Seabrook scenarios. Exh. 76, Letter of January 8, 1985 and Scenarios A-E.

Under similar assumptions to Exhibit 76, styled "BUILD" Scenarios (Exhs. 158, 159, and 160), support the conclusion that without financing to complete Seabrook the company will probably be forced into filing for protection under the Bankruptcy Code. Mr.

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Trawicki analyzed the impact on PSNH of not implementing the necessary financing to complete the construction of Seabrook. Mr. Trawicki concluded that if the financing plan was not implemented, the company would probably be unable to secure the necessary financing to continue its Seabrook participation. The company's credit sources are inadequate to finance Seabrook. Accordingly, the company would either voluntarily seek protection from its creditors under the Bankruptcy Code or be forced by its creditors into reorganization proceedings. Exh. 95 at 31. Mr. Trawicki further concluded that the rates in 1993-1997 under the "Newbrook Not Implemented Scenario" will be higher than those resulting from completing the financing contemplated by the base case. Exh. 95 at 27 and Schedule 12.

The anti-CWIP law, RSA 378:30-a as interpreted by the New Hampshire Supreme Court in *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984), prevents recovery of the sunk investment in cancelled plant. The non-recovery of the debt obligations for an investment exceeding \$1 billion dollars clearly would place PSNH in default of its obligations and will precipitate a reorganization under the United States Bankruptcy Code.

Given that a bankruptcy appears to be inevitable absent approval of this financing, we have in this docket undertaken an investigation on this issue so that we can arrive at a conclusion based on record evidence. That investigation was initiated on May 1, 1984 by a request for assistance directed at the Office of Attorney General. Exhibit 9-B. The Attorney General in turn obtained expert assistance by the law firm of Devine, Millimet, Stahl and Branch. Exh. 9-D. On September 21, 1984, the Attorney General submitted a report to the Commission which had been prepared by Devine, Millimet, Stahl and Branch, which report was admitted into the record of the instant proceeding at Exhibit 9. In the course of the proceedings, Mr. Mark Vaughn, one of the co-authors of the report, appeared as a witness to support that report.⁶⁵⁽⁸⁴⁾ Additionally, the Commission heard the testimony of CRR witness Palast, CLF witness Viles, Commission witness Trawicki and various PSNH witnesses passim. The record also contains several reports on the interrelationship of bankruptcy law and public utility law which were the subject of comment by various witnesses. See e.g., Devine, Millimet, Stahl and Branch, *The State of New*

Hampshire and Public Service Company of New Hampshire, September 1984, Exh. 9; Arthur Young, Report on Analysis of Strategic Options for Jersey Central Power and Light Company, October 1980, Exh. 89; Morgan Stanley, The Effects of Bankruptcy - An Analysis of the Impact on Three Investor-Owned Utilities, May 1984, Exh. 90; Testimony of Harvey R. Miller before the Pennsylvania Public Utility Commission, January 1980, Exh. 91; Touche Ross & Company, Report on Alternatives for the Apportionment of the Costs

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of the Shoreham Nuclear Facility, February 1984, Exh. 91-A; and Prepared Testimony of Roger M. Whelan before the Michigan Public Service Commission,
October 1984, Exh. 86.

After full consideration of the record in this proceeding, we find that: 1) the record is sufficient to allow the Commission to analyze the bankruptcy option; and 2) a denial of the proposed financing which results in a PSNH bankruptcy would be inconsistent with the public good. Our analysis of this issue will commence with a statement that defines certain analytic standards. We will then generally describe the bankruptcy process; a matter that is not the subject of serious dispute. Following that, we will analyze the risks and uncertainties of the bankruptcy process which have been identified by the Company and the Intervenor. That analysis will lead us to the summary of the findings pertinent to bankruptcy; a summary which forms the basis for our conclusion that bankruptcy is not in the public interest.

A. Analytic Standards

Initially, it must be stated directly that our finding that PSNH's proposed financing to complete the construction of Seabrook Unit I is in the public good is independent of the probable bankruptcy of the Company if its Petition is denied. Even if the Company was not facing an imminent bankruptcy in the cancellation case, we would find under an incremental cost analysis that Seabrook is the preferred alternative.

Secondly, we must distinguish between two independent analytic standards that were blurred in the parties' argument. The first standard is uncertainty per se. The second standard is the risk that uncertainty will be resolved in a manner that is adverse to the interests of the Company or its ratepayers.

B. Public Policy Considerations in Opposition To Bankruptcy

1. Bankruptcy involves regulatory uncertainties incompatible with the public interest.
2. The generation from Seabrook I is required to serve forecasted demand in New Hampshire.
3. Seabrook I will be a productive source of electric capacity and energy only if completed.
4. It is economic waste to abandon a plant which is 80-85% complete with a sunk investment of over \$1.3 billion. If Public Service Company does not finance its 35.6% of Seabrook capacity Seabrook Unit I cannot be constructed by the other New England participants in the project. Accordingly, \$3.6-\$3.7 billion of total investment would be abandoned with no recovery of New Hampshire's share and only partial recovery of the share of other participants dependent upon the

regulatory law of the affected jurisdiction.

5. Without Seabrook I there will be inadequate generating capacity in the NEPOOL area to serve projected demand.

6. The incremental cost of completing Seabrook is less than the incremental cost of any reasonable alternative.

7. Reorganization of debts during PSNH's liquidity crisis mitigates the bankruptcy refuge. See, *Re Public Service Co. of New Hampshire*,

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69 NH PUC 522 (1984); Exh. 173.

8. A bankrupt utility is not in the public interest. *Re Legislative Utility Consumers' Council*, 120 N.H. 173, 174, 412 A.2d 738 (1980).

C. Bankruptcy Creates Regulatory Uncertainties Incompatible With the Public Interest

A Chapter 11 reorganization will involve an additional jurisdictional layer of regulation through the bankruptcy court, which is not clearly defined regarding rate jurisdiction or the specific functions relating to the regulation of an electric utility like PSNH during the period of reorganization. The level of rates could be set through the bankruptcy court with or without the cooperation of this State Commission in order to reduce the losses of existing creditors and stockholders, although it is likely that the Commission would participate in the process. The court may not approve a plan unless the Commission approves any rate changes to be effective after confirmation of the plan. Bankruptcy Reform Act of 1978 (BRA) 11 USC § 1129(a)(6). See, *Collier on Bankruptcy*, par.1129:02 at 1129-19. If the Commission does not approve the rates inherent in a reorganization plan, the issues of rate levels and underlying methodology will invite dispute and litigation. Mr. Trawicki emphasized that the goal of a reorganization proceeding is to maximize recovery by the creditors. This policy of the Bankruptcy Code may be in conflict with ratemaking decisions of the Commission which are based on a reasonable return and prudent investment in a depreciated original cost rate base to minimize rates to the ratepayers. It would not seem to be appropriate public policy to subordinate the ratepayers' interest in just and reasonable rates to creditors and shareholder interest in protecting their investment regardless of the impact on ratepayers. Exh. 95 at 32-34.

Dean Viles also recognized that reorganization is primarily for the benefit of the protection of the creditors.⁶⁶⁽⁸⁵⁾ Exh. 83 at 11. The primary uncertainties precipitated by seeking "relief" under the Bankruptcy Code are:

- (1) the potential litigation regarding valuation of assets during reorganization;
- (2) the impact of a recapitalized PSNH at higher valuations on rates (Trawicki Exh. 95, 22 Tr. 4003-04);
- (3) the difficulty of raising capital after reorganization, which would result in canceling recovery of sunk investment in plant under construction and supporting AFUDC;
- (4) the effect of reorganization on the long term cost of capital;

(5) the post-reorganization availability of conventional financing;

(6) the serious question of whether any new generation needed during reorganization could be financed in time to avoid a shortage of capacity in New Hampshire and possibly New England;

(7) the reluctance of equity investors

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to purchase equity securities of a utility in reorganization;
67(86)

(8) the limited access to capital markets probably on terms unfavorable to the debtor (PSNH), its creditors and ratepayers. Exh. 9.

It is likely that capital markets will raise the cost of borrowed capital above prebankruptcy levels. Exh. 9 at 33.

The duration of a bankruptcy proceeding is estimated at three to five years. The necessity of establishing various credit committees creates a large potential for litigation to establish claims against revalued assets. The estimated legal and accounting cost of a bankruptcy are a minimum of \$20 million. 14 Tr. 2418-19 (Palast); 15 Tr. 3743-53 (Palast); 19 Tr. 3415-19 (Viles); 20 Tr. 3675-78 (Vaughn); 21 Tr. 3792-93 (Vaughn); 22 Tr. 4011-14 (Trawicki). To regain credibility and reliability in the investment community after reorganization will require an indefinite period of time, if ever. Exh. 89 at 2-40. Because the cost of capital will be exceedingly high, ratepayers will pay a penalty for bankruptcy. Bankruptcy will be counter-productive in raising long term capital needs to supply needed power capacity in New Hampshire and the New England region. 7 Tr. 1249-55 (Plett).

While there is no historic precedent in modern times to determine the cost of capital for an electric utility after bankruptcy, the risk of not recovering an investment in cancelled plant will raise the cost of capital which is a function of risk. 3 Tr. 547; 7 Tr. 1293 (Plett).

D. Additional Uncertainties in PSNH Chapter 11 Reorganization

[19-23] Federal laws govern. *International Shoe v. Pinkus*, 278 U.S. 262, 73 L.Ed. 318, 49 S.Ct. 108 (1929). State law in conflict with the Bankruptcy Code violates the Supremacy Clause of the United States Constitution, Article 6, VI cl.2, and is invalid. *Perez v. Campbell*, 402 U.S. 637, 29 L.Ed. 233, 91 S.Ct. 1704 (1971). Conflicts in jurisdiction will inevitably occur since there is no specific point of demarcation for bankruptcy court and Commission jurisdiction. "Bankruptcy was described by witnesses Vaughn, Bayless and Trawicki as fraught with uncertainties and litigation." CAP Reply Brief at 4. The entry of an order for relief in a PSNH bankruptcy involves § 362 of the Bankruptcy Code, 11 USC §362, the Automatic Stay, prohibiting the commencement or continuation of any judicial or quasi-judicial action or proceedings against the debtor. It appears to be relatively clear that the Commission will have jurisdiction over PSNH as Debtor-In-Possession. See, 959b of the Judicial Code, 28 U.S.C. §59b requires PSNH as debtor-in-possession to operate its business in accordance with applicable regulatory laws and § 362(b)(4) may exempt the Commission in its exercise of regulatory powers from the operation of the Automatic Stay. We must recognize, however, that the §

362(b)(4) exemption has been restricted by court decisions to powers relating to the enforcement of state laws concerning health, welfare, morals, and safety. The exemption has not been

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extended to regulatory laws that conflict with control of the property of the debtor by the bankruptcy court. Whether a regulatory action will be deemed to relate to or affect the debt or property or whether it will relate to public health and safety or both is a question requiring resolution in a bankruptcy proceeding. 19 Tr. 3465-70, 20 Tr. 3654-55. Injunctive relief against state regulatory actions not relating to public health and safety matters has not been uncommon. See, e.g., *Missouri v. Bankruptcy Court*, 647 F.2d 768, 776 (8th Cir.1981).

Mr. Vaughn testified that Commission jurisdiction over utility financing pursuant to RSA Chapter 369 is unclear in the event of bankruptcy. 20 Tr. 3666; 21 Tr. 3776. In addition, the bankruptcy court could assert exclusive jurisdiction to establish interim electric rates if there was an immediate need for cash to preserve the prospects of a successful reorganization. Exh. 9 at 6; 21 Tr. 3760-63, 3831-32, 3923-24.

A plan of reorganization of PSNH would require approval of the Commission if the plan provided for a rate change. Exh. 9 at 6; 19 Tr. 3448-50 (Viles); 21 Tr. 3923-24 (Vaughn). Additionally, bankruptcy court could continue to exercise its jurisdiction over financings approved by the bankruptcy court prior to plan confirmation and rates approved in connection with the plan confirmation even after confirmation of the plan of reorganization. 21 Tr. 3778-82. Bankruptcy of PSNH will result in continuing jurisdictional conflicts between the bankruptcy court and the Commission not only by the company but by interested trade creditors, bankruptcy creditors, stockholders, bond holders, credit committees, stockholder committees, and indenture trustees. There are no express provisions of the Bankruptcy Code requiring the bankruptcy court to consider and balance the interest of the ratepayers against the interest of the creditors. 19 Tr. 3477-78; 20 Tr. 3614-15.

The Bankruptcy Code is equivocal regarding the official standing of the Commission as a party in a bankruptcy proceeding. Section 1109(b) of the Bankruptcy Code specifically identifies those parties entitled to intervene as follows:

A party in interest including the debtor, the trustee, a creditors' committee, an equity security holders committee, a creditor, an equity security holder, or any indenture trustee may appear and be heard on any issue in a case under this Chapter.

Probably §1109(b) would entitle the Commission and ratepayer representatives a right of permissive intervention subject to bankruptcy court approval since the term "party in interest" is not defined in the Bankruptcy Code. Exh. 9 at 4-5; 20 Tr. 3708-09.

Significant litigation could also result from the probability that PSNH would oppose any requests for appointment of a trustee. Exh. 9 at 19. It is also unclear how the appointment of a trustee will affect the operation of the company and particularly whether a trustee can be found with capability to manage the company. Exh. 9 at 19; 20 Tr. 3713-14. The likelihood is that the Debtor-In-Possession would be PSNH and the management of the affairs of the company would be subject to the supervision of the bankruptcy court without the necessity of appointing a trustee. Exh. 9 at 17, 11 U.S.C. §§11071108. However, we must recognize that,

in the absence of a trustee, an examiner could be appointed. 19 Tr. 3456, 3492, 3498 (Viles); 20 Tr. 3712-13 (Vaughn).

Under § 1102 of the Bankruptcy Code creditors and equity security holder committees will be appointed to formulate a plan of reorganization. Each Committee may hire professionals including lawyer, accountant, or investment banker. 11 U.S.C. §1103(a). In a PSNH bankruptcy, it is probable that several committees will be appointed, e.g., general unsecured creditor committees, secured creditor committees, Joint Owner committees (Seabrook), debenture holder committees, equity security holder committees. Credit committees may consult with the trustee or debtor in possession regarding the administration of the bankruptcy, the operation of the debtor business and the desirability of continuing the business or revising the manner of operating the business. The committees may participate in the formulation of a plan. 11 U.S.C. § 1103. The extent of the influence of a credit committee over the operation of a debtor's business is an inherent uncertainty in a PSNH bankruptcy. 21 Tr. 3787 (Vaughn).

While the debtor in possession has the authority to continue to operate the company in the ordinary course of business (11 U.S.C. § 1107-1108), the management of a company in Chapter 11 reorganization is subject to a requirement that it cooperate with the bankruptcy court, credit committees and major suppliers. In addition, it must propose a reorganization plan. What plan will serve the public interest as distinguished from the creditor's interest is another major procedural uncertainty.

E. Other Substantive Issues in PSNH Chapter 11 Reorganization

Secured creditors, including first and general and refunding mortgagees of PSNH may petition the court to grant relief from the Automatic Stay to commence foreclosure proceedings. §11 U.S.C. §362(a). If the secured property is not necessary for a reorganization or there is no equity in the secured property, relief may be granted to secured creditors. 11 U.S.C. § 362(d) (i)(2). Adequate protection turns on valuation. If fair market value or going concern value or original cost less depreciation result, as they will, in disparate valuations, the value of the property of a public utility will be the subject of major litigation in a Chapter 11 proceeding, compelling expert testimony on valuation issues and creating substantial administrative expense. Exh. 9 at 18; 20 Tr. 3576-78, 3657-59; 21 Tr. 3914.

1. Some Seabrook Issues

Major Seabrook issues would probably include: whether Seabrook should be completed or abandoned; whether the Seabrook joint ownership agreement is an executory contract which may be rejected; and whether Seabrook as an unfinished should project be sold by PSNH pursuant to Section 363 of the Bankruptcy Code. 14 Tr. 2395-96 (Palast); 15 Tr. 2704-06 (Palast); 20 Tr. 3551-52 (Viles); 21 Tr. 3889-93 (Vaughn). Additional issues could also include the price for a 35% interest in an unfinished nuclear plant and whether capital can be raised to construct alternate generating sources at affordable costs.

2. Property Taxes

Any delay in approval of property taxes will lead to litigation and impair the financial ability of towns to meet their obligations on tax anticipation notes. Exh. 9 at 25-26; 15 Tr. 2631-42 (Palast); 19 Tr. 3471-73 (Viles).

3. Capital Construction Costs

Limited access to capital markets as well as the unwillingness of creditors to permit expenditure of funds for capital projects will limit the ability of PSNH to contribute to necessary generation facilities and construction of projects like Hydro-Quebec Phase Two, resulting in increased costs to New Hampshire ratepayers. 19 Tr. 3493-97 (Viles); 22 Tr. 4011-21 (Trawicki).

4. Rate Effects

Rate effects of a PSNH bankruptcy will be volatile, ranging from no rate increases on the unlikely assumption of a stable rate base to a doubling of the revenue requirement caused by a revaluation of assets and a substantially higher rate base. Exh. 54 at 16; 22 Tr. 4003-04 (Trawicki).

5. Service Deterioration

Difficulties in obtaining necessary goods and services, cost cutting measures resulting in reduction in work force and overhead induced by credit committees can affect quality of service, responses to power outages, and timely new service installations. 21 Tr. 3746-47, 3758-59.

6. Sale of Assets

Creditors could cause a sale of assets e.g., PSNH interest in Yankee generating stations, which could be replaced theoretically by short term purchases from other utilities with, however, increased cost to ratepayers over the long term. Exh. 102; 19 Tr. 3493-94 (Viles); 20 Tr. 3526-28, 3589-94 (Viles); 22 Tr. 4003, 4108, 4111 (Trawicki).

A summary analysis of liquidation priorities and company assets which may be marshalled to apply to secured priority or unsecured debt shows liabilities far exceeding assets if Seabrook I is not completed. The Schedule of Liquidation Priorities follows:

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
COMPARISON OF PAGES 11-12 DEVINE & MILLIMET
(Exh. 9)
REPORT TO 1984 ANNUAL REPORT (Exh. 173)
DF 84-200
(000)

	Per	Per
	Divine Millimet	1984 Annual
	Report (Exh. 9)	Report (Exh. 173)

1. Secured Debt	599,000	437,431
a. First Mortgage Bonds	165,481	155,351
b. General & Refunding Bonds	217,540	212,080
c. Acceptance Facility Loan	5,000	- 0

d. Nuclear Fuel Lease	50,000	50,000	
e. Newington Pollution Control Bonds	5,800	-	0
f. Seabrook Pollution Control Bonds	20,000	20,000	
g. June 19, 1984 Secured by G&R Bonds	135,000	-	0
2. Expense of Administration (estimate)	20,000	20,000	
3. Accrued Taxes	8,113	7,959	
4. Unsecured Debt	478,000	876,495	
a. Term Note	25,000	25,000	
b. Eurodollar Note	50,000	50,000	
c. Eurobonds (offset by value of subsidiary)	12,000	12,486	30,000
d. Debentures	275,000	700,000	
e. Accounts Payable	75,000	32,111	
f. Accrued Interest	23,000	39,384	
5. Preferred Stock	320,000	319,933	
6. Common Stock \$5.00 par	185,000	185,955	
7. Notes Payable - 0 -		20,485	

Comparative Balance Sheets for the years ending December 31, 1983 and 1984 follow:

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
BALANCE SHEETS (Exh. 173 at 31)
ASSETS

December 31,			
1984	1983		
(Thousands of Dollars)			
Utility Plant at Original Cost			
Electric Plant \$	684,086	\$	639,688
Less: Accumulated Provision for Depreciation	219,355		201,044
	464,731		438,644
Unfinished Construction (Note 1)			
In Progress (Principally Seabrook Unit I)	1,389,555		1,095,034
Suspended (Seabrook Unit II)	301,900		303,100
Total Unfinished Constr.	1,691,455		1,398,134
Net Utility Plant	2,156,186		1,836,778
Investments			
Nuclear Generating Companies	11,600		11,544
Finance Subsidiary	12,486		13,258
Real Estate Subsidiary	7,619		8,227
Other, at Cost	184		185
Total Investments	31,889		33,214
Current Assets			
Cash and Temporary Investments	262,256		82,487
Accounts Receivable (Net of Allowance of \$959 and \$875 in 1984 and 1983, respectively)	47,021		50,277
Unbilled Revenue	10,560		9,220

Fuel, Materials and Supplies, at Cost		28,311	45,840
Other	4,943	5,093	
Total Current Assets	353,091	192,917	
Other Assets			
Special Deposits	2,431	205	
Cost of Canceled Pilgrim Unit II Project (Note 1)	15,646	15,931	
Other	6,040	6,738	
Total Other Assets	24,117	22,874	
	\$2,565,283	\$2,085,783	

(Note 1 - [Exh. 173 at 38-42] is a comprehensive summary of commitments and contingencies involving creditor arrangements, financing with banks and other lenders, financing in Docket DF 84-167, issues involving Docket DF 84-200, issues relating to nonrecovery of costs of abandoned plant Pilgrim II and Seabrook II.)

Analysis of these Balance Sheets and the Schedule of Liquidation Priorities discloses, inter alia, the following:

1. Net electric plant (original cost less accumulated provision for depreciation) totaling \$464,731,000 secures first mortgage bond obligations, and general and refunding bonds totaling \$367,431,000. Unfinished construction of \$1,659,455,000 is not given any value since completion of both Seabrook Units I and II are necessary before any portion of the investment on plant can be included as an earning asset. See, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). If Seabrook I is completed, the portion of construction costs and associated AFUDC comprising prudent investment may be added as part of plant in service with a corresponding increase in net utility plant. If there was liquidation of PSNH prior to completion of Seabrook I construction, there is a significant question of valuation as to whether there will be adequate proceeds realized from plant assets to satisfy the obligations of the secured creditors.

2. The value of the stock of nuclear generating companies totaling \$11,600,000 may be understated on the Balance Sheet. An upward revaluation would create additional equity for secured investors. Accounts Receivable totaling \$47,021,000 are not encumbered and could be pledged in connection with new bank financing as authorized by DR 84-168, Order No. 17,139 (69 NH PUC 415),

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granting PSNH permission to give a security interest in Accounts Receivable to secure a \$35 million revolving credit facility.

3. Fuel materials, and supplies totaling \$28,311,000 secures the acceptance facility loan portion of notes payable totaling \$20,485,000. The \$15,646,000 cost of the cancelled Pilgrim Unit Two project is currently not recoverable and should be excluded as an asset. See, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20, (1984); Exh. 173 at 42, 2.1.

4. The value of the security for the Seabrook Pollution Control Bonds in a liquidation is marginal because of the improbability of any substantial recovery of investment in an unfinished nuclear plant. If Seabrook I is not completed the debt service attributable to Seabrook I and debt

service for other corporate purposes would far exceed the value of PSNH's remaining assets which purportedly secure the debt. It should further be noted that in a bankruptcy liquidation the priority debts, i.e., secured debt, expense of administration, and accrued taxes must be satisfied by payment or other appropriate arrangements before obligations may be paid to general unsecured creditors. Priority obligations totaling \$367 million are secured by net electric plant totaling \$464 million. Whether valuation of electric plant in bankruptcy will produce any leverage for raising additional capital or liquid assets to pay any significant part of unsecured debt is speculative.

5. Unsecured creditors with obligations totaling \$876,495,000 in 1984 (compared to \$478 million as of December 31, 1983) would have their entire debt at risk in a bankruptcy.

F. Completion of Seabrook I is a Preferred Alternative to Bankruptcy

We have already found after extensive record review that on an incremental cost basis Seabrook Unit I is the least cost alternative for meeting the Company's power needs. Supra at Section V. (On An Incremental Cost Basis Completion Of Seabrook Unit I Is The Least Cost Option To Serve The Public Good).

The "No-Seabrook" generation expansion plan, Exh. 4 at IV-17, is probably incapable of attainment as demonstrated by Exhibit 76, Mrs. Hadley's financial scenarios offered in response to a request from CalcoGen, which assumed cancellation and non-recovery of sunk costs. Cancellation with no recovery of sunk costs will probably result in insolvency for PSNH. Debts inexorably accrue even if sunk costs are written off. Since PSNH would be unable to raise a significant amount of capital during and after reorganization there is substantial doubt that the capacity expansion contemplated in the "NoSeabrook" generation expansion plans would be accomplished. Exh. 102 at 1-2.

During the course of bankruptcy there is the risk that the company would suffer the following consequences with adverse impact on the ratepayers reflected in higher rates:

1. Sale of equity in four Yankee

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plants (98 MW) which Public Service owns with a right to purchase power.

2. Loss of Millstone III capacity (32.7 MW due to default on future construction payments).

3. No ownership or capacity rights to Hydro-Quebec power (148 MW through 1999 and 237 MW thereafter). Exh. 4 at Table IV-17. Without funds for up front payments for construction costs of the terminal equipment for Phase II and the sale of Phase I rights PSNH would not be a participant in the project. Without PSNH participation in Hydro-Quebec Phase II some doubt is cast upon whether the New Hampshire Site Evaluation Committee could find that the project is in the best interest of New Hampshire since only a small quantity of power would be utilized by New Hampshire ratepayers from that project.

4. Public Service company's interest in the 100 MW of Merrimack Unit No. Two currently being sold to Velco until 1998 would be sold to the highest bidder and would not be available to PSNH customers after 1997. Exh. 102 at 2.

If these dreary results occur there would be a loss of 131 MW in 1987, 279 MW in 1990, and 455 MW in 2000 causing significant uncertainties in whether PSNH could meet future power requirements under bankruptcy reorganization. The capacity deficiency below PSNH's capacity responsibility (based on the 1984 load forecast, Exh. 31) is graphically summarized in Exh. 102 assuming 1.5% load growth both with and without life extensions. Exh. 102, Attachment E, comparing capability versus capable responsibility incorporating assumptions 1-4 above.

G. Bankruptcy of Public Service Company of New Hampshire is not in the Public Interest

[24] We recognize that the dominant standard of New Hampshire Public Utility Law is that rates shall be just and reasonable. *New England Teleph. & Teleg. Co. v. New Hampshire*, 98 N.H. 211, 218, 219, 99 PUR NS 111, 97 A.2d 213 (1953); *New England Teleph. & Teleg. Co. v. New Hampshire*, 95 N.H. 353, 361, 78 PUR NS 67, 64 A.2d 9 (1949). See also, *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 58 PUR NS 65, 89 L.Ed 1206, 65 S.Ct. 829 (1945); *Federal Power Commission v. Natural Gas Pipeline Co. of America*, 315 U.S. 575, 42 PUR NS 129, 86 L.Ed. 1037, 62 S.Ct. 736 (1942). (RSA 363:17-a) The 1979 directive of the New Hampshire General Court that the Commission act as arbiter between the interests of the customer and the interests of the regulated utility is declaratory of modern Public Utility Law requiring a balancing in the decisional process of investor, consumer, and utility aspects of the public interest, which the Commission is mandated to serve.

Seabrook I is required to meet the future power needs of New Hampshire. The public good requires a solvent utility to provide electric service as reasonably required by its jurisdictional customers. RSA 374:1; Exh. 67 (Ellsworth). Financial capability is of vital importance to enable PSNH to meet its utility responsibilities. We must balance the interest of ratepayers for electric service at reasonable rates, the interest of investors who are entitled to a reasonable return on prudent investment and

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the overall financial integrity of the public utility. *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 333 (1944); *New England Teleph. & Teleg. Co. v. New Hampshire*, 95 N.H. 353, 78 PUR NS 67, 64 A.2d 9 (1949). If the financial capability of a utility to supply power is denied without substantial evidence to warrant the denial or by statutory mandate without unconstitutional confiscation of property the "... general welfare of the utility involved" becomes the dominant issue. *Re Legislative Utility Consumers Council*, 120 N.H. 173 at p. 174, 412 A.2d 738 (1980), citing *Boston and Maine Railroad v. New Hampshire*, 102 N.H. 9, 10, 148 A.2d 652 (1959), "If the utility can remain solvent the public interest is served. *Grafton County Electric Light & P. Co. v. New Hampshire*, 77 N.H. 539, PUR1915C 1064, 99 Atl. 193 (1915), "[A] bankrupt utility is not in the public interest."

Mindful of these precepts, nevertheless, we do not find that the financing in this docket should be approved on the ground that the alternative is the bankruptcy of PSNH. To the contrary, we find that the financing to complete Seabrook I serves the public good independently of the probable bankruptcy of PSNH subsequent to the denial of this financing. The public good requires the financing to complete Seabrook; bankruptcy will not serve the public good.

We do not believe:

(1) that alternate base load plant could be completed in time to meet prospective load requirements precipitating a power shortage if Seabrook is not completed.

(2) that conservation, small hydro, or cogeneration are reasonable alternatives to reduce central generation to meet load, or

(3) that PSNH would be able to finance the construction of alternate capacity after a reorganization under the bankruptcy laws (Clearly, if a reorganization of PSNH is necessitated by denying this financing, the company's ability to attract capital at reasonable prices before or after a reorganization will be substantially impaired).

Considering bankruptcy of PSNH as an alternative to granting this financing request in this docket leads us to conclude that the desirability of a bankruptcy reorganization is not supported by substantial evidence. Rather, substantial evidence establishes the unreasonableness and impracticality of a bankruptcy course. The following witnesses filed testimony relating to a Chapter 11 reorganization:

Gregory A. Palast, sponsored by Campaign for Ratepayer Rights, Exhibit 54;

Robert M. Viles, sponsored by Conservation Law Foundation, Exhibit 83;

Donald J. Trawicki, sponsored by the Commission, Exhibit 95;

Mark M. Vaughn, co-author of the Devine Millimet report, sponsored by the Commission, Exhibit 9.

These witnesses were extensively cross examined regarding the bankruptcy issue. It is significant to note that none of the witnesses recommended a PSNH reorganization in bankruptcy as a preferable alternative to the proposed financing. Witnesses Vaughn and Trawicki

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testified affirmatively in opposition to the bankruptcy alternative. Mr. Vaughn's testimony summarized bankruptcy uncertainties, the potential for litigation on unresolved jurisdictional and regulatory issues and concluded that bankruptcy should be avoided if feasible. Exh. 19. Mr. Trawicki testified that upon denial of the proposed financing and the resulting cancellation of Seabrook, ratepayers will pay higher electric rates by the mid 1990's than his base case scenario. Mr. Trawicki recommended that the financing be approved. Exh. 95 at 37. Witnesses Viles and Palast did not offer any substantial evidence in the support of the "bankruptcy alternative" but recommended further study and analysis before the Commission acts on the present financing. Exh. 54 at 8; Exh. 83 at 15; 20 Tr. 3604-05. Mr. Palast suggested that the Commission defer approval of PSNH's proposed financing pending proof by the utility that the financing offers greater protection for the public than bankruptcy reorganization. Exh. 54 at 30.

The preponderance of the evidence in this proceeding demonstrates the unreliability, uncertainty and burdensome consequences of a bankruptcy reorganization. The testimony of Mr. Vaughn, Mr. Trawicki and various company witnesses, e.g., Plett, Staszowski, and Hadley is substantial evidence proving that the company's financing plan offers greater protection to the

ratepaying public and the public interest than bankruptcy reorganization. Further study of this issue would be fruitless in the light of our findings that the proposed financing will serve the public good and our correlative finding that bankruptcy will not serve the public good based on substantial evidence. The company has sustained its burden to prove that the proposed financing will serve the public good. Intervenor's have not proved that further delay will serve the public good or that bankruptcy at this or a later time is a rational alternative to going forward with Seabrook.

Intervenor's cross examination and briefs depart from the limited testimony of their own witness and advocate, either expressly or impliedly, reorganization of the company in bankruptcy. The linchpin of Intervenor's rationale is the anti-CWIP statute, RSA 378:30-a, prohibiting recovery from ratepayers of construction-work-in-progress (CWIP) and associated AFUDC. *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). If this financing for \$525 million is denied and \$1.2 billion of sunk cost in Seabrook as an abandoned plant may not be recovered in rates, recourse to bankruptcy will be necessary to pay maturing indebtedness of the company to both secured and unsecured creditors. Intervenor's do not seem concerned that the putative benefits of a bankruptcy reorganization may be transformed to a will-o'-the-wisp.

CLF argues that the evidence establishes that reorganization would enhance economic savings associated with Seabrook I cancellation and would be less risky and costly than the consequences of granting the instant financing. CLF Brief at 18. CLF is apprehensive that if Seabrook goes forward, full costs may be rate-based, whereas not going forward results in rate-basing none of the cost. CLF Brief at 19. Clearly, only prudent investment in Seabrook may be allowed in rate base after a full rate hearing and a prudency evaluation. If Seabrook is cancelled,

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over \$1 billion would be excluded from the rate base, assuming the anti-CWIP law withstands attack on its constitutionality whether or not warranted by a prudent investment review. Accrued debts are nevertheless payable unless those debts are reduced or eliminated by the bankruptcy court. The illusion of the CLF approach lies in nonrecognition of the adverse implications of bankruptcy — a crippled utility emerging from bankruptcy and a potential shortfall in power if Seabrook is not built. Nor does the CLF argument acknowledge the economic waste involved in canceling investments of over \$3.6 billion by all 16 participants in Seabrook in Maine, Vermont, Massachusetts, Connecticut and New Hampshire.

CLF's Reply Brief at 3 further argues against incremental cost assessment analysis on the ground that the New Hampshire Legislature has determined through RSA 378:30-a "... that ratepayers may not be charged a dime for sunk investment in cancelled plant irrespective of the reasons for cancellation". Clearly, plant cannot be cancelled without reason. There must be persuasive and rational reasons to cancel Seabrook overriding the necessity of Seabrook construction for the availability and reliability of power supply to serve the electrical needs of ratepayers in New Hampshire and New England.

In his discussion of the bankruptcy issue the Consumer Advocate properly recognizes that

the Commission is the arbiter between the interest of the ratepayers and the regulated utility, RSA 363:17-a. The Consumer Advocate concludes that PSNH's petition should be denied and that bankruptcy is the safest course leaving to the Commission to weigh the need for power from Seabrook and all alternatives and, after the weighing process to use its judgment to determine what course is in the public interest. We have used our balanced judgment to find that this financing to complete Seabrook will serve the public good and the public interest.

CRR also argues that PSNH improperly ignored sunk cost in its incremental cost analysis since in a completion scenario sunk costs are recoverable in contrast to non-recovery in a cancellation scenario. CRR claims that PSNH failed to produce a truly incremental cost analysis of the differences between cancellation and completion. CRR then concludes that if PSNH had compared the cost of completion, including sunk cost, to the cost of cancellation with no recovery of sunk cost, bankruptcy would not be unavoidable after cancellation. CRR Reply Brief at 11. The nonrecovery of sunk cost through rates under the anti-CWIP law does not terminate the underlying debt for construction of Seabrook or interest accruing on the debt. While interest on CWIP may not be included per se as part of an allowance for AFUDC interest on debt, obligations must be paid unless wiped out in a bankruptcy. CRR's position is that PSNH's financing request should be denied until PSNH has made a full analysis proving that bankruptcy reorganization is more costly than the proposed financing. The record evidence in this proceeding supports our conclusion that bankruptcy reorganization will be more costly to ratepayers regarding reliable electric services at reasonable rates over the long term than the proposed financing to put Seabrook on line. It is unnecessary in this proceeding to analyze further the impact on the public interest of a bankruptcy of PSNH. The evidence was substantial to support our finding that

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bankruptcy will not serve the public interest. Further study simply will not resolve the remaining uncertainty. That uncertainty can only be resolved by a bankruptcy court; a forum that we have concluded it is in the public interest to avoid.

CRR cites the testimony of its witness Dr. Richard Rosen, who claimed that PSNH did not substantiate its assertion that bankruptcy is not in the company's interest or in the interest of its ratepayers. CRR Brief at 6; Exh. 46 at 8. However, Dr. Rosen did not address bankruptcy costs. 13 Tr. 2188. PSNH has substantiated its assertion through its "no Seabrook" scenarios and comparison of the net benefit of completing or not completing Seabrook as well as through the opinion evidence of its witnesses Staszowski, Bayless, Plett, and Hadley, and the financial evidence of Hildreth (Merrill Lynch); Myer (Kidder Peabody); and Jetmore (Drexel, Burnham, Lambert). That bankruptcy is not in the Company's interest or not in the interest of its ratepayers is further confirmed by substantial evidence in opposition to bankruptcy by Commission witnesses Vaughn and Trawicki.

CRR also cites the testimony of Consumer Advocate Witness Paul Chernick for the proposition that bankruptcy may not be the worst outcome for ratepayers. CRR Brief at 5. Mr. Chernick offered no substantive support for this opinion that the cost of bankruptcy may be less than the cost of completing Seabrook. Exh. 63 at 119. He further advocates that the anti-CWIP statute should be repealed to enable recovery of prudently incurred cost of cancelled plant

ostensibly on the assumption that the Commission will grant the financing request because the alternative of denial is bankruptcy. Then Mr. Chernick raised the possibility of a subsequent bankruptcy of Seabrook even if this financing is granted due to problems associated with the large revenue requirements, rate shock, and loss of load rendering PSNH insolvent. Exh. 53 at 124. Mr. Chernick's opinion is conjectural and largely irrelevant in the light of our finding that this financing will serve the public good based on substantial evidence, equitably balancing the interest of the ratepayers, investors and the general welfare of the utility to provide electric service. The rationale of CRR's argument is based on Mr. Chernick's historical statistical testimony of other plants which leads him to conclude that Seabrook will not be completed within the \$4.6-\$4.7 billion planning estimate, but rather that the cost may escalate to \$4 to \$8 billion. A \$6 billion would imply a to-go cost of \$2.7 billion, Exh. 63 at 63, compared to Mr. Derrickson's cost of \$882 million. At a minimum Mr. Chernick suggests a \$5.5 billion target be used. Dr. Rosen concurred. Exh. 46 at 29. We have found that the \$4.6-\$4.7 billion estimated cost is a reasonable estimate based on the Joint Owners planning estimate and the hard testimony of Mr. Derrickson. The November 5, 1984 MAC report based on the assessment of the August 30, 1984 project cost and schedule estimate concluded that if a recommended budget figure of \$1 billion is adopted "... There is a high probability that no additional financing associated State regulatory approval will be required." Exh. 106 at 24. It is MAC's opinion that it is highly unlikely that the projected cost to completion will exceed the 90% cumulative probability value of \$990.3 million. Id. at 23.

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VIII. CONDITIONS OF FINANCING

The uncertain regulatory status of proposed financings by the participants places the completion of Seabrook I in jeopardy until the financing of each participant's pro rata share of construction to completion is reasonably assured. As of the date of this order, the necessary approvals for financing each participant's share of the construction cost to completion of Seabrook I have not been granted with any reasonable assurance that the funding of Seabrook I will be accomplished. Including the order issued herein, regulatory approvals have been granted for 57.12927% of remaining construction as follows:

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

Participant Share %

N. H. Public Utilities Commission	
Public Service Co. of N.H.	35.56942%
Conn. Dept. of Pub. Ut. Control	
United Illuminating Co.	17.50000
Conn. Light & Power Co.	4.05985
21.55985	
57.12927	

Regulatory denials, or approvals with restrictive conditions authorizing financing (subject to appellate review), total 35.61567% as shown below:

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

Maine Public Utilities Commission (MPUC)

Central Maine Power Co. 6.04178
 Bangor Hydro-Electric Co. 2.17391
 Maine Public Service Co. 1.46056
 9.67625

Mass. Dept. of Public Utilities (MDPU)
 Mass. Municipal Wholesale Electric
 Company (MMWEC) 11.59340
 New England Power Co. (NEPC) 9.95766
 Canal Electric Company 3.52317
 Fitchburg Gas & Elec. Light 0.86519
 25.93942
 35.61567

Regulatory approvals pending further review total 7.25506% as indicated below:

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

Vermont Public Service Board (VPSB)
 Central Vt. Public Serv. Corp. 1.59096
 Vermont Elec. Generation &
 Transmission Coop., Inc. 0.41259
 2.00355

N. H. Public Utilities Commission
 N. H. Electric Co-op., Inc. 2.17391

Mass. Dept. of Public Utilities (MDPU)
 Montaup Electric Company
 (Wholesale Subsidiary of Eastern
 Edison Electric Co.) 2.89989
 Taunton Mun. Lighting Plant 0.10034
 Hudson Light & Power Dept. 0.07737
 3.07760
 7.25506
 100.00000

Regulatory authorization has been granted to finance the portion of construction attributable to the 57% ownership share of PSNH, United Illuminating Company and Connecticut Light and Power Company. Regulatory denials, or limited approvals with restrictive conditions, or pending approvals involve financing for the construction of Seabrook I to completion by 43% of participating ownership.

It is uncertain whether regulatory approval satisfactory to the owners and regulatory agencies and intervening appellate review will be concluded within a predictable time frame to enable construction to proceed and construction to be completed. The availability of financing under the restrictive conditions imposed by both the Maine Public Utilities Commission and the Massachusetts Department of Public Utilities subject to appellate review is conjectural. Accordingly, to serve the public good, it is necessary to authorize this financing upon the express condition that all Seabrook participants will have received regulatory authorization to finance their respective ownership share of Seabrook and, further, that there is reasonable assurance that each participant will finance its share to fulfill its contractual commitment to pay on a timely basis its share of Seabrook I construction costs.

Before the financing contemplated herein may go to market, we anticipate that appropriate representation and proof that there has been satisfaction of these conditions will be presented to

this Commission for its review, approval and further order as may be necessary. In effect, this means that our approval of the proposed financing herein cannot be considered as a valid authorization for the purpose insulating the validity of the securities from appellate review until the conditions are satisfied. *Re Seacoast Anti-Pollution League (Part II)*, 125 N.H. — (April 12, 1985).

Because of the equivocal status of financing authorization for construction by Massachusetts, Maine and Vermont utilities, the level of construction expenditures at Seabrook I pending final regulatory authorization for financing may be substantially reduced or revised from plans to construct at a level of \$10 million per week commencing in April 1985. We therefore adhere to the limitation in DF 84-167 Order No. 17,222 (69 NH PUC 522) prohibiting PSNH from spending or contributing cash for the purpose of constructing at a level that exceeds 35.56942% of \$5 million per week, or in the aggregate, expending more than 10% of the net proceeds of the financing authorized therein for direct Seabrook expenditures until further order of this Commission. Increased spending on a week to week basis may be acceptable so long as the overall spending limitations is not exceed [sic]. Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110) in this docket.

In its Petition, PSNH also requested

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authority to utilize \$30 million of the proceeds of the unit financing approved in DF 84-167 for the purposes proposed in the instant financing. In effect, PSNH wishes to have the flexibility to raise \$30 million less than proposed by applying cash on hand to Seabrook construction. We do not believe that such a reduction in the amount to be financed is in the public good. Mr. Trawick recommended that we not approve the proposed financing unless we are convinced that the amount is sufficient to assure PSNH's survival until COD of Seabrook I. Exh. 95 at 39. While we are convinced that the proposed financing is sufficient to complete the construction of Seabrook under current circumstances, we have throughout this order recognized that there are uncertainties associated with all alternative courses of action. The retention of \$30 million of the proceeds of the unit financing will provide additional necessary flexibility in the event that adverse contingencies occur. Thus, we do not believe that it is in the public good to allow PSNH to apply those \$30 million of proceeds to direct incremental Seabrook construction and associated AFUDC at the current time. If circumstances warrant such an application in the future, the Company may renew its request.

Additional conditions are set forth in the attached Order.

IX. CONCLUSION

For the reasons set forth herein, we find that the issue of the proposed securities upon the terms proposed is consistent with the public good. Subject to the conditions set forth supra at Section VIII. (Conditions of Financing), we will authorize the issuance and sale of the proposed securities.

Our Order will issue accordingly.

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

ATTACHMENT A

SCHEDULE OF WITNESSES

DAY NO.	DATE	DAY	WITNESS
Week 1 Day 1	12/3/84	Monday	Derrickson
Day 2	12/4/84	Tuesday	Derrickson
Day 3	12/5/84	Wednesday	Derrickson, Plett
Day 4	12/6/84	Thursday	Plett
Week 2 Day 5	12/11/84	Tuesday	Hildreth
Day 6	12/12/84	Wednesday	Plett, Hildreth
Day 7	12/13/84	Thursday	Plett, Stazowski
Week 3 Day 8	12/17/84	Monday	Stazowski
Day 9	12/18/84	Tuesday	Stazowski
Day 10	12/19/84	Wednesday	Lovins
Day 11	12/20/84	Thursday	Lovins, Stazowski
Week 4 Day 12	1/2/85	Wednesday	Stazowski
Day 13	1/4/85	Friday	Rosen
Week 5 Day 14	1/7/85	Monday	Palast
Day 15	1/8/85	Tuesday	Easton, Palast, Rosen
Day 16	1/9/85	Wednesday	Chernick
Day 17	1/10/85	Thursday	Chernick, Ellsworth
Day 18	1/11/85	Friday	Hilberg
Week 6 Day 19	1/14/85	Monday	Viles
Day 20	1/15/85	Tuesday	Viles, Vaughn
Day 21	1/16/85	Wednesday	Vaughn
Day 22	1/17/85	Thursday	Trawicki
Day 23	1/18/85	Friday	Hadley
Week 7 Day 24	1/21/85	Monday	Ellsworth
Day 25	1/22/85	Tuesday	Ellsworth, Voll
Week 8 Day 26	2/4/85	Monday	Bayless
Day 27	2/5/85	Tuesday	Hildreth, Meyer, Jetmore
Day 28	2/6/85	Wednesday	Bayless
Day 29	2/8/85	Friday	Trawicki
Week 9 Day 30	2/11/85	Monday	Hadley
Day 31	2/12/85	Tuesday	Hadley
Day 32	2/13/85	Wednesday	Hadley
Day 33	2/14/85	Thursday	Hadley, Stazowski
Day 34	2/15/85	Friday	Stazowski
Week 10 Day 35	2/19/85	Tuesday	Plett, Bayless, Brown
Day 36	2/20/85	Wednesday	Stazowski, Brown
Day 37	2/21/85	Thursday	Brown, Harrison
Day 38	2/20/85	Friday	Harrison

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

ATTACHMENT B

DF 84-200 PSNH - ORDERS

Date	Order No.	Description
8/15/84	Order 17,164	Issued setting forth a procedural schedule - Opinion Commissioner Aeschliman attached. (69 NH PUC 446.)
8/24/84	Supl. 17,177	Issued denying Colcogen, Inc.'s Motion for Reconsideration requesting inter alia that Intervenor status be granted without a requirement to submit an offer of proof. (69 NH PUC 457.)
9/10/84	Order 17,196	Issued ordering that Commissioner Iacopino be appointed as the presiding officer in DF 84-167 and DF 84-200 until further ordered by the Commission and that pursuant to RSA 363:20 and 21, the Commission apply to the Governor and Council for appointment of a special commissioner in the instant dockets.

(69 NH PUC 489.)

9/10/84 Order 17,197 Issued in compliance with the Supreme Court's Order of 9/7/84 the Chairman recused himself from DF 84-167 and takes the action of recusing himself of Docket No. DF 84-200. (69 NH PUC 500.)

9/13/84 Supp. 17,201 Issued ordering that PSNH's Motion for Reconsideration and Clarification is denied without prejudice and Order No. 17,164 is amended to provide that the deadline for certain staff and intervenor prefiled testimony on issue 2b is 9/14/84. (69 NH PUC 503.)

9/17/84 Order 17,212 Issued by Commissioner Iacopino, Presiding Officer, granting Colcogen's Motion to Intervene. (69 NH PUC 516.)

11/9/84 3rd Supp. Issued ordering that PSNH's Motion to Compel Responses to PSNH Data Requests to John V. Hilberg is 17,307 granted. (69 NH PUC 649.)

11/29/84 Supp. 17,332 Issued granting in part PSNH's Motion for establishment of a discovery schedule with respect to the testimony of Charles E. Bayless. Ordering that all parties are to file their data requests directed at the Bayless testimony with PSNH no later than the close of business on 12/5/84 and PSNH must respond to said data requests no later than 12/10/84. (69 NH PUC 670.)

11/29/84 2nd Supp. Issued setting forth procedural schedule for upcoming 17,333 hearings. (69 NH PUC 671.)

12/6/84 3rd Supp. Issued ordering that the procedural rulings on the 17,343 scope of issues, schedule, order of witnesses and order of cross-examination shall be as set forth in the Report. (69 PUC 679.)

12/18/84 4th Supp. Issued ordering the witness to sponsor the Bankruptcy 17,359 Report shall be scheduled to appeal as set forth in the Report; PSNH is to provide the information sought in SAPL Data Request No. 1; PSNH is to produce Mr. Harrison to testify. (69 NH PUC 690.)

2/4/85 5th Supp. Issued ordering that the Motion of SAPL, CLF, AND 17,430 CRR to Dismiss Application for Financing Authorization and for Further Relief is denied. (70 NH PUC 42.)

2/4/85 6th Supp. Issued granting SAPL's Motion to Compel Discovery, 17,431 subject to the protective restrictions set forth in the order. (70 NH PUC 45.)

3/13/85 7th Supp. Issued ordering that the Motion of SAPL, Consumer 17,495 Advocate, CAP and CRR to order PSNH to comply with Order No. 17,222 be denied. (70 NH PUC 110.)

3/13/85 8th Supp. Issued ordering that the request of SAPL, CLF, CRR 17,496 and the Consumer Advocate for the opportunity to engage in further cross-examination is denied. (70 NH PUC 113.)

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is ORDERED, that pursuant to RSA Chapter 369 and subject to the conditions set forth herein,

the Commission finds that the issue of the proposed securities upon the terms proposed is consistent with the public good; and it is

FURTHER ORDERED, that pursuant to RSA Chapter 369 and subject to the conditions set forth herein, Public Service Company of New Hampshire (PSNH or Company) be, and hereby is, authorized to enter into a Third Mortgage Indenture to provide Third Mortgage security for the Deferred Interest Bonds (DIBs) and/or Pollution Control Revenue Bonds (PCRBs) and/or Credit Support PCRBs as described in paragraph 4 of Amended Petition (February 21, 1985) of PSNH; and it is

FURTHER ORDERED, that pursuant to RSA Chapter 369 and subject to the conditions set forth herein PSNH be, and hereby is, authorized either (i) to issue and sell up to \$525,000,000 of DIBs, within the range of terms proposed, or alternatively, (ii) to issue and sell and/or arrange for the issuance and sale of a mix of securities, consisting of DIBs, PCRBs and/or Credit Support PCRBs, up to \$525,000,000 in principal amount (not counting any Third Mortgage Bonds issued in connection with the PCRBs) and to take all actions necessary to complete such issuance of securities, as proposed, so long as the Company's net cost to maturity is not greater than its maximum net cost to maturity of the issue and sale of up to \$525,000,000 principal face amount of

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DIBs only pursuant to alternative (i) hereof; and it is

FURTHER ORDERED, that the Commission finds, subject to the conditions set forth herein, that the consummation by the Company of the transactions as proposed will be consistent with the public good and, accordingly, subject to the conditions set forth herein, the same be, and hereby is, approved and authorized pursuant to the provisions of RSA Chapter 369; and it is

FURTHER ORDERED, that the approval of the issuance and sale of the proposed securities be, and hereby is, subject to the condition that all Seabrook I Joint Owners have received regulatory authorization to finance their respective ownership shares of Seabrook I and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook I construction costs; and it is

FURTHER ORDERED, that before the securities approved herein may be issued and sold appropriate representation and proof of satisfaction of the aforementioned condition must be presented to the Commission for its review, approval and further order as may be necessary; and it is

FURTHER ORDERED, that until further Order of the Commission, PSNH's request that the Commission remove the condition imposed in Re Public Service Co. of New Hampshire, 69 NH PUC 522 (1984), which prohibits the Company from contributing cash for the purpose of Seabrook construction at a level exceeding its ownership share of \$5,000,000 per week be, and hereby is, denied provided, however, that any amount of expenditures less than PSNH's 35.6942% share of \$5,000,000 per week since December 1984 may be aggregated and spent for any increase in joint funding levels for Seabrook I construction, but in no event more than 10% of the net proceeds of the \$425,000,000 in Order No. 17,222 (See also, Report and Seventh Supplemental Order No. 17,495 in this docket dated March 13, 1985 [70 NH PUC 110]); and it

is

FURTHER ORDERED, that PSNH be, and hereby is, authorized to continue accruing Seabrook I AFUDC and servicing Seabrook related debt; and it is

FURTHER ORDERED, that PSNH's request for authority to use an appropriate portion of the proceeds of the financing authorized in Re Public Service Co. of New Hampshire, 69 NH PUC 572 (1984), for the purpose of the present financing as a pro tanto reduction in the amount of the issue authorized herein be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1985.

Separate Opinion of Commissioner Aeschliman

I agree with the majority to the extent that I would approve the Financing Petition of Public Service Company of New Hampshire (PSNH or Company) with certain conditions and restrictions. However, since I disagree with much of the analysis adopted by the majority I am led to conclude that certain additional conditions and restrictions should be imposed to limit ratepayer exposure.

I disagree with the majority holdings because my analysis of the evidence in this proceeding leads me to conclude that completion of Seabrook Unit 1

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with full cost rate support is not consistent with the public interest. Completion of Seabrook with the level of rates required to support Public Service Company of New Hampshire's full capital structure is not a reasonable or financially feasible means of meeting the need for power. In addition, Public Service Company has not demonstrated that there is a clear economic benefit to completing Seabrook.

On the other hand, I agree with much of the majority opinion relative to their findings of the adverse effects of bankruptcy. It is clear that Public Service Company will be required to file for a Chapter 11 reorganization under the bankruptcy code if it cannot complete Seabrook 1. Bankruptcy entails considerable risks for ratepayers primarily because of uncertainties about the valuation of assets, the length of reorganization proceedings and the administrative expense of reorganization.

While the primary responsibility of the Commission is the protection of the consuming public, the Commission must also consider the interests of investors. It is virtually certain in a bankruptcy reorganization that equity holders would lose their entire investment and that unsecured debt investors would suffer significant losses. Thus, a PSNH bankruptcy would also be contrary to the public good, if it can be prevented.

The parties in this case on both sides of the issue essentially argue that the Commission must choose one course or the other. I disagree. Since I find that neither course is consistent with the public good or with the responsibility of this Commission, I believe the Commission must attempt to find a resolution to this case which avoids both of these outcomes.

The evidence in this case indicates that Public Service Company can complete Seabrook and

can survive with significantly lower rates than those implied by full cost recovery, if the plant can be completed at close to the \$1 billion cash cost to go level. Public Service Company cannot support significant amounts of debt above that requested in this financing.

Consistent with these findings the Commission should authorize the financing under conditions which protect the ratepayers from full cost recovery through rates and from further risks if the Seabrook plant cannot be completed. In addition to those conditions adopted by the majority, I find the following exceptions and conditions to be necessary in the public interest.

First, the Commission should condition approval of the financing on the adoption of the following rate making standards which limit ratepayers exposure:

(1) Cost recovery from ratepayers will not be approved for the equity portion of the cost of financing the Seabrook investment that is determined to be excess capacity.

(2) Cost recovery from ratepayers will be limited to those expenditures which were prudently incurred prior to the date of this order in the event that Seabrook 1 does not become operational and that RSA 378:30-a is found to be unconstitutional.

Second, the Commission should initiate an appropriate prudency investigation and should make a commitment to obtain the assistance from consultants required by the Commission.

Third, authorization to enter into the proposed third mortgage indenture required by RSA 369:2 should be denied. The public interest requires that

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the Company's existing generating assets be protected from additional overburdensome mortgages.

These conclusions are based upon the following analysis and findings relative to the evidence in this proceeding.

NEED FOR POWER

Power Supply

An analysis of the need for power begins with an examination of existing generating capacity. Table 1 summarizes PSNH supply sources. Existing capacity is designated by the labels present and continuous. Sources labeled present will terminate within the 20 year time frame; sources labeled continuous will be in service through the period. Both present and continuous sources are based upon retirement dates that reflect life extensions. (Exh. 32 E) Present on system capacity totals 1254.4 MW. Present off system unit ownership totals 150.5 MW. Present capacity purchases from other units varies according to capability responsibility as detailed on Table 1.

Future system additions which are included by PSNH in both the generation expansion plan with Seabrook and without Seabrook, as depicted on Charts 1 and 2, are detailed in Table 1. In the Seabrook completion case, there is also the addition of the MMWEC buyback.

In addition to the supply sources listed on Table 1, Charts 1 and 2 include the contribution from small power producers (SPPs) as estimated by Dr. Voll and included in Mr. Ellsworth's

testimony. (Exhibit 67, Attachment 4).

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

TABLE 1

PSNH SUPPLY SOURCES
 MW IN OUT OF
 UNIT OWNERSHIP RATING SERVICE SERVICE NOTES

On System - Present
 Hydro 65.5 continuous
 Merrimack 1 121.6 continuous
 Merrimack 2 343.8 continuous
 Schiller 3 28.7 continuous
 Schiller 4 48.7 continuous
 Schiller 5 52.0 continuous
 Schiller 6 53.1 continuous
 Newington 423.0 continuous
 Comb Turbines 115.0 present 05/05
 Diesels 3.0 present 86/87

On System - Future
 Seabrook 1 409.0 86/86 indefinite
 Errol 2 85/86 indefinite
 Murphy 2 86/87 indefinite
 Hydro 4 92/93 indefinite
 Merrimack (Velco) 100 98/99 indefinite

Off System
 Mass Yankee 12.3 present 97/98
 Conn Yankee 29.1 present 02/03
 VT Yankee 19 continuous
 ME Yankee 38 continuous
 Wyman 4 19.4 continuous
 Millstone 3 32.7 86/87 indefinite

Purchases
 Present
 Coleson Cove 8.3 present 85/86
 LEEP Variable Varies 17.1 (84/85) to
 135 (98/99 and beyond)
 Brayton 4 Variable present 85/86 Varies 200 to meet
 Cap. Resp.
 Wyman 4 Variable present 85/86 Varies 40 mw to
 meet Cap. Resp.
 H/Q 148 90/91 99/00
 H/Q 237 00/01 indefinite
 MMWEC Buyback 50 86/87 88/89
 MMWEC Buyback 29 89/90 95/96
 NHEC Buyback 25 undetermined

[Graphic Not Displayed Here]

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[Graphic Not Displayed Here]

Although the BIA and Mr. Ellsworth question the reliability of the HydroQuebec power and the power from SPPs (BIA Brief at 12, 13, and Exhibit 67 at 15, 21), inclusion of these sources in both generation expansion plans is appropriate in establishing a starting point for analysis. Inclusion of HydroQuebec phase 2 capacity is appropriate in both cases because it captures present PSNH and NEPOOL planning. (Exhibit 4, Att. 1, Tables IV-8, IV-9 and Att. 2 at 1 and

2). Inclusion of the Staff estimates of SPPs is consistent with the Commission's findings in *Re Public Service Co. of New Hampshire*, 68 NH PUC 257.

In attempting to assess present and potential supply sources in the cancellation case, an important part of the analysis is the effect that a PSNH bankruptcy might have on both present and potential supply sources. Relative to present sources and planned additions questions were raised regarding the effect of bankruptcy on the ownership in the Yankee plants, the Hydro Quebec capacity purchases, the contribution of SPPs, unit life extensions, the PSNH interest in Merrimack Unit 2 which has been sold to VELCO until 1998, and the PSNH interest in Millstone 3.

Although there are significant uncertainties relative to the disposition of assets, and particularly relative to the valuation of assets in a public utility bankruptcy proceeding, the weight of the evidence in this proceeding supports the conclusion that liquidation for the benefit of creditors is unlikely. The Touche Ross testimony concluded,

... considering the impracticality of liquidating a public utility, coupled with the public interest, it is

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inconceivable that the assets of a public utility would be liquidated. (Exh. 95, at 33)

What is true for the Company as a whole, is also likely to be true for individual assets, if those assets are required to meet the need for power. Since the Company would have a need for power in addition to present generating sources without Seabrook, it is very unlikely that the public interest in maintaining reliable electric service would be entirely subordinated to creditor and shareholder interests.

The particular present ownership interests in question include the Yankee ownership, the PSNH interest in Merrimack 2 presently purchased by VELCO and the interest in Millstone 3. The Commission should conclude that the likelihood of liquidation of the Merrimack interest and the Millstone 3 interest is remote. Millstone 3 payments could be expected to continue in a bankruptcy reorganization as this is a project well underway and nearing completion. The Touche Ross analysis assumes continuation of projects underway in its bankruptcy analysis. (22 Tr. 4037)

The PSNH Yankee holdings raise somewhat different and more complex issues than the ownership in other generating units. The nature of PSNH's interest is that it is an equity holder of the entity which in turn owns the Yankee facilities. PSNH's equity interest is not a part of rate base and has not been subject to the control of the Commission. PSNH purchases its power from the Yankee facilities pursuant to a wholesale tariff approved by Federal Energy Regulatory Commission (FERC).

Because of the nature of the Yankee equity interest, the Yankee holdings probably provide the greatest risk of a forced sale in a bankruptcy proceeding. However, the balance sheet treatment does not alter the public interest in maintaining PSNH as a going concern with the capability to meet the need for power.

Dean Viles indicated that it was his clear opinion that a bankruptcy court would not sell off

generating assets that would be required to meet the New England Power Pool (NEPOOL) requirements. (20 Tr. 3594). He indicated that the objective of a reorganization is a healthy reorganized company, and a healthy electric utility would need to meet its NEPOOL power requirements. (20 Tr. 3594). If PSNH had excess capacity without Seabrook, the sale of the Yankee interests would be much more likely. However, given a clear need for power, Dean Viles testimony is persuasive.

The parties also raised questions relative to PSNH's participation in the Hydro-Quebec purchase and relative to the unit life extensions detailed on Staszowski Exhibit 32E because of an inability to raise sufficient capital. Mr. Staszowski indicated that PSNH's participation in Hydro-Quebec Phase 2 -1 would require up front payments for its share of the construction costs of the Phase 2 terminal equipment. (Exhibit 102, at 2) However, there is no foundation in the record to support this contention. The Phase I project including both transmission and terminal facilities is being financed entirely by New England Electric Transmission with no support payments required by the NEPOOL participating utilities prior to the anticipated in-service date of the project.¹⁽⁸⁷⁾ The entire amount of financing required by the Phase 1

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projects totaled \$120 million.²⁽⁸⁸⁾

No estimate of the construction cost of the Phase 2 project has been provided in this record. However, assuming that Phase 2 will cost several times the amount of Phase 1, PSNH's share would still not be substantial. PSNH's share of Phase 1 was 7.6%. (Exh. 67, at 19) This share in Phase 2 could be increased by a 5% bonus granted to the host State should the line traverse New Hampshire (Exh. 67 at 21). It might also be reduced by an allocation to UNITIL. (36 Tr. 6851) Even assuming PSNH's total share to be 12-13%, it is highly unlikely that the total cost would be more than \$100 million. The terminal share alone would be considerably less. If the participating utilities were required to fund part of this amount in advance, it would also be spread over several years prior to the 1990 estimated in service date. Given the public interest consideration and the amounts of funds involved, if any, the Commission should conclude that it is unlikely that Hydro-Quebec participation would be abandoned should a PSNH bankruptcy occur. Mr. Trawicki testified that he believes capital could be made available for participation in Hydro-Quebec phase 2 during a bankruptcy reorganization either from internal or external sources. (22 Tr. 4038)

The record does not provide cost estimates of the unit life extensions listed by Mr. Staszowski on Exhibit 32E. However, a review of the retirement dates without life extensions shows that only Schiller Units 3, 4 and 5 have retirement dates earlier than 1995. The retirement dates are 1988, 1991 and 1994 respectively, and the unit capacities 28.7 MW, 48.7 MW and 52 MW respectively. (Exhibit 32E) If a bankruptcy reorganization was completed in three years, the only unit extension in jeopardy would be Schiller 3. A longer period of reorganization could potentially jeopardize unit 4 extension. The larger units — Merrimack 1 and 2 and Newington — have retirement dates without extension of 1999, 2007 and 2018, respectively. Thus, one can conclude that funds for nearly all of the life extension projects would not be required until after a bankruptcy reorganization was completed.

The availability of the projected supply from small power producers and cogenerators (SPPs) in the event of bankruptcy has also been questioned, because SPP's financiers look to a stream of revenues from the purchasing utility as security.

The Commission is certainly aware that financiers have expressed concern over being dependent on PSNH as a source of revenues. Since a debtor in possession or a trustee can void executory contracts and since contracts between SPPs and PSNH will be executory, there is an element of risk.

However, a reasonable assessment of the power supply situation in a bankruptcy involving the cancellation of Seabrook 1 would support the conclusion that other factors will be favorable to SPP development. It is clear that SPP development is highly dependent on the avoided cost rates set by the Commission. The PSNH data reflect higher avoided cost rates in the absence of Seabrook. (12 Tr. 2080-81) Mr. Staszowski testified that if avoided cost rates rise, it is likely that additional SPP resources will be developed. (12 Tr. 2081) Finally, costs attributable to SPPs are recoverable at the same time the expense is incurred through the purchase power component of the Company's Energy

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Cost Recovery Mechanism (ECRM). See e.g., Re Small Power Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132, 141 (1984); Re Energy Recovery Cost Recovery Mechanism, 67 NH PUC 875 (1982).

In view of all of these factors it is reasonable to find that SPP development will not change as a result of bankruptcy because the financing risk will be offset by those new factors which favor SPP development.

This analysis supports the conclusion that the present and projected nonSeabrook power sources listed on Table 1, plus the Staff SPP estimate, form a reasonable starting point for analysis in assessing the power supply needs in the cancellation case. The need for future sources of power depends upon an assessment of the projected demand for power.

Demand Forecasts

What is the appropriate demand forecast(s) to use in assessing the need for power?

An assessment of the need for power requires an evaluation of total system capacity or resources which are available to meet the Company's projected load. This is a reliability assessment and not an economic assessment, and the appropriate demand forecast for this analysis is the peak load forecast. The financial evaluations, on the other hand, use forecasts of energy sales. Although historically measures of peak load growth and prime sales growth have not varied significantly, this relationship may show greater future variance as energy management and load management strategies are more commonly and vigorously applied.

Business as usual forecasts

Chart 1 portrays a peak load forecast for PSNH without Seabrook under "normal" or "business as usual" circumstances plus a reserve requirement of 20%. The use of 3% load growth is for illustrative purposes. It was chosen as an estimate which is roughly consistent with

historical experience, with Commission determination in 1981, and with the methodologies and results of national and regional forecasts.

The historical record reflects a ten year compound annual growth rate of 2.5% for the period 1972/73 to 1982/83; (Exhibit 31 at 5-4) and a 2.4% rate for the period 1973/74 to 1983/84. (Exhibit 130) The substantial increases in peak load this winter can be expected to increase the 10 year average for the 1974/75 to 1984/85 period.

In 1981, the Commission conducted an investigation of demand forecasting method, and on the basis of a "business as usual" approach found that 3 percent was a reasonable estimate of future load growth. Re Public Service Co. of New Hampshire, 66 NH PUC 441 (1981).

The NEPOOL April 1, 1984 report which is the basis for the NEPLAN study cited in Mr. Staszowski's testimony (Exhibit 4, Attachment 5) assumes an annual load growth for winter peak of approximately 2% and growth of summer peak of approximately 2.1%. (33 Tr. 6252). New Hampshire continues to be a winter peaking system and has experienced greater growth than New England as a whole.

PSNH's situation makes "business as usual" planning unrealistic.

In PSNH's case, business as usual

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forecasts do not form a reasonable basis for capacity expansion planning. In the case of Seabrook completion, the very substantial effect of price elasticity must be estimated. The Commission has previously recognized this effect in Re PSNH, supra, and the question of price elasticity of demand is a central issue in this case.

In the event of Seabrook cancellation and the bankruptcy of PSNH, the Commission must assess the potential effect of bankruptcy on rates and thus, on demand. Even uncertainty about PSNH's ability to complete Seabrook may affect demand, prior to either completion or cancellation, if customers determine a need to secure alternate supply sources. In addition, the Commission must assess the effect of bankruptcy on PSNH's ability to raise capital in order to implement alternative supply plans.

Not only do these distortions make business as usual planning unreliable, but they make using the same demand forecast in analyzing the need for power with completion and cancellation somewhat unrealistic.

Need for power if Seabrook is cancelled

The evidence in this case indicates that in the short-run if Seabrook is cancelled rates are likely to be lower than if Seabrook is completed. This effect is demonstrated in Mr. Trawicki's testimony on Supplemental Schedule 3 (Exhibit 95B), included here as Chart 3. On this Exhibit the "No Newbrook" case represents Seabrook cancellation and PSNH bankruptcy. Mr. Trawicki also testified that actual rates in the case of bankruptcy are likely to be higher than those modeled. Nevertheless, it still appears likely that rates with

[Graphic Not Displayed Here]

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Seabrook cancelled are likely to be lower than with Seabrook completed until the early 1990's. Even though bankruptcy would entail substantial administrative expenses and might entail revaluation of PSNH's non-Seabrook assets, it would appear that these effects would be more than offset by the cheaper cost of purchased power which all parties agree is available in NEPOOL through 1992 even without Seabrook I capacity.³⁽⁸⁹⁾ Table 2 compares the cost of an oil purchase in /kwh with the bus bar cost of Seabrook for the years 1986-1992.

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

Table 2

Comparison of Oil Purchase With
Seabrook Bus Bar Costs

Oil Purchase

4(90) Seabrook Bus Bar

5(91) Year (/KWH) Costs (/KWH)

1986	7.8	23.4
1987	8.3	23.5
1988	8.5	21.5
1989	8.7	20.4
1990	9.0	19.3
1991	9.2	18.0
1992	9.4	17.6

In addition, in the Seabrook completion case rates are effected by carrying very substantial excess capacity (see Table 4) which would not occur in the cancellation case.

It is extremely difficult to project prices beyond the early 1990's in the Seabrook cancellation case because this would require detailed modelling of alternate supply scenarios.

Mr. Trawicki has not projected rates in the "No Newbrook" scenario beyond 1993. However, he assumes that rates will rise significantly as the Company is forced to purchase power at increasingly higher rates. At the same time, he assumes that the Company would begin construction of both peaking and base load plants once reorganization is completed. (Exh. 95 at 37) He concluded that rates would be higher in the cancellation case by 1995, given the same demand assumptions, than the base case scenario. (Exh. 95 at 37) Looking at Chart 3, rates would have to rise only slightly between 1993 and 1995 in the NO NEWBROOK case to be above the base case without phase-in by 1995. Referring to the data points,⁶⁽⁹²⁾ NO NEWBROOK rates in 1993 are 14/kwh and base case rates in 1995 are 15/kwh. However, NO NEWBROOK rates would have to rise very substantially to be above the base case phase-in rates by 1995, which Mr. Trawicki estimates to be 20/kwh.⁷⁽⁹³⁾

The intervenors, on the other hand, predict that rates will continue to be lower in the cancellation case than in the completion case. This conclusion is based upon both the prediction of higher rates with Seabrook completed than the Company's and Mr. Trawicki's base cases, and

the prediction of lower rates from alternate supply sources.

Even though the parties predict different prices in the completion and cancellation cases, for the most part they use the same demand projections in assessing the need for power. Thus, although the Company recognizes that prices will be lower in the short-run in the cancellation case and that demand

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will be higher,⁸⁽⁹⁴⁾ Mr. Staszowski's generation expansion plans use the same demand projections.⁹⁽⁹⁵⁾ The Company and the BIA adopt Mr. Trawicki's conclusion that rates in the long run will be higher with cancellation,¹⁰⁽⁹⁶⁾ but make no adjustment in their assessment of the need for power. Mr. Staszowski does recognize that load growth in the cancellation case is understated by 63 MW starting in 1986 because the New Hampshire Electric Cooperative would also lose its Seabrook capacity.¹¹⁽⁹⁷⁾ (12 Tr. 2085).

Likewise, the intervenors project lower rates with Seabrook cancelled, but fail to recognize that lower rates will result in greater demand and greater need for power. This is particularly apparent in SAPL's analysis of Mr. Ellsworth's testimony.¹²⁽⁹⁸⁾ Mr. Ellsworth's testimony is based upon PSNH's projections of peak load. PSNH's peak load projections assume Seabrook completion and assume significant demand reduction from a "business as usual" forecast as can be readily observed by comparing Charts 1 and 2. The PSNH 1985 load forecast assumes a 1.1% growth rate in peak load between 1983/84 and 1993/1994, and a 2.9% rate of growth for the 1993/94 - 2003/04 period. The significant difference between the two periods is attributed to the projected price of electricity and its effect on demand. (Exhibit 130 at 5-3, 5-4.) Thus, SAPL's conclusion that the PSNH demand forecast is appropriate for assessing capacity deficiency in the cancellation case is not consistent with its assumption of lower rates in the cancellation case.

There is one additional point in assessing capability responsibility and the need for power which the parties generally fail to recognize: effect of inclusion or exclusion of the UNITIL load. If the contracts between Concord Electric Company and Exeter and Hampton Electric Company and PSNH are terminated in 1986 in accordance with the September 7, 1984 notice of termination by these Companies, the future capability responsibility for their loads will be assumed by UNITIL rather than by PSNH.¹³⁽⁹⁹⁾ If the FERC grants PSNH's petition,¹⁴⁽¹⁰⁰⁾ then these contracts will continue until 1992.¹⁵⁽¹⁰¹⁾ PSNH's petition is based upon Seabrook completion. If Seabrook is cancelled and PSNH is in bankruptcy, it is logical to assume that neither party would wish to continue the present contracts. In fact, UNITIL has cited uncertainty of supply as a reason, in addition to price, for terminating contracts with PSNH. (Exhibit 151 at 10) Thus, in the cancellation case the Commission should assume that the UNITIL load will not be part of PSNH's capability responsibility. Of course, UNITIL will continue to need power and the NEPOOL need for

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power will be unchanged.¹⁶⁽¹⁰²⁾

In summary, the Commission should assume higher demand in the short run in the

cancellation case due to lower prices. The Commission should also assume that the UNITIL load will not be part of PSNH's capability responsibility. Thus, the 3% load growth projection without UNITIL as depicted on Chart 1 is a reasonable starting point for analyzing the need for power in the cancellation case. The actual resource deficiency figures are tabulated in Table 3.

This analysis results in a much smaller capacity deficiency in the cancellation case than many of the parties assume. The capability deficiency is less than 300 MW until 1996 and is roughly 450 MW at the end of the century. (Table 3) Given deficiencies of this size, the Commission can conclude that there would not be actual shortages of power. The PSNH analysis, Mr. Ellsworth's analysis, Mr. Trawicki's analysis and the BIA analysis all assume that UNITIL continues as part of PSNH's capability responsibility, an assumption not supported by the evidence. In fact, Mr. Trawicki testified that "the Commission could look to maintaining the ability to provide electric service under a reorganization scenario" (22 Tr. 4027), even assuming the same level of demand which would prevail with UNITIL on the PSNH system.¹⁷⁽¹⁰³⁾

The evidence indicates that sufficient capacity exists in NEPOOL so that oil purchases would be available through 1992. Purchased power may be available outside of NEPOOL well beyond that time from Canada or other sources. Mr. Staszowski's generation expansion plan in the cancel case assumes that 300 MW of jet capacity are built in the 1990's. It is reasonable to assume that some jet capacity could be built even during a bankruptcy reorganization because jets require only small amounts of capital, and that additional jet capacity could be completed following reorganization, as needed.

Mr. Staszowski estimates that the cost of jet capacity is \$347 a kw in 1984 dollars. (Exh. 4 at IV-4C) This translates to \$34.7 million for 100 MW of jet capacity. While there is some uncertainty about the amount of capital which could be raised during the course of reorganization, it is likely that enough capital could be raised to install some jet capacity. Dean Viles testified that it would be possible to raise capital for modest construction projects during reorganization if there was security to pledge. (19 Tr. 3447) Mr. Vaughn testified that with adequate security it would be possible to raise capital during the course of reorganization. (20 Tr. 3671) At the present time PSNH has a total of \$347 million in first and second mortgage bonds, whereas the net book value of utility plant excluding construction is \$439 million. Thus, roughly \$100 million would be available for security during the course of reorganization without assuming any revaluation of assets. (Exhibit 94, 21 Tr. 3916)

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

TABLE 3

PSNH
EXCESSES (+) & DEFICIENCIES (-)

EXCLUDING SEABROOK I

Capability Responsibility		Capability Responsibility		Result	UNITIL Load	Resources	Difference
With	Total	Without	Total				
Peak	UNITIL Load	Resources	Difference	Result	UNITIL Load	Resources	Difference
Result							

86/87	1641	mw	1343	mw	298	mw	(-)	1457	1343	mw	114	mw	(-)
87/88	1690		1354	336	(-)		1500	1354	146	(-)			
88/89	1741		1368	373	(-)		1546	1368	178	(-)			
89/90	1793		1375	418	(-)		1592	1375	217	(-)			
90/91	1847		1534	313	(-)		1640	1534	106	(-)			
91/92	1903		1540	363	(-)		1689	1540	149	(-)			
92/93	1960		1555	405	(-)		1740	1555	185	(-)			
93/94	2018		1565	453	(-)		1792	1565	227	(-)			
94/95	2079		1574	505	(-)		1846	1574	272	(-)			
95/96	2141		1583	558	(-)		1901	1583	318	(-)			
96/97	2206		1593	613	(-)		1958	1593	365	(-)			
97/98	2272		1581	691	(-)		2017	1581	436	(-)			
98/99	2340		1663	677	(-)		2077	1663	414	(-)			
99/00	2410		1663	747	(-)		2140	1663	477	(-)			
00/01	2482		1752	730	(-)		2204	1752	452	(-)			
01/02	2557		1752	805	(-)		2270	1752	518	(-)			
02/03	2634		1752	882	(-)		2338	1752	586	(-)			
03/04	2713		1695	1018	(-)		2408	1695	713	(-)			
04/05	2794		1650	1144	(-)		2480	1650	830	(-)			
05/06	2877		1625	1252	(-)		2555	1625	930	(-)			

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Since the Company would only need an additional 150 MW by 2000, this deficiency could be met either through traditional supply sources or through conservation and alternate energy projects. In fact, if bankruptcy resulted in substantially higher rates either because of revaluation of plant or because of high replacement power costs, then demand would be anticipated to be lower, in any event. The evidence indicates that a reorganized PSNH could raise capital to meet future demand; the question is cost. Mr. Trawicki testified that assuming similar levels of interest rates to those currently prevailing, a reorganized PSNH would not have to pay in excess of 22% for capital. (22 Tr. 4062) In other words, financing costs would not be expected to exceed those presently facing the Company. Consequently, in the event of cancellation and the bankruptcy of PSNH the key question is not the ability to provide electric service, but is cost and the relative economic benefit of completion versus cancellation.

Need for power with Seabrook completed

Chart 2 depicts PSNH capability responsibility with Seabrook completed using the PSNH preliminary 1985 load forecast. The lower line depicts capability responsibility without UNITIL. As discussed above, this is the situation which will prevail unless FERC grants PSNH's petition to continue the present Concord and Exeter & Hampton contracts until 1992. In that event the UNITIL load could continue as part of PSNH's capability responsibility until 1992.

Table 4 tabulates the excesses and deficiencies in capability responsibility using the 1985 load forecast plus a 20% reserve margin with and without the UNITIL load. Although figures are calculated including the UNITIL load after 1992 in capability responsibility for illustrative purposes, this situation is not expected to prevail. With the UNITIL load, PSNH has very substantial excess capacity through 1992. What is particularly striking is that without the UNITIL load, virtually the entire Seabrook capacity (409 MW) is excess until 1997/98 and when Hydro-Quebec phase 2 capacity is added in the early 1990's excess capacity rises to about 550 MW.

There are also problems with the PSNH load forecast which indicate that the load forecast is not consistent with rates which would be required to support full cost recovery. The load forecast

is based upon average prices, and the assumption is made that prices for each customer class will increase at the same rate as the average. (37 Tr. 7111) However, it is highly unlikely that this assumption would prove to be valid.

One of the customer classes presently comprises other utilities which purchase from PSNH under the Company's resale service or wholesale rate. The preliminary 1985 load forecast assumes that the full load of UNITIL continues to be served and that the full load of the municipalities of Ashland, New Hampton and Wolfeboro continue to be served. The New Hampshire Electric Cooperative's load is reduced to reflect its Seabrook ownership. It is clear that PSNH will not be able to serve the total requirements of UNITIL at full cost unless FERC orders the continuance of the present contracts through 1992. (Exhibits 134 and 151)

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

TABLE 4

PSNH
EXCESSES (+) & DEFICIENCIES (-)

INCLUDING SEABROOK I

Year	Capability Responsibility		Capability Responsibility		Difference	Result	UNITIL Load		Difference
	With	Total	Without	Total			Resources	Resources	
86/87	1580	1802	222	(+)	1397	1802	405	(+)	
87/88	1607	1813	206	(+)	1418	1813	395	(+)	
88/89	1626	1827	201	(+)	1433	1827	394	(+)	
89/90	1634	1813	179	(+)	1435	1813	378	(+)	
90/91	1640	1972	332	(+)	1435	1972	537	(+)	
91/92	1640	1978	338	(+)	1427	1978	551	(+)	
92/93	1660	1993	333	(+)	1441	1993	552	(+)	
93/94	1712	2003	291	(+)	1488	2003	515	(+)	
94/95	1768	2012	244	(+)	1537	2012	475	(+)	
95/96	1818	2021	203	(+)	1580	2021	441	(+)	
96/97	1860	2002	142	(+)	1616	2002	386	(+)	
97/98	1913	1990	77	(+)	1663	1990	327	(+)	
98/99	1960	2072	112	(+)	1703	2072	369	(+)	
99/00	2006	2072	66	(+)	1744	2072	328	(+)	
00/01	2070	2161	91	(+)	1800	2161	361	(+)	
01/02	2159	2161	2	(+)	1859	2161	302	(+)	
02/03	2201	2161	40	(-)	1918	2161	243	(+)	
03/04	2270	2104	166	(-)	1981	2104	123	(+)	
04/05	2338	2059	279	(-)	2041	2059	18	(+)	
05/06	2408	2035	273	(-)	2105	2035	70	(-)	

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PSNH explains in detail in its petition to FERC the effect on its other customers if the UNITIL load is lost. (Exhibit 134) PSNH's FERC filing estimates that \$212 million in revenue requirements would be shifted to other customers between 1986 and 1992. (Exhibit 134 at 2). It is clear that UNITIL will not buy from PSNH at full cost absent a FERC order compelling such a purchase because UNITIL believes it can purchase power from NEPOOL and/or other sources at a lower price of approximately 10 - 12/kwh. (Exhibit 151). Mr. Staszowski testified that PSNH

could not sell capacity and energy for as much as the resale rate would be between 1986 and 1990 (33 Tr. 6239). If the resale service class does not carry its share of costs, then these costs would be transferred to other customer classes further increasing their rates.

Likewise, there is substantial doubt that the industrial load forecast is consistent with full cost pricing. PSNH load forecasts do not estimate contribution to peak load by customer classes. However, in forecasting peak load the Company uses the prime sales forecast as the starting point to drive the peak load forecast. (Exhibit 130 at 5-2, 37 Tr. 7029-7031) Mr. Staszowski indicated that interruptible load is not included in peak load forecasting, but that only approximately 2 megawatts of the 1985 peak load was interruptible. (33 Tr. 6252).

Thus, the prime sales estimates that are provided by class give a good indication of the relative contribution of each class to peak load. PSNH is projecting industrial sales to increase at an average annual rate of 3.25% for the years 1984-1994 and by 4.10% for the period 1984-2004. (Exhibit 130, Table 9-1). The largest contributor to growth in the 1984-1994 decade is the durable manufacturing class which is anticipated to have increased sales of 5.2%. (Exhibit 130, Table 9-3).

The growth rates projected for the industrial class for the next two decades of 3.25% and 4.1% respectively compare with an historical compound growth rate in the industrial sector of 2.7% for the period 1974-1984, a period which includes the very large growth experienced in 1984.¹⁸⁽¹⁰⁴⁾ Thus, the Company is projecting higher growth rates in the industrial sector despite the Seabrook rate impacts.

PSNH witnesses contend that the price effects on demand have been adequately captured in this forecast. Mr. Brown testified that no discounted purchases have been assumed in projecting industrial demand and that any such purchases would be in addition to forecasted demand. Mr. Brown also testified that the forecast incorporated different estimates of price elasticity for different industries to reflect the greater impact on energy intensive users and greater sales loss from these customers. (35 Tr. 6644-45).

However, the testimony of a number of other witnesses raises substantial questions about the validity of the industrial forecast at full cost rates. Mr. Lovins' testimony cited recent studies of price elasticity of demand which found large price elasticities for industrial and commercial customers.¹⁹⁽¹⁰⁵⁾ He cited elasticity estimates of minus 3.55 in the industrial sector and minus 1.05 to minus 4.56 in the commercial sector. (11 Tr. 1893).

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Mr. Palast provided testimony about the impact of full cost rates upon income and employment in New Hampshire based upon an econometric study prepared by Union Associates. (Exhibit 54, Exh. CRR-4 and Exh. 61). Based upon a rate increase of 111% phased in between 1984 and 1989 which corresponds to the average plant cost (\$6 billion) measure in Exh. 61, Table 8 (15 Tr. 2722-2724, 2730), Mr. Palast estimates a loss of more than 9,000 jobs. (Exhibit 61, Table 8) Mr. Palast's study projects a linear or proportional relationship between loss of jobs and size of rate increase. (15 Tr. 2727). Mr. Palast indicates that the economic impact increases dramatically moving from the lower rate increase estimates to the higher ones. (15 Tr. 2733, 2734). The manufacturing sector will be hit first by the rate increases with a secondary effect on

industries which depend upon manufacturing.

Mr. Palast also indicates that his model does not capture the migration effect resulting from rate differentials between New Hampshire and other areas. (15 Tr. 2727). He does provide tables showing comparative commercial and industrial rates. (Exh. 61, Tables 6 and 7 at 12, 13).

Although Mr. Palast does not estimate impact on electric loads, the impact on the economy of full cost rates is not consistent with the growth rates projected by the Company.

Mr. Trawicki also recognized that large rate increases could cause large customers to relocate outside the service area or even to build their own energy facilities. (Exh. 95 at 18). Mr. Trawicki provided estimates of NEPOOL rates and other comparative rates in Exhibit 95, Schedule 14 and Exhibit 95A Supplemental Schedules 1-3. Mr. Trawicki indicated that rate levels in other jurisdictions are something the Commission should consider, although such a comparison may not be a controlling factor. (29 Tr. 5405).

In fact, the Commission itself has previously recognized that full cost rates could jeopardize incremental industrial loads by adopting the Special Industrial Contract Policy proposed by the BIA and supported by PSNH in DR 82-333. Re Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563, 587, 588 (1984). Although Mr. Brown testified that sales promoted by this policy were not implicitly included in the Company load forecast (37 Tr. 7112-114), it is illogical to assume that the BIA would have proposed such rates and the Commission would have adopted them if an actual increase in the rate of growth in industrial sales was anticipated absent such a policy.

Demand forecast does not fully capture effect of loss of customers

The Company's elasticity assumptions do not fully capture the effect of customer loss to the system. First, in the residential sector elasticities are primarily applied to the use per customer as opposed to the number of customers. (37 Tr. 7073). Own price elasticity is primarily used as a variable in the formulation of use per appliance within the residential sector. (37 Tr. 7072). Customer numbers are determined by population estimates and measures of appliance saturation. The penetration of appliances on the Company's system as opposed to appliance usage is modeled as a function of income elasticity (35 Tr. 6635) and is formulated in another part of the forecast. (35 Tr. 6644).

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The Company has attempted to capture the effect on the number of customers in the industrial sector in part through analysis of locational vectors. (35 Tr. 6644) Part of the location analysis is the effect of the price of electricity. (35 Tr. 6645).

Both the number of residential customers and the number of industrial customers are also affected by prices of other fuels. This effect is termed cross-price elasticity. To the extent that PSNH has underestimated fuel price differentials, the number of customers and the saturation of appliances may be over-estimated. PSNH's oil estimates, in particular, appear to be high and may result in overstating of space heating. For example, residential space heating is projected to increase at an average annual rate of more than 4% between 1984 - 2004. (Exhibit 130, Table 7-5) Gas also offers significant fuel switching opportunities.

The number of customers and the saturation of appliances is also overestimated due to the assumption of constant price elasticities. To the extent that price increases trigger customer investment decisions to switch to appliances with alternate fuel supply, to seek another wholesale supplier, to build their own generation facilities, or to change their location decisions, these customers are lost to the PSNH system for the life of that investment decision. Thus, sharp price increases which drive customers from the system may result in discontinuity of demand that does not reverse itself in equivalent fashion when relative prices improve. PSNH's rapid growth projections in the 1990's result from assuming constant price elasticities. However, to the extent that there is discontinuity in demand levels due to loss of customers, the assumption of constant elasticity is incorrect. (11 Tr. 1931).

Demand forecast does not capture "feedback" effect

If sales are lower than forecast or sales to some customers and classes do not recover full costs, the rates for other customers must be increased, further depressing demand. Mr. Lovins has dubbed this effect the "death spiral". (10 Tr 1689, 1690). In fact, both Mr. Chernick and Mr. Lovins question whether it is possible for PSNH shareholders to ever recover their investment in Seabrook. (11 Tr. 1904, 1905, 1908, 1909 and Exh. 63 at 109).

PSNH's only hope of recovering its full costs from wholesale customers is that FERC will force UNITIL to continue the Exeter & Hampton and Concord contracts. PSNH has no means to force industrial or other customers to purchase from it at full cost rates. PSNH has not prepared a demand forecast which properly reflects the loss of the UNITIL load or sales to UNITIL at reduced prices. In order to do this, PSNH would have to show higher price increases for other customer classes and reestimate demand for these classes consistent with the higher prices. Mrs. Hadley recognized that lower sales will increase /kwh because of the high fixed costs from Seabrook which must be recovered. (33 Tr. 6174). Lower sales would result in lower fuel costs because more efficient plants would be generating at the margin, but this would not offset fixed charges. (33 Tr. 6175). In the case of discount sales, plants would still be operated and there would be no fuel savings. Mr. Chernick described this same effect and indicated that because of the feedback effect the higher

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long run elasticity estimates of minus 1.2 or minus 1.5 may be appropriate. (17 Tr. 3072, 3073).

The Commission in DE 81-312 discussed the importance of a convergent solution of supply and demand. (69 NH PUC 257.)

PSNH prices in the load forecast are underestimated; higher prices would reduce demand

PSNH's load forecast prices and base case prices assume full UNITIL load at wholesale rates, Seabrook cost of \$882 million to go (Derrickson's estimate), Seabrook completion date of October 31, 1986, a mature Seabrook capacity factor of 72%, and no recovery for Seabrook Unit 2. The UNITIL situation and other factors which may overstate demand and understate prices have already been discussed. The PSNH assumptions about Seabrook cost, completion date, capacity factor and no recovery for Unit 2 are all optimistic assumptions in terms of rate levels.

More pessimistic assumptions yield significantly higher rates.

For financial analysis, it is more appropriate to use higher Seabrook cost and schedule estimates.²⁰⁽¹⁰⁶⁾ The Joint Owners are using the estimates of Management Analysis Company (MAC) for financial planning and this financing is based upon the MAC estimates. It is also appropriate to use a 60% capacity factor for financial planning. The Commission cannot resolve the questions of UNITIL load or Unit 2 recovery in this docket but can only look at the effect of different assumptions.

Using the MAC estimate of cost to go (\$1 billion), a mature Seabrook capacity factor of 60%, recovery for Unit 2, and no UNITIL load, prices are very significantly higher. This can be seen in Table 5 by comparing the base case and the load forecast prices with the prices in Exhibit 167B. If a later completion date consistent with the MAC analysis is also included, this would further increase the prices in Exh. 167 B. The prices from Exhibit 124 C provide a different combination of assumptions — PSNH's cost estimate, a 60% capacity factor, UNITIL load included and no Unit 2 recovery. The prices from Exhibit 124 F are based on the same assumptions as Exh. 124 C except that the UNITIL load is excluded. Table 6 presents similar comparisons without rate phase-in. The rate shock table also includes two forecasts which were not prepared with a phase-in. Exhibit 167 E assumes no UNITIL load, Unit 2 recovery, 60% capacity factor, \$1 billion cost to go and utilizes the 1985 load forecast. Exhibit 174 shows the prices resulting from the more pessimistic assumptions requested by the intervenors. (Data Request 10).

It is unlikely that all of PSNH's optimistic rate assumptions will prevail and rates are undoubtedly understated in the base case and in the load forecasts. Higher rates would produce lower demand and more excess capacity than shown by the figures on Table 4.

Based upon this analysis, the Commission must conclude that completion of Seabrook with the level of rates required to support PSNH's full capital structure is not a reasonable or feasible means of meeting the need for power. Even assuming that the Company's load forecast is consistent with full cost rate support, virtually all of Seabrook capacity would be in excess of the Company's capability

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responsibility until the late 1990's, absent FERC intervention to continue the UNITIL contracts through 1992 (Table 4). If the full UNITIL load remains as part of the PSNH capability requirement, more than half of the Seabrook capacity is excess through 1992 (Table 4).

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

TABLE 5

PSNH Price Projections in Nominal Prices with Rate Phase-In

1984 ²		1985 ⁴				
Base ¹	Load	Exhibit ³	Load	Exhibit ⁵		
	Exhibit ⁶					
Year	Case	Forecast	167 B	Forecast	124 C	124F

1984	8.23	8.7	7.96	8.27	7.99	7.96
1985	8.49	9.9	8.26	8.55	8.19	8.26
1986	8.68	11.3	8.57	9.12	8.42	8.57
1987	9.56	12.9	9.92	10.50	9.42	9.92
1988	11.61	14.7	12.05	12.04	11.23	12.05
1989	13.40	16.8	13.96	13.88	13.02	13.96
1990	15.39	18.0	15.99	15.93	14.99	15.99
1991	17.65	17.8	18.33	18.29	17.15	18.33
1992	20.52	17.6	21.21	21.54	19.89	21.21
1993	22.76	17.6	24.05	20.64	22.07	24.05
1994	24.26	17.8	27.61	19.93	24.55	27.05
1995	22.97	18.5	30.94	19.60	23.04	25.98
1996	22.79	19.0	32.92	19.80	22.26	24.60
1997	23.07	19.5	31.67	21.02	22.49	24.28
1998	22.68	20.0	30.67	20.90	22.57	24.03
1999	23.32	21.3	30.50	22.26	23.32	24.49
2000	23.86	22.6	30.35	22.95	23.87	24.98
2001	23.74	24.0	29.43	24.11	23.68	24.82
2002	25.08	25.5	29.75	24.84	24.63	25.78
2003	24.91	27.0	30.96	26.21	24.62	27.48

¹Exhibit 99A, pp. 33, 34.

²Exhibit 42.

³Exhibit 167, Attachment B, pp. 33, 34; No UNITIL, Unit 2 recovery, \$1 billion cost to go, 60% capacity factor.

⁴Exhibit 54.

⁵Exhibit 24, Attachment C, pp. 33, 34, UNITIL, No. Unit 2 recovery, \$882 million cost to go, 60% capacity factor.

⁶Exhibit 24, Attachment F, p. 33, 34. No UNITIL, No Unit 2 recovery, \$882 million cost to go, 60% capacity factor.

The purpose of building Seabrook was to meet the needs of PSNH's customers, not to serve as a discount wholesaler to NEPOOL. If the load forecast is not consistent with full cost rate support, as the preceding analysis indicates, then an attempt to recover full costs through rates would result in driving other customers from the system and forcing further conservation. The ultimate result would be even greater excess capacity. It is not in the public interest to pursue such a course.

Although economic theory and analysis do not allow us to measure precisely price elasticity of demand or to pinpoint the price level at which rate increases become counterproductive, that does not mean that the Commission can ignore the realities of economics. Even though PSNH has a

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

TABLE 6

PSNH Price Projections in Nominal Terms Without Phase-In
(Rate Shock)

Base ¹	Exhibit ²	Exhibit ³	Exhibit ⁴	Exhibit ⁵	
Year	Case	124 B	124 D	167 E	174
1984	8.23	7.99	7.96	8.34	8.25
1985	8.49	8.19	8.26	9.87	8.60
1986	9.59	9.50	9.47	17.90	8.74
1987	14.44	16.24	15.86	18.96	11.48
1988	16.49	17.83	16.17	18.32	18.22
1989	16.86	17.73	17.86	18.08	18.79
1990	16.80	17.36	18.88	18.04	20.73
1991	16.62	17.08	18.62	18.65	21.45
1992	16.89	17.51	18.74	18.89	21.39
1993	16.72	17.50	18.02	18.62	20.42
1994	17.23	17.53	17.65		
1995	17.59	17.54	17.38		
1996	18.32	17.90	17.95		
1997	19.25	18.45	18.69		
1998	18.53	18.94	19.14		
1999	19.71	20.27	20.30		
2000	20.49	21.24	21.26		
2001	20.81	21.47	21.61		
2002	22.54	22.82	23.02		
2003	24.89	25.15	25.18		

¹Exhibit 99B.

²Exhibit 124, Attachment B, p. 33, 34, UNITIL, Unit 2 recovery, \$882 million cost to go, 60% capacity factor.

³Exhibit 124, Attachment D, p. 33, 34, No UNITIL, No Unit 2 recovery, \$882 million cost to go, 60% capacity factor.

⁴Exhibit 167, Attachment E, p. 20, No UNITIL, Unit 2 recovery, \$1 billion cost to go, 60% capacity factor.

⁵Exhibit 74, Request 10, pp. 34, No UNITIL, \$1.3 billion cost to go, 10/1/87 in service date, 55% capacity factor, Write off at Pilgrim and Seabrook 2.

monopoly franchise, it is not effectively insulated from competition. The Company must sell excess capacity and energy in the competitive NEPOOL market. Electricity prices are also a competitive factor in business location and expansion decisions. It must compete with conservation, with alternate fuels and with alternate technologies which enable larger users to

install their own supply systems. Such competition sets an effective ceiling on rates.

Although the Commission cannot determine the effective rate ceiling, the Commission can determine from the evidence many danger signs that reinforce the preceeding analysis. Most immediately apparent is the termination notice by Exeter & Hampton and Concord. As Mr. Brown indicated, such a response to anticipated Seabrook prices would not be predicted by the elasticity estimates in the Company's load forecast. (37 Tr. 7123).

Mr. Lovins testified that the Commission could rely to some extent on

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the experience of other utilities. He cited his experience working in Kansas where Kansas Gas and Electric is in a similar situation with the Wolf Creek Plant and is finding its largest industrial customers dropping off. (11 Tr. 1911). He also cited the impact of the Shoreham Plant on Long Island. (11 Tr. 1911). In addition, Mr. Lovins pointed to some worrisome signs within the PSNH service area in addition to the Exeter & Hampton and Concord action. These signs include the high penetration of wood stoves and the great interest in small power production despite the risk of non-payment if PSNH goes into bankruptcy. (11 Tr. 1905).

Mr. Palast, in citing rate differentials with other service territories, testified that a rate differential of 4 to 5 cents a kilowatt hour would be a level that a number of businesses could not sustain. (15 Tr. 2734). Particularly sensitive industries cited in his testimony were plastics, machinery and defense contractors. (15 Tr. 2733). Because New Hampshire's basic industry competitive market is the northeast, these rate differentials would be the most important to consider. (15 Tr. 2735). Looking at Chart 4, it is readily apparent that PSNH's forecasted base case rates are substantially above the NEPOOL rates and the differential is particularly large with the rate phase-in. The timing of the differential is also different in the case of phase-in versus no phase-in. In the no phase-in scenario, PSNH rates exceed the NEPOOL rates by 4/kwh or more during the years 1987-1991. In the phase-in scenario, the large differential occurs in the years 1991-1997, with the difference reaching a peak of 10/kwh in 1994. Full cost rates using more realistic assumptions than the

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PSNH base case would produce even larger differentials. The Staff requested scenario, which produces the highest rate differential, Exhibit 167B in Table 5, would result in about a 15/kwh differential from the NEPOOL rates in the mid-1990's. This is clearly an unacceptable situation.

Can Seabrook be completed and PSNH survive at less than full cost recovery?

The key evidence relative to this point was provided in the Touche Ross analysis. Touche Ross estimated the maximum amount of cost which could be excluded from rate base without causing PSNH to be unable to meet its contractual payment obligations when due. (Exh. 95 at 10). As described by Mr. Trawicki, the test for determining the maximum amount of rate base exclusion is essentially a survival test. (Exh. 95 at 11, 12). His analysis showed that about \$1 billion could be excluded from rate base and the Company would still have sufficient cash to

fund its operating expenses, debt service and construction requirements when due. (Exh. 95 at 31, and Schedules 9, 10 and 11) The exact amount that could be excluded varied somewhat depending upon what other assumptions about Seabrook cost, operating performance and demand levels were assumed. The exclusion is based upon PSNH's share of the plant, roughly \$1.8 billion, rather than the entire plant cost. (22 Tr. 4094). The exclusion is also in addition to the exclusion of Unit 2 cost. Mr. Trawicki's analysis treated the Unit 2 Seabrook investment as a non-earning asset on the Company's balance sheet. (29 Tr. 5556).

Mr. Trawicki's analysis shows that the rate base exclusion has a substantial effect in lowering rates, as would be expected. His actual results are depicted on Schedules 9, 10 and 11 of Exhibit 95 and tabulated on Exhibit 119.

Chart 4 also provides some additional comparisons of the rate effect of the Trawicki rate base exclusion. It charts the PSNH base case, the PSNH base case without phase-in, the Trawicki base case \$1 billion exclusion and projected NEPOOL rates.

However, the actual rate differential could be expected to be larger than Mr. Trawicki's analysis shows because his analysis does not take into account any demand effect. Mr. Trawicki did not look at the elasticity factor and make a determination of demand based upon price. His analysis assumes different levels of demand in the different cases — optimistic, base and pessimistic.²¹⁽¹⁰⁷⁾ However, all the rate scenarios for each case are based on the same level of demand. For example, looking at three base case variations — base case without phase-in, base case with 5 year phase-in and base case with \$1 billion rate base exclusion — projected rates vary by as much as 6/kwh in a given year. (Exhibit 119) It is highly unlikely that the same level of demand would prevail in the different scenarios when such large rate variations occur.

A large rate base exclusion would have other significant effects relative to cash flow requirements and financial

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feasibility. It should be noted that Mr. Trawicki's analysis of cash flow required for survival is significantly different from the cash flow requirements in the PSNH forecasts. In projecting his survival cash requirements, Mr. Trawicki only provides enough cash to meet payments when due. The PSNH forecasts provide sufficient cash to meet indenture coverage requirements. This is important because the PSNH phase-in forecasts show very substantial borrowings after Seabrook completion to meet cash requirements. The testimony of Mr. Hildreth raises doubt about the Company's ability to raise the estimated \$700 million to \$1 billion required during a phase-in. (6 Tr. 1124, 1126). Mr. Trawicki's testimony indicates that raising such large amounts would not be necessary for survival. His rate base exclusion scenarios assume only limited borrowings. (Exhibit 95, Schedule 1-3).

A large rate base exclusion also would eliminate or reduce the need for phase-in of rates and the resulting deferred revenue balances. The deferred revenues are not required by the Company to meet its ongoing obligations, but result instead in large stock buy backs at prices providing a large capital gain to the warrant holders from the \$425 million unit financing.

Under the PSNH base case, the Company has \$2 billion in deferred operating revenues in

1993 which are then recouped in rates over the next ten year period. (Exhibit 99A at 19, 20). Under the Staff requested financial forecast, (Exhibit 167B, assuming \$1 billion cash cost to go, No UNITIL, Unit 2 recovery and 60% capacity factor) deferred operating revenues rise to \$4.2 billion in 1994. (Exhibit 167B at 20).

Recoupment of these high deferred balances results in such high operating revenues in the years following the phase-in that the Company projects large common stock buy backs. (Exh. 99A at 23, 24). The Company's base case projects buy backs of 21.7 million shares of common stock between 1992 and 1998. (Exh. 99A at 23, 24). At prices close to book value, the buy backs cost the Company an estimated \$725 million. (Exh. 99A at 9, 10). Without the buy backs the Company's equity ratio would increase dramatically as retained earnings increase. (31 Tr. 5705-07). The amounts are so large that even raising dividends would not be sufficient to hold the equity ratios down. (30 Tr. 5707). Without the stock buy backs, equity ratios rise because of the higher common stock equity participation in the capital structure. (30 Tr. 5708). If equity ratios rise, revenue requirements and rates rise because there is no tax deduction for the equity component. (30 Tr. 5692, 5693).

Consequently, it is the recoupment of deferred revenues more than the exercise of the warrants from the \$425 million unit financing which causes the increase in equity ratios. The exercise of the warrants does increase common equity capitalization by some \$90 million (31 Tr. 5710). However, the total equity capitalization in 1991 is projected to be roughly \$1.6 billion and the effect of the warrants alone is not significant. (31 Tr. 5710). If deferred revenues were eliminated or were lower, equity capitalization would be lower; the need for stock buy backs would be less, and might not be required at all.²²⁽¹⁰⁸⁾ (33

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Tr. 6119). Thus, a rate base exclusion which reduces deferred revenues also alleviates the pressure of rates resulting from higher equity ratios.

The ability of the Commission significantly to affect rates through a rate base exclusion is eroded as the plant cost escalates. Under the Trawicki pessimistic case, which assumes a \$1.3 billion cash cost to go and a total plant cost of about \$5.5 billion, only \$800 million can be excluded in the survival scenario. (Exh. 95, Schedule 10). The pessimistic case also includes lower demand and a lower-capacity factor.

Chart 5 provides a comparison of the level of rates under three variations of the Trawicki pessimistic case — pessimistic case without phase-in, pessimistic case with 15% phase-in, and pessimistic case with \$800 million rate base exclusion — and the NEPOOL rates. In this comparison, even the survival level of rates is very significantly higher than the NEPOOL rates in the years 1988 through 1994, with differences of as much as 5 cents/kwh. This analysis demonstrates that PSNH would have great difficulty in supporting additional levels of debt.

Other financial forecasts of PSNH support this conclusion as well. Pursuant to its responsibility to use "due diligence" [sic] in providing disclosure relative to the Securities and Exchange Commission requirements, PSNH undertook a financial forecast based upon a \$1.3

billion cost to go, a \$5.5 billion total plant cost, and an October 1, 1987 completion date, on August 30, 1984. (Exhibit 165, Testimony of Mrs. Hadley, 33 Tr. 6137). This financial forecast shows that with revenue requirements phased-in at 15% per year, the Company would be required to raise enormous amounts of cash in the financial markets. The outside cash required for the years 1987-1991 totals \$1.964

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billion.²³⁽¹⁰⁹⁾ This financial forecast was apparently the basis for the statement in the Company's September 1984 prospectus that

If the cash cost to complete Unit 1 were to increase to \$1.3 billion, the Company's cash requirements would exceed amounts it could reasonably expect to obtain through rate increases and external financing.²⁴⁽¹¹⁰⁾

The Company would also have difficulty raising the debt to complete Seabrook at this cost level, as the prospectus indicates,

There can be no assurance that the Company can obtain its share of a \$1.3 billion level of prefinancing.²⁵⁽¹¹¹⁾

Mr. Hildreth verified the doubtful marketability of this level of financing in his testimony. (5 Tr. 796, 862).

Similar conclusions relative to financial feasibility can be drawn from the financial forecasts requested by the intervenors. (Exhibit 174).

Consequently, the Commission can conclude that PSNH can complete Seabrook and survive with significantly lower rates than those implied by full cost recovery, but only if the plant can be completed at close to the \$1 billion cash cost to go level. The evidence in this record, indicates that PSNH could not support significant amounts of debt above that requested in this financing. ECONOMIC ANALYSIS

A determination of whether Seabrook completion is in the public interest also depends upon an assessment of the relative economic benefit of completion versus alternatives.

There is no dispute in this proceeding that the proper methodology in assessing the relative economic merits of Seabrook completion versus alternative sources is a net present value (NPV) analysis. A NPV analysis measures the cost differences between two generation expansion alternatives. While the intervenors continue to maintain that the economic analysis should be based on total Seabrook costs, an incremental analysis is appropriate in answering the relevant question — whether it is economically desirable to complete Seabrook. A total cost analysis is appropriately employed in assessing whether it is financially feasible to support the full capitalization of the Company through rates, as has been discussed in the previous section.

Although there are many variables which effect the economic analysis, the most critical factor is the cost of Seabrook. The Commission has been presented with three different cost analyses. The Company estimates presented by Mr. Derrickson are based upon an engineering analysis specific to the Seabrook project and incorporate Mr. Derrickson's management changes and schedule changes to the United Engineers and Constructors previous estimates. The

Consumer Advocate has presented the testimony of Mr. Chernick which provides extensive historical analysis of trends in the nuclear industry and presents a range of cost estimates derived by projecting industry trends using various methodologies. In addition, the reports of MAC, a consultant hired by the Joint Owners to assess the project cost and schedule, were provided by the Company at the

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request of the Commission. The MAC analysis combines a detailed engineering review of the Derrickson schedule and cost estimates, with a probabilistic assessment of achieving the cost and schedule estimates based upon industry experience.

In its last detailed review of the Seabrook cost and schedule estimates, the Commission was presented only with Company engineering estimates and statistical analyses of industry experience. The Commission found in that evaluation that the statistical analysis, particularly the analysis of Mr. Chernick, was more reliable than the Company's estimates. Re Public Service Co. of New Hampshire, 68 NH PUC 67. History has proved that judgment to be correct.

In this proceeding, the Commission should rely on the MAC estimates for economic analysis and the Chernick analysis for an assessment of risk and ratepayer exposure. The Derrickson estimates are characterized by MAC as targets. While it is appropriate to manage the construction of the project to optimistic cost and schedule targets, these estimates do not have a sufficient likelihood of being achieved to provide a realistic basis for economic analysis. MAC has also specifically reviewed the Derrickson management changes and has incorporated the effect of these changes in its November 5, 1984 report (Exhibit 106) resulting in a more positive project assessment than the April 24, 1984 report. (Exhibit 16).

Derrickson estimates do not include sufficient schedule detail beyond the Cold Hydro milestone to enable an indepth analysis. (Exh. 106 at 15). This lack of detailed planning was a significant consideration in MAC's schedule evaluation. (Exh. 106 at 8).

The Commission should accept the MAC probabilistic cost and schedule evaluation (PCE) as a reasonable assessment of the aspects of the cost and schedule that can be quantified with any degree of certainty.

Assuming full project funding in January 1985 and no cash flow constraints after that time, MAC found that \$842 million was the most likely estimate of total direct cost to complete; and that there was a 10% probability of \$744 million cost to go and a 90% probability of achieving a \$990 million cost to go. In terms of schedule, MAC found the expected commercial operation (CO) date to be May 1987, with a 10% change of CO occurring prior to December 1986 and a 90% chance that CO would not occur later than December 1987. (Exhibit 106 at 18). MAC noted that its definition of CO was different from the New Hampshire Yankee definition, resulting in a later estimate. New Hampshire Yankee has estimated CO based upon a demonstration of 50% of unit capability, whereas MAC defines CO as the achievement of full design power (Exhibit 106, p. 17).

Cash flow constraints have continued beyond the January 1, 1985 date and are projected to continue until June based upon the plans of the Joint Owners as testified to by Mr. Harrison. (38 Tr. 7316). This schedule continues to be in doubt. Accordingly, the Commission should not rely

on the expected values previously predicted by MAC for its economic analysis, but should use the more pessimistic 90% cumulative probability values.

MAC does not translate these estimates into a total project cost value.

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However, an estimate can be derived from data provided by PSNH in Exhibit 176. PSNH was asked to estimate the cost of a six month delay in AFUDC assuming a \$1 billion cash cost. PSNH estimates that total project cost increases approximately \$270 million to \$300 million as a result of a 6month schedule slippage. It is appropriate to use the high end of the range in projecting further slippage as the total amount on which AFUDC must be calculated continues to increase as the schedule is delayed. It is also appropriate to raise the base cost from \$4.6 billion to \$4.7 billion to account for the \$1 billion direct cost estimate as opposed to the \$882 million Derrickson estimate. Using \$50 million per month as the estimated increase in total project AFUDC, a delay from October 31, 1986 to December 31, 1987 would add \$700 million to the total project cost or an increase from \$4.7 billion to approximately \$5.4 billion. This schedule estimate would be reduced by roughly 4 months if the New Hampshire Yankee definition of CO is adopted rather than the MAC definition,²⁶⁽¹¹²⁾ resulting in an August 31, 1987 CO date and a project cost of \$5.2 billion. Since the Commission has not determined the appropriate definition for CO, use of the mean figure provides a reasonable estimate for economic analysis. The resulting estimate for economic analysis is a \$5.3 billion total cost figure, based upon a direct cost to go of \$1 billion and a CO date of October 31, 1987.

There are many other variables which affect the economic analysis of completing Seabrook including the cost of capital additions, the capacity factor, operating cost, decommissioning costs, plant life, cost of capital and discount rate. The majority decision describes the evidence presented relative to each of these assumptions and makes findings which are generally consistent with previous findings of this Commission and are reasonable for purposes of economic analysis.

The Company's fuel price estimates are based upon the Data Resources, Inc. (DRI) fall 1983 forecast. (9 Tr. 1553, 1557). Since oil prices in particular have fallen significantly since that time, I believe it is more appropriate to use the low fuel price estimate than the Company's base case estimate.

Mr. Staszowski has presented a NPV analysis based upon various combinations of assumptions. Given the preceeding findings relative to the proper assumptions for analysis, the question of whether there is an economic benefit of completing Seabrook turns upon the level of demand growth and energy sales assumed. Exhibit 137 contains 68 graphs depicting Mr. Staszowski's analysis of the net benefit of completing Seabrook using various combinations of assumptions. Based upon the Company's load forecast and other assumptions consistent with this analysis there would be a net benefit of roughly \$300 million to completing Seabrook (Exhibit 137 at 14). With the low demand and energy growth assumption, the net benefit is reduced to about \$200 million (Exhibit 137 at 16). When the Concord and Exeter & Hampton loads are removed, the cancellation case becomes preferable by \$70 million. (Exhibit 136, Attachment B, and Exhibit 137 at 26.) In addition, Mr. Staszowski's high Seabrook cost assumes an April 1987

completion date and is thus somewhat lower than the

cost I think is appropriate for economic analysis. A higher cost would lower the NPV figures cited.

These results indicate that there is not a clear economic benefit to completing Seabrook. The economic benefits to PSNH's customers depend upon retaining the loads and sales growth projected in the Company's forecast. The analysis in the preceding section has shown that retention of projected loads is highly uncertain unless prices are lower than projected with full cost recovery.²⁷⁽¹¹³⁾

Mr. Staszowski's economic analysis also assumes that a large part of Seabrook replacement power comes from jet capacity and new coal plants. To the extent that lower cost alternatives could substitute for this new capacity, costs in the cancellation case would be reduced.

Cost in the case of cancellation would depend significantly on the speed and manner with which a reorganized PSNH could move to meet future demand. This would depend on the length of reorganization proceedings and on the planning preparations and strategy developed by the Company. Dependence on high cost jet capacity and high cost purchased power could significantly increase rates, and rates would be heavily dependent on oil prices. While jet capacity requires relatively little capital expense, operating costs are very high. Mr. Staszowski has provided estimates of operating costs starting at \$5/KWH in 1984 and escalating to \$15.90/KWH in 2000. (Exhibit 4, Table IV-3 at IV-12). These estimates are tied to PSNH oil price estimates since jet generation is fueled by jet fuel. Similar capacity could also be obtained by installing gas fired turbines.

To the extent that conservation and load management could reduce the need for power, capital intensive replacement capacity could be deferred. Mr. Lovins has presented impressive testimony about the potential for utility conservation investments. However, Commission reliance upon conservation requires the development of reliable estimates and a plan for implementing conservation programs. Mr. Lovins' testimony does not provide a sufficient basis to conclude that demand could be reduced below the low estimate in Mr. Staszowski's economic analysis.

In this regard, it should be noted that both the Company and the Commission have been deficient in analyzing the potential of conservation investments. Significant conservation is factored into Mr. Staszowski's alternate generation expansion plan only to the extent that he has performed an analysis using lower demand. However, Mr. Staszowski has not done any analysis of the amount of conservation that could be achieved or the cost on a /kwh basis, nor can he point to any company analysis of conservation potential. (8 Tr. 1420). The Commission previously recognized the need for this kind of analysis. Docket DE 83-153 was opened in April 1983 to investigate the potential of long-term conservation and load management programs and the Company was urged to undertake analysis of opportunities for conservation and renewable resource development. Re Public Service Co. of New Hampshire, 68 NH PUC 67.

Likewise, as has been noted previously, higher avoided cost rates in the cancellation case

could act as a stimulus to SPP development which would

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also reduce the need for capital intensive base load replacement capacity.

Thus, it is certainly possible that cheaper alternatives could reduce the costs projected by Mr. Staszowski in the generation expansion plan for the cancellation case. However, the Commission cannot reliably quantify these effects from the evidence in this record and cannot conclude that the potential alternatives are so clearly superior on the basis of an incremental analysis that their apparent availability alone warrants the cancellation of Seabrook.

Ratepayer Exposure

While the MAC estimates provide an appropriate basis for determining Seabrook costs to be used in an economic analysis, the MAC Seabrook cost estimates do not constitute a proper basis for assessing ratepayer exposure. MAC very specifically acknowledges that the probabilistic cost and schedule evaluation focuses on the directly controllable aspects of the schedule and cost and that the assessment excludes analyses of certain factors which may have impact on the cost and schedule. (Exhibit 106 at 11).

Factors which were excluded and may cause delay include (1) further cash flow constraints; (2) delayed acceptance of the emergency evacuation plan by the appropriate agencies and the NRC; (3) intervenor action; (4) abnormal schedule extension due to inadequate quality compliance; and (5) industry generic problems (such as a Three Mile Island accident) requiring additional engineering and rework. (Exhibit 106 at 11 and 12)

It is these additional risk factors which Mr. Chernick attempts to capture in his cost analysis. The Chernick testimony incorporates these risk factors into total cost projections for Seabrook through statistical analysis based on the historical experience of the nuclear industry. Mr. Chernick recommends that a cost range from \$6 billion to \$8 billion be utilized for Seabrook analysis, with the lower estimate appropriate for capacity planning purposes and the higher estimate for financial planning. (Exhibit 63 at 62).

While I have determined that the high end of the MAC range provides a better plant specific estimate for capacity planning analysis than Mr. Chernick's \$6 billion estimate, his testimony is powerful evidence of the financial risks which Seabrook completion entails. It is clear that if costs should rise to these levels, Seabrook completion would not be financially feasible for PSNH nor would it be economically desirable. Given the uncertain benefits of Seabrook completion, ratepayers should not be exposed to these extraordinary risks.

LEGAL STANDARDS

There are four statutes which are relevant to the Commission's deliberation and resolution of this case. The primary statute under which PSNH has petitioned the Commission is the financing statutes, RSA Chapter 369. RSA 369:1 and 4 empower a public utility to engage in financing by issuing and selling securities when the Commission finds that such issuance will be "consistent with the public good." The public good standard has been interpreted by the New Hampshire Supreme Court to require two basic findings. First, the Commission must find that the project which is the object of the financing is economically

justified relative to alternatives. *Re Easton*, 125 N.H. 205, 212, 213, 480 A.2d 88 (1984); *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984). Second, the Commission must find that the capitalization resulting from the financing is consistent with reasonable rates. *Re Easton*, supra, 125 N.H. at pp. 212, 213; *Re Seacoast Anti-Pollution League*, 125 N.H. 708 A.2d 1196 (1984).

The second requirement relative to rates necessitates a review of the regulatory standards employed in setting rates. RSA 378:7 requires the Commission to set "just and reasonable or lawful rates." RSA 378:27 and 28 require that "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." This section of the statutes sets forth the standard that rates shall be determined with reference to the investment upon which they are required to provide a return. Furthermore, in determining the amount of the investment in rate base upon which rates shall be set the Commission has two standards of review. The property must be: (1) "used and useful" in the public service and; (2) the cost of the property less depreciation must be allowed in rate base unless the Commission has a lawful reason to reject a management decision.

... [T]he PUC may reject management decisions "[w]hen inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest are shown." *Re Public Service Co. of New Hampshire*, 62 NH PUC 83, 92, aff'd *Legislative Utility Consumers' Council v. New Hampshire Pub. Utility Commission*, 117 N.H. 972, 380 A.2d 1083 (1977). *Re Public Service Co. of New Hampshire*, 122 N.H. 1062, 1076, 51 PUR4th 298, 454 A.2d 435 (1982). See also, *Re Easton*, supra, 125 N.H. at p. 215.

These standards are commonly referred to in regulatory language as the "used and useful" test and the "prudence" test.

RSA 363:17-a relative to the Commission as arbiter also provides legislative guidance concerning the manner in which the Commission is charged to exercise the powers and duties conferred upon it. This statute calls upon the Commission to serve as "the arbiter between the interests of the customer and the interests of the regulated utilities...."

In exercising its role as arbiter, the Commission must also consider the position of the Court in attempting to strike a balance between the Commission's authority and management's prerogatives. *Re Easton*, supra. In *Easton* the Court reaffirmed that

... it has never been the position of this court that a utility completely surrenders its right to manage its own affairs merely by devoting its private business to a public use. *Re Easton*, supra, 125 N.H. at p. 211 (citing *Re Public Service Co. of New Hampshire*, 122 N.H. at pp. 1066, 1067, 51 PUR4th 298.)

Similarly, the Court cites *Grafton County Electric Light & Power Co. v. New Hampshire*, 77 N.H. 539, PUR1915C 1064, 94 Atl. 193 (1915) in *Easton* in construing the phrase "public good". See, *Re Easton*, supra. In *Grafton County*,

the Court found that a public utility as a private corporation should be permitted to take a certain course provided that the action proposed met the test of reasonableness under all the circumstances.

Finally, RSA 374:1 sets forth the goal of public utility regulation, which is "the provision of service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." The duty to provide safe and adequate service relates directly to the public good standard in RSA Chapter 369. The Commission must find that the property which is the object of the financing is property which is reasonably requisite for present and future use. ..." Re Easton, supra, 125 N.H. at p. 211, citing Re New Hampshire Gas & E. Co., 88 N.H. 50, 55, 16 PUR NS 322, 184 Atl. 602 (1936). This entails an assessment of the need for power and an evaluation of Seabrook as a means to fulfill the need for power versus alternative sources. The statute also requires that service be just and reasonable in all other respects which necessitates a consideration of cost as well as reliability. The Court has also combined the standards of cost and reliability as the appropriate criteria for determining the public good in a financing proceeding:

A prime test is not to permit the capital issues to exceed, at least so much as to affect the public interest materially, the fair cost of the property reasonably requisite for present and future use, plus necessary working capital and any other authorized requirements. Re New Hampshire Gas & E. Co., supra, 88 N.H. at p. 55, 16 PUR NS at p. 327 (Emphasis supplied); see also, Re Easton, supra, 125 N.H. at p. 211.

The application of these legal standards in the instant case is a difficult matter. My earlier analysis of the rate impact of Seabrook completion would preclude a finding that the financing is consistent with the public good under a plan of full cost recovery.

... [I]f it appears, upon all the evidence, that the capitalization sought is so high that the utility because of

its] inability to earn operating costs, depreciation and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled, then the primary public interest may be found to be affected injuriously. Re New Hampshire Gas & E. Co., 88 N.H. at p. 57, 16 PUR NS at p. 329. This standard is cited by all of the Justices of the Supreme Court in Re Seacoast AntiPollution League, 125 N.H. 708, 482 A.2d 1196 (1984).

The Commission cannot determine that the need for power is of greater public interest than the level of rates, because a reasonable review of the evidence does not support a conclusion that there will be actual shortages of power if Seabrook is not completed.

On the other hand, the evidence indicates that PSNH will be forced to file for a Chapter 11 bankruptcy reorganization if Seabrook is not completed. While I do not subscribe to all of the findings of the majority relative to the consequences of bankruptcy, it is clear that bankruptcy entails great uncertainty and risk for ratepayers as well as enormous administrative expense. Thus, a PSNH bankruptcy would also be

contrary to the public good if it can be prevented.

In addition, while it is impossible to determine with precision the degree to which investor claims would be honored in a plan of reorganization, it is virtually certain that equity holders would lose their entire investment. It is likely that unsecured debt investors would suffer significant losses as well. Given the Commission's express duty under RSA 363:17-a to serve as the arbiter between the interests of the customer and the interests of the regulated utility, the Commission is obligated to prevent such a result if there is any way to do so consistent with protecting the public interest.

The parties in this case on both sides of the issue essentially argue that the Commission must choose one course or the other. Since I find that neither course is consistent with the public good or with the responsibility of this Commission, I believe the Commission must attempt to find a resolution to this case which avoids both of these outcomes. Such a resolution would allow the Company to go forward with financing under conditions which protect the ratepayers from full cost recovery through rates and from further risks if the Seabrook plant cannot be completed for whatever reason.

Limiting Ratepayer Exposure with Seabrook Completion

The parties generally argue that the Commission cannot provide for less than full recovery in this proceeding because a disallowance of costs is only possible with findings of imprudence in a rate case.

The Commission did entertain evidence relative to a cost cap in this proceeding. The BIA proposes that the Commission cap the plant cost for ratemaking purposes at a cost to complete estimated by the BIA of \$4.7 billion. Since this proposal would not provide sufficient protection to ratepayers under my analysis, it is not necessary to reach the legal issues implied in this approach.

Dr. Rosen suggested that the Commission might adopt a cost cap which resulted in sharing the losses represented by the "sunk" costs in the plant. In his initial testimony, Dr. Rosen suggested a cap at roughly \$3.5 billion. (Exhibit 46 at 9). This was later refined to \$2.6 billion, along with Dr. Rosen's methodology for reaching this result. (Exhibits 62 at 177). Although Dr. Rosen's approach has considerable merit as a rough tool to achieve an equitable distribution of costs between ratepayers and stockholders, there is considerable doubt whether the Commission has the legal authority to impose such a condition in this proceeding. It has been noted earlier that the Commission has two criteria for excluding costs from rate base — the used and useful standard and the prudence standard. Dr. Rosen's proposal is not based on either of these standards. Consequently, the Commission has not been presented with a cap proposal in this proceeding which is legally and factually supportable. However, a cap is not the only means for limiting recovery.

While the Commission does not have evidence in this case upon which to determine a prudence disallowance, the Commission has substantial evidence relative to the used and useful criteria. Whereas the prudence standard requires a finding of fault as a prerequisite for the exclusion of an asset from rate base, the used and useful test does

not.²⁸⁽¹¹⁴⁾ Although the relationship between the prudence standard and the used and useful standard is vague and the application of these standards by Commissions is inconsistent, regulators have increasingly turned to the used and useful standard as a flexible tool in dealing with cases which severely test the traditional regulatory framework.²⁹⁽¹¹⁵⁾ In fact, the New Hampshire Supreme Court has explicitly recognized that the "used and useful" principle of public utility regulation is not a rigid concept, but an elastic one; and that allowing the Commission flexibility in applying the "used and useful" test serves to promote the public interest. *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 344, 31 PUR4th 333, 402 A.2d 626 (1979).

There are other important reasons for using both standards. First, there is a need to provide some certainty relative to electric rates. Businesses and other customers of PSNH are making investment decisions now in light of their assessment of future electric rates. It is essential to the financial viability of PSNH to forestall the loss of customers to their system. If their market share continues to be eroded, the Company will not be able to support its Seabrook investment. Further loss of customers can be expected, unless the Commission provides assurance that rates will be significantly lower than under full cost recovery. The action of Concord Electric Co. and Exeter & Hampton Electric Co. this past September is a serious warning in this regard. The particular application of a "used and useful" standard can be adopted now, even though actual imposition of that standard would depend on the facts presented at the time of the rate case. The prudence standard cannot be applied until the rate case.

In addition, there are compelling financial reasons to use both rate making standards. A prudence disallowance from rate base will apply for the entire 30-40 year life of the plant. A "used and useful" disallowance will apply only to the extent that capacity is in excess. This is a critical difference. In order to make completion viable, the Company must absorb large losses in the first years of operation. However, over time the relative economics and need for capacity will enable additional plant to be included in rate base, and will enable the company to gradually regain financial health.

As noted in the need for power analysis, Seabrook completion will result in very substantial excess capacity. The excess capacity is in part a result of past forecasting errors, i.e., present levels of demand are very substantially lower than those forecast when Seabrook was planned. (Exh. 57). However, excess capacity is also the result of reduced market share due to uncompetitive prices. This is dramatically demonstrated by the loss of the UNITIL load.

The Commission should adopt a ratemaking standard for the treatment of excess capacity in this proceeding.

As a necessary condition to finding that the present financing and resulting capitalization is consistent with reasonable rates and the public good, the Commission should adopt a ratemaking standard for the treatment of excess

capacity in this proceeding. The regulatory approach consistent with this goal is to exclude from rate base the equity portion of the financing cost of the Seabrook investment that is determined to be excess capacity.

There are many possible rate making methodologies to accomplish full or partial exclusion of excess capacity from rate base. However, given the perilous financial condition of PSNH, the methodology chosen must insure adequate cash flow to cover debt obligations and to avoid the threat of bankruptcy. The methodology of excluding the equity portion of AFUDC would hold harmless bondholders, while directing losses due to Seabrook excess capacity toward the stockholders. In effect, the Commission would be prohibiting stockholders from earning a return (or profit) on capacity that is not "useful" to its customers.

This methodology is also desirable because the risk of excess capacity is shared by ratepayers and stockholders. Full rate base exclusion of excess capacity allocates all of the risk to the utility, while full inclusion of excess capacity in rate base allocates all of the risk to ratepayers. This methodology recognizes that while the capacity from Seabrook may not be useful to its customers, the plant will be operated and used for its energy savings. Consequently, it is appropriate to allow operating costs and debt costs to be recognized in rates.

Adoption of this standard for ratemaking would result in very significant exclusions from rate base. Table 7 provides an estimate of total AFUDC for PSNH assuming \$1 billion cash cost to go and completion by October 31, 1986. Of the total \$757 million in AFUDC, equity funds amount to \$465 million. If a more realistic completion date is assumed, these amounts would increase. PSNH estimates that a six month delay would increase AFUDC costs by \$120 to \$125 million. (Exh. 176). Since virtually all of PSNH's share of the Seabrook plant is excess capacity without the UNITIL capability responsibility when Seabrook comes on line, the exclusion could amount to more than \$500 million. The actual amount would depend upon updated estimates at the time of the rate case and would depend upon the amount of Seabrook costs determined to be prudent.

In adopting a ratemaking standard for the treatment of excess capacity the Commission should also be cognizant of long term goals and should be willing to incorporate appropriate rate making incentives and rate structures. By excluding excess capacity from rate base, the Commission would not wish to provide an incentive for increasing peak demand, as this would be detrimental to long term supply planning. The Company itself has adopted a goal of limiting load growth to 1.5% per year in order to postpone capacity additions following Seabrook completion (11 Tr. 2032, 2033). To ensure that such a policy does not unduly impede the introduction of energy saving conservation measures and SPP development, whose life cycle benefits support implementation despite short run excess capacity, the Commission should consider appropriate exemptions from the rate base exclusion. There is adequate time to refine the regulatory mechanism for the rate base exclusion to compensate for these policy considerations.

Need for a prudency docket and experts to conduct a management audit.

If the Commission is to have an

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

ESTIMATE AFUDC ON \$1 BILLION

CASH COST TO GO

(000) DF 84-200

EQUITY BORROWED

TOTAL FUNDS FUNDS

Total AFUDC as of 11/30/84 (384,608)* 267,479 (117,129)

12/84 (per exh. 167,

att. c, page 18)

Scenario SP 84-DK1

\$123,555 ° 12	10,263*	7,153	3,110
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1985 AFUDC

Sea 1 PSNH Plant Cum 5/85**	152,540*	96,863	55,677)
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Sea 1 PSNH Plant Post 5/85**	34,000	34,000	
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Less Interest Income***	(7,453)	(7,453)	
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1986 AFUDC

Sea 1 PSNH Plant Cum 5/85**	145,780*	94,174	51,606
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Sea 1 PSNH Plant Post 5/85**	42,500	42,500	
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Less Interest Income***	(5,163)	(5,163)	
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Estimated Total 757,075 465,669 291,406

*

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

1984 1985 1986

AFUDC % between Borrowed Funds .303 .365 .354

Other Funds .697 .635 .646

**Per Exhibit 167, Attachment C, page 18 Scenario SP 84-DK1

***Per Exhibit 167, Attachment C, page 21 Scenario SP 84-DK1

adequate evidentiary record on which to base prudence determinations, it must hire consultants with the expertise to review the conduct of the Seabrook construction and to review management's financial and planning decisions. An appropriate review of the construction management at Seabrook requires substantial knowledge about nuclear engineering, management techniques and performance in the nuclear industry as a whole. Likewise a review of management's planning and financial decisions requires expertise in these areas, as well as a knowledge of the response of other utility managements to similar conditions. While the Commission has hired additional auditors and has a staff audit in progress, this is only the first step in an appropriate review.

Given the history of the Seabrook project and the situation of PSNH, it is clear that the Commission must conduct a management audit from a forward looking perspective as well as an historical prudence perspective. I had felt that a management evaluation should have been done prior to the

conclusion of this case.³⁰⁽¹¹⁶⁾ However, a prudency review of management's decisions is a necessary part of a management evaluation, and time constraints precluded that investigation in this case. I continue to believe that a management evaluation is essential.

Limiting ratepayer exposure in the event Seabrook can not be completed.

Although the Commission may have increased confidence in the estimates of direct construction costs, there continues to be a substantial risk of schedule slippage and cost increases, as has been previously discussed. Since this evaluation indicates that it would not be financially feasible for PSNH to support significant additions of debt, the Commission must recognize the possibility that PSNH may not have the capability to complete Seabrook. The question of recovery for abandoned plant has not been finally resolved; there is a possibility that the Supreme Court may ultimately find that the antiCWIP statute, RSA 378:30-a, is unconstitutional relative to its application to abandoned plant. Expenditures from this financing would substantially increase the investment in Seabrook and thus, increase the ultimate exposure of ratepayers if the plant is abandoned and if recovery is allowed. Given the findings in this decision relative to the fragile economic and financial viability of Seabrook completion, ratepayers should not be exposed to this risk. The financing should be conditioned to limit cost recovery from ratepayers to those expenditures which were prudently incurred prior to date of this Order in the event that Seabrook 1 does not become operational and that RSA 378:30-a is found to be unconstitutional.

Third Mortgage

Finally, the Commission should not allow PSNH to further mortgage its non-Seabrook assets. The Commission must be concerned about the possibility of bankruptcy after completion of this financing because Seabrook can not be completed for whatever reason.

The Company in its revised petition seeks authorization pursuant to RSA 369:2 to enter into a Third Mortgage indenture to provide security for the Deferred Interest Bonds (DIBs) and/or the Pollution Control Revenue Bonds (PCRBs). (Petition, paragraphs 4 and 14) Subject to the prior lien of the Company's First Mortgage and the Company's General and Refunding Mortgage, the proposed Third Mortgage would encumber the same assets as the Company's General and Refunding Mortgage (present and future property, tangible and intangible, including franchises), except that the Third Mortgage will not encumber the Company's assets located outside the State of New Hampshire. (Petition Para. 4) The Third Mortgage would permit the issuance of one or more series of bonds to provide security for the DIBs and/or PCRBs and would also permit the issuance of one or more future series of third mortgage bonds, the issuance of any such future series of third mortgage bonds being subject to prior approval by this Commission. (Id.)

Upon a review of all of the testimony, I believe that the Company has not met its burden of proof that the third mortgage is required to market the securities, and authorization to enter into the proposed third mortgage

indenture required by RSA 369:2 should be denied. The potential assistance the third mortgage might give to the marketing effort is outweighed by the need to protect the financial

integrity of the Company's existing generating assets from overburdensome mortgages.

The Company contends that the third mortgage provision is reasonable under the circumstances because investors had previously been advised that the next PSNH financing would be secured and because the underwriters believe the third mortgage security would broaden the market and lower the cost of financing. In addition, the Company indicates that the use of secured debt rather than unsecured debt avoids the need to seek amendment of the limits on issuance of unsecured debt in PSNH's Articles of Agreement.

Although it is true that investors have been advised that the third phase financing would include third mortgage security, this argument is not convincing in supporting its necessity. The PSNH three phase financing plan originally devised by Mr. Hildreth in the spring of 1984 has undergone significant changes with investor acceptance. In fact, it is obvious that the financing plan originally petitioned for by the Company in this docket on November 15, 1984 has undergone radical changes and representatives from three investment banking firms including Mr. Hildreth now assure the Commission that investors view the changes positively. The changes include the elimination of Newbrook Corporation, the elimination of credit support from the proposed "Yankee Swap" and the purchase of Treasury Investment Growth Receipts (TIGR), and the elimination of the request for authority to exchange the third mortgage bonds for First Mortgage bonds and G&R bonds consistent with the indenture limitations of these mortgages. (Petition of November 15, 1984) In light of these material changes, the contention that a feature of the financing must be retained because this is what investors expect is not supportable.

The three investment banking experts did testify that the third mortgage feature would improve the marketability by broadening the market and lowering the cost. (27 Tr. 5048-49 and p. 5092). However, neither Mr. Jetmore nor Mr. Hildreth were willing to venture an estimate of the cost effect on the securities issuance of including the third mortgage. (27 Tr. 5046-48) In fact, Mr. Hildreth indicated that dropping the third mortgage would not be a significant change, but that he recommended including as much flexibility of terms in the Commission order as possible. (27 Tr. 5050). Mr. Meyer also indicated that he recommended the third mortgage provision for flexibility, but could not quantify a cost effect. (27 Tr. 5059, 5060). None of the witnesses testified that the financing could not be marketed without the third mortgage.

In fact, Mr. Hildreth's earlier testimony to the Commission indicated that the third mortgage feature was not worth much and that it was the upgrading to G&R and First Mortgages that made the security feature attractive.

But it is a third mortgage and I venture to say in this room nobody has a third mortgage bond. And you could go out on the street and the first million people you find they don't have a third mortgage bond. You don't see third mortgage bonds.

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We are almost inventing something that is new. And not between you and I, but my judgement is that a third mortgage bond is not worth much. That is the problem. And I know it is a bond, a mortgage on the assets of all of Public Service of New Hampshire, but it is not a first mortgage and it is not even a second mortgage, it is a third. And there aren't many third mortgages around. It isn't worth much and that is why our plan is to go from a third mortgage to

a general and refunding mortgage and then eventually to a first mortgage. And that is how investors will buy. (6 Tr. 1118-19).

Of course, the upgrading feature has now been eliminated.

Finally, the Company argues that the third mortgage provision relieves the necessity of amending the Company's Articles of Agreement. The Company's prospectus of July 6, 1984³¹⁽¹¹⁷⁾ indicates at 20 that:

The general effect of the provisions of the Articles of Agreement is to limit the cumulative amount of unsecured term indebtedness incurred during a stated period to an aggregate amount of secured and unsecured indebtedness (other than indebtedness issued for refundings) not exceeding 60% of net plant additions during the period.

As of May 31, 1984 the amount of unsecured debt that could be issued was approximately \$426,100,000. (Prospectus at 20) Since that time the Company has completed the \$425 million debenture financing. Mr. Bayless testified that the Company could only issue about \$48 million of unsecured debt as of the end of December 1984. (28 Tr. 5266, 5267 and Exhibit 142).

The Company also provided a description of the process for amending the Articles of Agreement and an estimated timetable for accomplishing the amendment. (Exhibit 142). According to this timetable the Amendment process expected to take 75 to 107 days. Since there was no cross-examination relative to this exhibit, the Commission cannot determine whether this schedule could be significantly expedited. For example, the 30-60 day period for writing proxy material and SEC clearance and the 35 day period for solicitation of proxies might be shortened considerably if necessary.

The Company also provided in Exhibit 152 a detailed description [sic] the number of times and circumstances under which the Articles of Agreement have been amended in the last 10 years. There have been 17 separate amendments during this time period, indicating that amendment of the Articles of Agreement is not an unusual occurrence.

While there is some concern about the time required to amend the Articles of Agreement, the evidence is not convincing that this is an insurmountable constraint to the timely conclusion of this financing. This process could be undertaken while a marketing effort is in progress. A final closing cannot take place in any event until all necessary regulatory approvals have been granted in other States. Furthermore, the Company has been well aware of the constraint in its Articles of Agreement as indicated in the July 6, 1984 Prospectus. In the past, the Company has made advance preparations to amend the Articles of Agreement when

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necessary to avoid this kind of time constraint. The Company has had ample time to amend the Articles of Agreement and with prudent planning this problem could have been avoided.

Since the evidence does not support the necessity of the third mortgage to this financing, greater weight should be placed on the value of retaining the financial flexibility that presently exists with unencumbered plant. At the present time PSNH has a total of \$347 million in first and second mortgage bonds, whereas the net book value of utility plant excluding construction is \$439 million. (Exhibit 94). Thus, roughly \$100 million in assets are presently unencumbered.

The evidence indicates that the ability to raise even modest amounts of capital during a bankruptcy reorganization depends upon the availability of security. The testimony of Mr. Vaughn and Dean Viles has been referenced previously in this regard.³²⁽¹¹⁸⁾ Dean Viles' testimony particularly emphasized the importance of having some flexibility in a reorganization.

... now we seem to have by simple mathematics, \$83 million³³⁽¹¹⁹⁾ of unencumbered plant and other real property assets. I think that that could be extremely valuable in a reorganization because it would give room to maneuver when applying the provisions of section 364 of the code to raise capital to do what's needed to be done, either at the direction of the Commission or on the decision of the Company in reorganization." (20 Tr. 3557-58).

In light of the prior analysis of the need for power given Seabrook cancellation, it is clear that the ability to raise some capital could be critical to the installation of jet capacity, to the participation in the Hydro-Quebec Phase 2 project or for the funding of aggressive conservation programs. The public interest requires that this flexibility be retained.

In addition, Dean Viles emphasized that if borrowing on a secured basis goes too far, the ability to conduct business as usual during a Chapter 11 reorganization may be severely hampered because all of the cash flow that was not necessary to keep the Company going would have to be diverted to paying creditors. (19 Tr. 3472) If this were the case, payment of property taxes as an administrative expense during the course of reorganization proceedings could be jeopardized. (19 Tr. 3472-3474). This would result in serious repercussions to towns and cities that rely heavily on property taxes from PSNH.

In view of this substantial evidence, the Commission should find that the addition of \$525 million in third mortgage liens is contrary to the public interest.

Opinion Conditional

The particular conditions and exceptions which I believe to be necessary in the public interest are summarized on page three of this opinion. In addition, the findings in this decision are based upon the planning of the Joint Owners to go to full Seabrook construction in June. This planning assumption

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may no longer be valid because of subsequent regulatory actions in other states. If full construction is significantly delayed, the findings of this decision would not continue to be valid, and are subject to review prior to final approval.

FOOTNOTES

¹On August 21, 1984 N.H. Yankee applied to the Commission pursuant to RSA 374:22 for permission to engage in business as a public utility and concurrently, pursuant to RSA 369 et seq, for authority to issue and sell 100 shares of common stock. In Docket No. DF 84-229, after public hearings, the Commission issued Order No. 17,245 (69 NH PUC 590) authorizing N.H. Yankee to engage in business as a public utility within the town of Seabrook for the sole purpose

of acting as managing agent for the construction of the Seabrook nuclear power project and further authorizing it to issue and sell its common stock.

On November 9, 1984, N.H. Yankee filed a petition for (a) an order authorizing acquisition of its stock by the joint owners of the Seabrook nuclear power facility and (b) for a specifically limited enlargement of its authority to do business as a public utility within the town of Seabrook so that it may act as managing agent for the Joint Owners in the operation of the Seabrook plant (Docket No. DF 84-339). A public hearing was held on December 20, 1984 and the petition has been taken under advisement by the Commission.

²Orders No. 17,057 (69 NH PUC 275) and 17,076 (69 NH PUC 326).

³Re Campaign For Ratepayers' Rights, Docket No. 84-325; Re Campaign For Ratepayers' Rights, Docket No., 84-379; and Re Seacoast Anti-Pollution League, Docket No. 84-313. These three dockets were consolidated by the Supreme court for appeal purposes and oral arguments were heard on January 8, 1985.

⁴Seacoast Anti-Pollution League previously appealed an order of the Commission in the same docket claiming that the scope of the proceedings as defined by the Commission was too narrow in light of *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984) and claiming that the Chairman of the Commission should have recused himself from the proceedings. The Court upheld the Commission's definition of scope, but held that the Chairman should have recused himself from the proceedings. The case was remanded for the latter reason. *Re Seacoast antipollution League*, 125 N.H. 465, 482 A.2d 509 (1984) (SAPL I). On September 10, 1984, following the SAPL I decision, the PUC Chairman recused himself from this Docket in Order No. 17,197. (69 NH PUC 500). Pursuant to a request from the Commission in Order No. 17,196 (69 NH PUC 499) and RSA 363:20, the Governor, with the consent of the Executive Council, appointed John N. Nassikas as Special Commissioner in DF 84-167 and DF 84-200 and related matters. The Commission subsequently appointed Special Commissioner Nassikas as presiding officer in this docket.

⁵SAPL II, 125 N.H. 708, 482 A.2d 1196.

⁶The NHEC did not participate in the proceedings.

⁷First Procedural Order (69 NH PUC at p. 450).

⁸See e.g., Supplemental Order No. 17,332 (69 NH PUC 670); Second Supplemental Order No. 17,333 (69 NH PUC 671); Third Supplemental Order No. 17,343 (69 NH PUC 679); Fourth Supplemental Order No. 17,359 (69 NH PUC 690).

⁹Report and Fifth Supplemental Order No. 17,430 (70 NH PUC 42).

¹⁰Exh. 3 at 9.

¹¹Report and Third Supplemental Order No. 17,343 (69 NH PUC 679).

¹²Id. at 4.

¹³Id. at 5.

¹⁴Id. at 6.

¹⁵Id. at 7.

¹⁶Order No. 17,222 (69 NH PUC at p. 541).

¹⁷Exh. 173 at 3.

¹⁸Id. at 4.

¹⁹2 Tr. 212

²⁰See, Exh. 3 at 8, 9.

²¹Exh. 173 at 7.

²²Exh. 174 at 7.

²³Id

²⁴Id.

²⁵Id.

²⁶Id.

²⁷Mr. Hildreth of Merrill Lynch testified that with further delays, Unit I becomes less economic, the longer the delay the more likely the occurrence to adverse events which could affect the Joint Owners and the more likely the Joint Owners would lose the advantage of the momentum gained since the liquidity crisis (5 Tr. 945).

²⁸Testimony was also presented by Staff and Commission witnesses Bruce Ellsworth, Sarah Voll, Mark Vaughn and Donald Trawicki. However, inasmuch as the Staff is not a party, as such, it has not filed a brief or otherwise taken an advocacy position in this proceeding. See, N.H. Admin. Rules, Puc 203.15.

²⁹Although PSNH estimates that the incremental cost of Seabrook is \$882 million, the proposed financing is based on the assumption that it will cost \$1 billion to complete construction. This prefinancing level was a requirement of the Seabrook Joint Owners. See Exhibit 23; Exhibit 106; PSNH Brief at 16.

³⁰As discussed above, the Company also presented the testimony of Mr. Derrickson, Mr. Plett and Mr. Brown to support several of the underlying assumptions of Mrs. Hadley's analysis. Since those assumptions have been previously identified, the summary of the testimony of Mr. Derrickson, Mr. Plett and Mr. Brown will not be repeated.

³¹The Consumer Advocate witness Amory Lovins stated that he was offering no forecast or projection of PSNH long term demand (10 Tr. 1-37).

³²Although the court referred to the Commission's Report and Supplemental Order No. 17,138 (69 NH PUC 412) in Re PSNH, DF 84-167 rather than to the Commission's August 2, 1984 Order of Notice in the instant docket, it is important that it was precisely the quoted language in the July 30, 1984 Order which was deferred to this proceeding.

³³Several Intervenors or their witnesses believed that such an allocation is irrational and recommended that a mechanism be developed to allow the Commission to allocate fairly the

sunk cost in abandoned plant. See e.g., Brief of CLF at 2-3; Testimony of Consumer Advocate witness Lovins at 11, Tr. 1923-24.

³⁴Of course, even if 100% of the sunk costs are excluded from ratebase for ratemaking purposes, debt investors would still be entitled to recovery to the extent that PSNH is not relieved of such obligations in a bankruptcy proceeding.

³⁵Common facilities are those facilities which are necessary to the operation of both units. An example of common facilities would be the portion of the plant devoted to the storage of nuclear waste.

³⁶This \$4 million per week and the subsequent increase to \$5 million per week are total project costs. PSNH's share of those costs are proportionate to its 35.56942% ownership share in the facility.

³⁷Most of that \$50 million is attributable to the cost of financing which is booked as AFUDC. Since the calculation is a total project calculation, the AFUDC component is based on the average AFUDC rate for all the Joint Owners. Since PSNH's AFUDC is the highest of all Joint Owners, the Company's share of the cost of delay is higher than 35% of \$50 million.

³⁸The allowance item is money reserved to pay for costs that have a high probability of occurring, such as rework. A contingency is for costs that have not yet been anticipated. 2 Tr. 365.

³⁹This is to be contrasted with the 3% contingency included in prior estimates. See e.g., Re Public Service Co. of New Hampshire, 68 NH PUC 257 (1983). Mr. Derrickson acknowledged that such a 3% contingency would be too low. 2 Tr. 366.

⁴⁰We recognize that although construction expenditures are increasing on a per week basis, See e.g., Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110), that the project may continue to be subject to further delays due to, inter alia, the inability of other Joint Owners to obtain timely regulatory financing approvals. See e.g., Order of April, 4, 1985 of the Massachusetts Department of Public Utilities. PSNH has specified the effect of such delays on the cost and schedule of the project in Exhibit No. 11. To the extent that the information contained in Exhibit 11 is applicable to the period of time up to fuel load and to the extent that such delays are actually experienced, we accept the Company's analysis as summarized in Exhibit 11 as a basis of estimating the effect of those delays on the projected cost and schedule of Seabrook Unit I.

⁴¹The four month interval supported by the Company is one month longer than the 3 month interval set forth in the Westinghouse manual and which had previously been the Company's official estimate from the beginning of construction. DE 81-312, (68 NH PUC 257).

⁴²We also note that we will deny the Company's request to apply \$30 million of the proceeds of the Unit financing to the proposed financing. See, infra at p. 269. Accordingly, the Company will have those funds available in the last months of Seabrook construction should they be necessary.

⁴³Mr. Trawicki employed a pessimistic assumption of an October of 1987 COD with an associated cost of \$1.3 billion in his financial feasibility analysis. See e.g., Exh. 95 at Schedule

1-2.

⁴⁴The record reflects that the parties used the term "availability factor" in addition to "capacity factor". Those terms have different meanings. An availability factor measures the percentage of the time a plant can be used if the generating utility wishes to use it. The capacity factor measures the percentage of kwhs that are actually generated at the plant as compared to the number of kwhs which would be generated if the plant were generating at 100% of capacity for every hour of the year. 11 Tr. 1998-99. Despite the different definitions, it appears that the terms are used synonymously throughout the record. This is not inappropriate because Seabrook Unit I is designed as a baseload plant, i.e., a plant which is designed to run at full capacity 24 hours per day.

⁴⁵It is noteworthy that although PSNH in brief argued that the capacity factor estimates of Dr. Rosen and Mr. Chernick should be rejected, it did not choose to argue directly in favor of its own estimate.

⁴⁶Exh. 63 at 79.

⁴⁷Exh. 4 at IV-6.

⁴⁸DE 81-312, (68 PUR4th 257).

⁴⁹Exh. 4 at IV-2.

⁵⁰Exh. 4 at IV-3.

⁵¹Exh. 63 at 89.

⁵²The distinction between total and incremental cost arises because PSNH has already prepaid certain nuclear fuel costs. Thus, they could have been considered "sunk." However, the use of a total cost estimate more accurately reflects the actual cost of operating the plant. Thus, PSNH's methodology was proper.

⁵³It is important to emphasize that this assumption, which acknowledges uncertainty and lack of actual experience, is being used solely for the purpose of an incremental cost analysis of alternatives. We do not intend this assumption to carry into any determinations we may be required to make as to the assumed useful life of the plant for accounting or ratemaking purposes. Those determinations must await the development of an appropriate record in a properly noticed future proceeding.

⁵⁴PSNH appropriately assumed that the cost of the proposed financing would be at the high end of the range for which approval is sought.

⁵⁵The 16.1% return on equity is the same as that allowed by the Commission in the Company's latest rate case. Re Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563, 578-581 (1984).

⁵⁶In its financial runs, PSNH depicted rates as the average cents per kwh for all customer classes. See e.g., 30 Tr. 5669. If it had depicted residential rates only, the cents per kwh figures would be higher. Id. It is appropriate to use a blended assumption for consumer discount rates as it is to project future energy prices.

⁵⁷We have previously discussed conservation and cogeneration potential in the need for power portion of this Order. The instant discussion is based on the testimony of Mr. Hilbert and Mr. Lovins which suggest that aggressive utility investment programs in conservation and cogeneration would be a least cost substitute for Seabrook Unit I power.

⁵⁸Exh. 4 at Attachment Staszowski 4. The assumption that small power contributions stay constant between cancellation and completion alternatives is not precisely accurate. The record reflects that such contributions may increase in the cancellation case. 12 Tr. 2080. However, given the testimony of Mr. Ellsworth and Dr. Voll about the level of dependable small power capacity (See e.g., 25 Tr. 4649-66), we cannot conclude that the change would be of sufficient magnitude to disturb the results of the comparison.

⁵⁹A jet is a combustion turbine unit. The turbine is generally small and similar to the jet engine of an aircraft. The turbine is connected to a generator which produces the electricity. The capital cost of a jet is usually low, but the operating cost is much higher than that of a nuclear or coal unit. 8 Tr. 1345-46.

⁶⁰Dr. Rosen testified that the most significant differences between his analysis and Mr. Staszowski's had to do with the applicable Seabrook assumptions in the completion alternative. 13 Tr. 2200.

⁶¹The proposed new financing adds a positive dimension to the net benefit of Seabrook. The incremental cost to complete Seabrook is lower than the cost in the Exh. 43 analysis due to lower AFUDC costs attributable to the new financing. The costs are based on 35.6594% ownership of Seabrook or 409 MW of capacity since sale of 38 MW of Seabrook to the NHEC is not required in this financing proposal. Assuming an in service date of October 31, 1986, the incremental cash cost is \$392 million (incremental cash \$311 million plus incremental AFUDC \$81 million). Assuming an in service date of March 31, 1987, the incremental cost is \$500 million (incremental cash \$392 million plus incremental AFUDC \$108 million). Exh. 136 at 2.

⁶²Several intervenors argued that Mr. Staszowski incorrectly assumed that PSNH would have to continue to service the debt incurred to finance Seabrook sunk costs in the cancellation scenarios. Since those debt service costs will exist in both completion and cancellation cases (the only issue is how the cost of servicing the debt will be allocated), the assumption is proper for an incremental cost analysis (36 Tr. 6901-02).

⁶³The capability responsibility for the UNITIL load will remain a New England obligation.

⁶⁴In his testimony in this proceeding, Mr. Robert Harrison, PSNH's Chief Executive Officer renounced his voluntary offer of a cost cap on PSNH's 35.56942% share of a \$4.5 Billion investment in Seabrook I for ratemaking purposes, Exh. 161 at 2-3, on the ground that regulatory uncertainty involving financing by the Joint Owners creates too much regulatory risk for such a voluntary undertaking. 37 Tr. 43-44, 71.

⁶⁵PSNH had earlier requested that the Commission take administrative notice of the report. Various Intervenors objected to the PSNH motion because such an evidentiary mechanism would preclude cross-examination of the authors of the report. Subsequently, the BIA reported that the authors of the report were prepared to present a witness to support the authenticity, analysis and conclusions of the report. No objection to the proffer of a witness to support the

report was interposed by any party. The Commission endorsed the concept of a supporting witness subject to cross-examination as a reasonable approach to test the reliability of the analysis and conclusions of the report. Report and Fourth Supplemental Order No. 17,359 (69 NH PUC 690).

⁶⁶Dean Viles also testified that bankruptcy policy under Chapter 11 is to allow a debtor relief from creditors to preserve the enterprise as an ongoing business. While we acknowledge this policy to be the case, we cannot find on this record that the risks and uncertainties of a bankruptcy of PSNH would be resolved in a manner that best balances ratepayer and investor interests. Cf., RSA 363:17-a (Commission as arbiter between interests of ratepayer and interests of Company).

⁶⁷We reject Intervenor argument that the real barrier to financing is RSA 378:30-a, rather than the effect of being in bankruptcy. While the antiCWIP law certainly is a factor in the access of PSNH to financial markets, it is more accurate to conclude that any existing financing difficulties would be substantially exacerbated if the inability to recover the sunk cost in cancelled plant (or in plant under construction) triggered a Chapter 11 filing.

SUPPLEMENTAL ORDER

¹Re New England Electric Transmission Corp., 68 NH PUC 153 (1983).

²Id.

³Exhibit 4, Attachment Staszowski 2 at 1 and Table IV-8 at IV-17.

⁴Source: Exhibit 114, data provided by PSNH.

⁵Source: Exhibit 112, Table 1, data provided by PSNH.

⁶Exhibit 119.

⁷Id.

⁸PSNH Reply Brief at 11.

⁹Exhibit 4, Tables IV-8, IV-9.

¹⁰BIA Brief at 42, PSNH Brief at 91, 107.

¹¹The 63 MW figure is based upon the 1984 load forecast which assumes completion of both Seabrook units. The 1985 load forecast adjusts for Seabrook 2.

¹²SAPL Reply Brief at 4-7.

¹³Concord and Exeter & Hampton have received approval from NEPOOL for membership. (Exhibit 151) Consequently, future purchase agreements between the two utilities would be between NEPOOL member utilities each with their own capability responsibility.

¹⁴Exhibit 131, PSNH Petition to FERC.

¹⁵Id., reference to PSNH request to continue contracts until 1992.

¹⁶UNITIL believes that capacity is available in excess of their requirements from other sources, including NEPOOL, New York, Canada and SPPs. (Exhibit 151). Commission

evaluation of their alternate supply plans is beyond the scope of this docket. However, the problem of raising capital in bankruptcy would not apply to UNITIL, whereas it is an issue if it is assumed that PSNH would be required to meet this capability responsibility.

¹⁷The NO NEWBROOK Scenario assumes the same level of demand as the Seabrook completion scenarios.

¹⁸Calculated from data on industrial sales contained in Exhibits 33 and 129.

¹⁹Elasticity of demand is the measure of the percent change in the quantity demanded given a percent change in the price of the product.

²⁰Assumptions I find appropriate for financial and economic analysis are discussed in detail starting infra at 294.

²¹In the optimistic case, prime sales are projected to increase at a 4% compounded rate. The base case incorporates the prime sales estimates in the PSNH 1984 load forecast. The pessimistic case reduces prime sales from the 1984 load forecast estimates by 4.8% each year after October 1, 1987. (Exhibit 95, Schedule 1-2).

²²It was not clear in the prior proceeding (DR 84-167) exactly what was contributing to the rising equity ratios because the long term effects of the financing were not investigated.

²³Exhibit 165 at 7.

²⁴Public Service Company of New Hampshire Preliminary Prospectus dated September 14, 1984 at 6.

²⁵Id.

²⁶Decision of Vermont Public Service Board, Docket No. 4701 (December 28, 1984) at 14.

²⁷For purposes of economic analysis it does not matter whether UNITIL is part of the PSNH capability responsibility. It is the revenue from sales to UNITIL that is important.

²⁸Pierce, Richard J. Jr., "The Regulatory Treatment of Mistakes in Retrospect: Canceled Plants and Excess Capacity," 132 U. Pa. L. Rev., 497, 513.

²⁹Id. See also, National Regulatory Research Institute, Commission Treatment of Overcapacity in the Electric Power Industry, September 1984 at 86-90.

³⁰Dissenting Opinion of Commissioner Aeschliman, DF 84-167, Report and Order No. 17,222 at 20, 21.

³¹Administrative Notice taken by Commission.

³²Supra at 25.

³³This estimate is based on the October 31, 1984 balance sheet (Exhibit 87); an updated balance sheet (Exhibit 94) shows a higher amount of unencumbered assets because of the maturity of some first mortgage debt in the interim.

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NH.PUC*04/19/85*[61045]*70 NH PUC 309*Manchester Gas Company

[Go to End of 61045]

70 NH PUC 309

Re Manchester Gas Company

DF 85-21, Order No. 17,559

New Hampshire Public Utilities Commission

April 19, 1985

ORDER granting gas utility authority to issue and sell a medium term promissory note.

Security Issues, § 49 — Financial condition — Medium term note — Future flexibility — Gas utility.

A gas utility was granted authority to finance plant additions through issuance of a medium term unsecured promissory note, rather than through longer term first mortgage bonds, because the medium term note would give the utility flexibility in financing larger amounts in the future and because issuance of the note in conjunction with issuance of an identical note by an affiliate of the utility would result in substantial savings in interest and issuance expenses.

APPEARANCES: David W. Marshall, Esquire for Manchester Gas Company; Dr. Sarah Voll, Chief Economist and Daniel D. Lanning, Assistant Finance Director for the NHPUC Staff.

By the COMMISSION:

REPORT

By a petition filed January 22, 1985, Manchester Gas Company (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a gas utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2, and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its medium term (5 year) promissory note or notes, 12 1/2% due 1990, in the aggregate principal amount of \$2,500,000.

At a hearing held in Concord on March 8, 1985, the Company submitted the following exhibits in support of its petition: a statement of the Company's capital structure as of September 30, 1984 proformed to reflect the proposed issue, prefiled testimony of the Company's Treasurer, Michael J. Mancini, Jr., a proformed income statement as of September 30, 1984, a

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statement of the estimated issuance expenses for the note; excerpts of meetings approving the note by EnergyNorth, Inc. (Manchester Gas Company's parent company) and the Company's board of directors, a letter from Aetna Life and Casualty to EnergyNorth, Inc. citing terms of

purchase and sale of securities (agreement), and a cash forecast for fiscal year 1985.

The proceeds from the sale of the note will be used to retire short term debt and the outstanding balance of a revolving long term note (discussed below), both of which have been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. In addition, the proceeds will also be used for increased construction activity the Company is forecasting for 1985.

Borrowings by utilities used to finance plant additions traditionally have a term of 15-30 years and are secured by first mortgage bonds. This financing differs, however, in that it is unsecured with a 5 year term. According to the Company, it will have a need to finance larger amounts in future years. It contends that this medium term note will give it flexibility to refinance a larger, more attractive issue when that need arises. Moreover, the Company argues that this medium unsecured term note is necessitated by the Company's desire to merge at some future time with its affiliate gas distribution company(s). Although the Company does not advocate it at this time, the Company contends that if and when a merger becomes possible, this medium term note will allow it greater flexibility in the implementation of such a merger than would a long term secured note.

The Company's witness, Michael J. Mancini, Jr., testified as to the cost savings of this issuance resulting from the Company's affiliation with ENI. He explained that this note is to be issued in tandem with a note from another ENI affiliate, Gas Service, Inc. (DR 85-22). According to Mr. Mancini, the institution that will purchase the Company's note, Aetna Life and Casualty, considers both Companies' notes (\$2.5 million each) as a single \$5 million dollar issue because of their common parent, ENI. This provided the Company and Gas Service, Inc. with a lower interest rate than would have been possible if each note were treated as a separate issuance. Mr. Mancini further testified that additional savings will result from the sharing of common legal fees and investment banker fees. The Company estimates savings of \$72,375 related to the joint issuance over the life of the note.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of this note in conjunction with the issuance of an identical note by Gas Service, Inc., an affiliate, will result in substantial interest and issuance expense savings as detailed above. Moreover, it will allow the Company flexibility in financing larger amounts in future years. We therefore will grant the Company's petition.

While we will grant the Company's petition, we must note our concern regarding the cost of this issue. In arranging this financing, the Company did not examine whether the issuance of a secured note would result in a lower cost. As the Company is certainly aware, unsecured debt is generally more costly than secured debt. As part of its investigation and negotiation process in issuing similar notes in the

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future, we expect the Company to examine whether issuing secured notes would result in a lower cost. It should also be noted that for ratemaking purposes the Commission does not approve or disapprove this financing but will defer that judgment until the next rate case.

Two additional points merit our attention. First, as stated above, one of the purposes of this

financing is to retire the outstanding balance on the Company's 5 year revolving note from the New England Merchants National Bank which the Company has been using to finance construction. This note, which the Company has carried on its books as a long-term note, was originally issued in 1980 as an unsecured promissory revolving note at prime plus 7% due 1985 up to an aggregate amount of 1.5 million. The note now carries an interest rate indexed to the prime rate of the bank and its aggregate amount is \$2 million. Furthermore, at the hearing, the Company indicated that this revolving note will continue to be available. It is unclear from the record when in 1985 the revolver comes due and whether, if at all, it will be renewed.

A review of the Commission files reveals that the Commission never authorized the issuance of this debt instrument as required by RSA 369, nor has the Company ever formally petitioned for approval. We therefore, will require the Company to immediately file a petition whereupon a separate docket will be opened to examine whether this long-term revolving note is consistent with the public good. RSA 369:1, 2, and 4. Accordingly, we will order the Company not to obtain further funds from this revolving note until it obtains authority to do so from this Commission.

In addition, during the hearings the Staff raised the issue of equity infusions by the Company's parent corporation, EnergyNorth, Incorporated. The Commission is concerned about the sources and uses of funds provided through a parent/subsidiary relationship and we will be monitoring these affiliated transactions very closely in the future.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the applicant, Manchester Gas Company, be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its medium term promissory note, 12.5% due 1990, in the aggregate principal amount of \$2,500,000, maturing five (5) years from date of issue, redeemable three years after actual issue date, in whole or in part at a premium equal to the present value (discounted at 10%) of the difference between the remaining interest due and the interest which could be earned on Treasury Bills with a maturity equal to the remaining average life of the prepaid note; and it is.

FURTHER ORDERED, that the proceeds of the issuance and sale of said medium term note, 12.5% due 1990, shall be applied to all of Manchester Gas Company's unsecured long term revolving notes from New England Merchants National Bank, and, to the extent not required therefore, to all of

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Manchester Gas Company's short term debt; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Manchester Gas Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said note, 12.5% due 1990, until the expenditure of the whole of said proceeds shall be fully accounted for; and it is

FURTHER ORDERED, that Manchester Gas Company shall not obtain further funds through the unsecured revolving note from New England Merchants National Bank without approval from this Commission in the form of an order.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1985.

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NH.PUC*04/19/85*[61046]*70 NH PUC 312*Gas Service, Inc.

[Go to End of 61046]

70 NH PUC 312

Re Gas Service, Inc.

Intervenor: Manchester Gas Company

DF 85-22, Order No. 17,560

New Hampshire Public Utilities Commission

April 19, 1985

ORDER granting a gas utility authority to issue and sell medium term promissory notes.

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Security Issues, § 49 — Financial condition — Medium term note — Future flexibility — Gas utility.

A gas utility was granted authority to finance plant additions through a medium term promissory note, rather than through long term first mortgage bonds, even though the cost of the new debt was 200 basis points above that of the debt it was replacing, because issuance of the new debt would allow the utility greater flexibility in its future financings and because issuance of the note in conjunction with the issuance of an identical note by an affiliate of the utility would result in substantial savings in interest and issuance expenses.

APPEARANCES: David W. Marshall, Esquire for Manchester Gas Company; Dr. Sarah Voll, Chief Economist and Daniel D. Lanning, Assistant Finance Director for the NHPUC Staff.

By the COMMISSION:

REPORT

By this petition filed January 22, 1985, Gas Service, Inc. (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein

as a gas utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2, and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its medium term (5 year) promissory note or notes, 12 1/2% due 1990, in the aggregate principal amount of \$2,500,000.

At the hearing held in Concord on March 8, 1985, the Company submitted the following exhibits in support of its petition: a statement of the Company's capital structure as of September 30, 1984 proformed to reflect the proposed issue, prefiled testimony of the Company's Treasurer, Michael J. Mancini, Jr., a proformed income statement as of September 30, 1984, the estimated issuance expenses for the note, excerpts of meetings approving the note by EnergyNorth, Inc. (Gas Service, Inc.'s parent company) and the Company's board of directors, a letter from Aetna Life and Casualty to EnergyNorth, Inc. citing terms of purchase and sale of securities (agreement), and a cash forecast for fiscal year 1985.

The proceeds from the sale of the note will be used to retire short term debt which has been utilized by the Company for construction and acquisition of additions and improvements to the [sic] its plant and facilities. In addition, the proceeds will also be used for increased construction activity the Company is forecasting for 1985.

Borrowing by utilities used to finance plant additions traditionally have a term of 15-30 years and are secured by first mortgage bonds. This financing differs, however, in that it is unsecured with a 5 year term. According to the Company, it will have a need to finance larger amounts in future years. It contends that this medium term note will give it flexibility to refinance a larger, more attractive issue when that need arises. Moreover, the Company argues that this medium unsecured term note is necessitated by the Company's desire to merge at some future time with its affiliate gas distribution company(s). Although the Company does not advocate it at this time, the Company contends that if and when a merger becomes possible, this medium term note will allow it greater flexibility in the implementation of such a merger than would a long term secured note.

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The Company's witness, Michael J. Mancini, Jr., testified as to the cost savings of this issuance resulting from the Company's affiliation with ENI. He explained that this note is to be issued in tandem with a note from another ENI affiliate, Manchester Gas Company (DF 85-21). According to Mr. Mancini, the institution that will purchase the Company's note, Aetna Life and Casualty, considers both Companies' notes (\$2.5 million each) as a single \$5 million dollar issue because of their common parent, ENI. This provided the Company and Manchester Gas Company with a lower interest rate than would have been possible if each note were treated as a separate issuance. Mr. Mancini further testified that additional savings will result from the sharing of common legal fees and investment banker fees. The Company estimates savings of \$72,375 related to the joint issuance over the life of the note.

As stated above, the interest rate of this note is 12.5%. It will be utilized to retire the Company's short term debt, the rate of which is indexed to the prime rate (currently 10.5%). Thus, the cost of this new debt is 200 basis points above that which it is replacing. Therefore, given the increased rate, it would appear that this new issuance is not cost effective and does not

constitute economical financial planning. However, other circumstances exist which allow us to conclude otherwise.

During the hearing the Company submitted a cash flow forecast which detailed the Company's cash needs. To meet these needs, the Company will have to secure short term debt in an amount of \$2.3 million in September 1985. If the Commission were to deny this financing, the existing short term debt (which will be retired by the proceeds of this financing) and the additional \$2.3 million to be issued will place the Company very close to its approved maximum level of short term borrowing (\$5,000,000). This would force the Company into a position where it would be forced to borrow without having an adequate opportunity to seek the least cost financing arrangement. Thus, this financing, while somewhat greater in cost than the short term debt it will replace, will allow the Company greater flexibility in its future financings.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of this note in conjunction with the issuance of an identical note by Manchester Gas Company, an affiliate, will result in substantial interest and issuance expense savings as detailed above. Moreover, it will allow the Company flexibility in financing larger amounts in future years. We therefore will grant the Company's petition.

While we will grant the Company's petition, we must note our concern regarding the cost of this issuance. In arranging this financing, the Company did not examine whether the issuance of a secured note would result in a lower cost. As the Company is certainly aware, unsecured debt is generally more costly than secured debt. As part of its investigation and negotiation process in issuing similar notes in the future, we expect the Company to examine whether issuing secured notes would result in a lower cost. It should also be noted that for ratemaking purposes the Commission does not approve or disapprove this financing but will defer that judgment until the next rate case.

Two additional points merit our

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concern, First, during the hearings the Staff raised the issue of equity infusions by the Company's parent corporation, EnergyNorth, Incorporated. The Commission is concerned about the sources and uses of funds provided through a parent/subsidiary relationship and we will be monitoring these affiliated transactions very closely in the future.

In addition, during the hearing, there was some discussion regarding the appropriate short term debt level for the Company after this financing is completed and the proceeds used to retire the Company's short-term debt. In Report and Order No. 16,672 dated September 5, 1983 (68 NH PUC 242), the Commission increased the Company's short term debt level from \$4 to \$5 million until permanent financing could be arranged. In that Order at page 2 the Commission stated that "upon approval of said permanent financing, the short term debt maximum approved by this Order will be reviewed for its appropriateness." Now is the time for that review. We therefore will order the Company to file a petition within 30 days seeking approval of whatever short term debt level it feels is appropriate in light of the approval of this financing.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the applicant, Gas Service, Inc., be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its medium term promissory note, 12.5% due 1990, in the aggregate principal amount of \$2,500,000, maturing five (5) years from date of issue redeemable three years after actual issue date, in whole or in part at a premium equal to the present value (discounted at 10%) of the difference between the remaining interest due and the interest which could be earned on Treasury Bills with a maturity equal to the remaining average life of the prepaid note; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said medium term note, 12.5% due 1990, shall be applied to Gas Service, Inc.'s short term debt; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Gas Service, Inc. shall file with this Commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said note, 12.5% due 1990, until the expenditure of the whole of said proceeds shall be fully accounted for; and it is

FURTHER ORDERED, that within 90 days of the date of this order, the Company shall file a petition within 30 days stating the appropriate maximum short term debt level for Gas Service, Inc.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of April 19, 1985.

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NH.PUC*04/19/85*[61049]*70 NH PUC 318*Concord Natural Gas Corporation

[Go to End of 61049]

70 NH PUC 318

Re Concord Natural Gas Corporation

DR 83-206, Supplemental Order No. 17,567

New Hampshire Public Utilities Commission

April 19, 1985

ORDER approving a step increase and authorizing recovery of revenue deficiency.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Concord Natural Gas Corporation, a duly organized gas distribution company within the jurisdiction of the New Hampshire Public Utilities Commission, filed Fifteenth Revised Page No. 12, 13 and 14, Sixteenth Revised Page No. 15 and Seventh Revised Page No. 1 of Supplement No. 6 to its NHPUC Tariff No. 13 - Gas, on December 5, 1984, proposing a

step adjustment of \$154,875, in accordance with the stipulation approved in Commission Order No. 16,862 (69 NH PUC 27), said tariff pages to be effective January 5, 1985; and

WHEREAS, on January 3, 1985 said tariff revisions were suspended without prejudice, pending investigation, pursuant to Commission Order No. 17,386; and

WHEREAS, on March 29, 1985 Concord Natural Gas Corporation filed certain revisions decreasing the step adjustment by \$26,880 to \$127,995 as a result of a Commission staff audit and other events; and

WHEREAS, Concord Natural Gas Corporation request recoupment of the deficiency in revenue from January 5, 1985 to the date of this order, said recoupment to be combined with the company's current temporary surcharge, 1st revised page No. 2 of supplement No. 8 to its tariff, NHPUC No. 13 — Gas, approved in Commission Order No. 17,304 (69 NH PUC 648); and

WHEREAS, the Commission finds revised step increase of \$127,995 is just and reasonable and conforms with the stipulation agreement in Commission Order No. 16,862 ; it is hereby

ORDERED, that Concord Natural Gas Corp. be, and hereby is, granted a step increase of \$127,995 on all service rendered on and after January 5, 1985; and it is

FURTHER ORDERED, that Fifteenth Revised Page No. 12, 13, and 14, Sixteenth Revised Page No. 15, and Seventh Revised Page No. 1 of Supplemental No. 6 to Concord Natural Gas Corp.'s NHPUC Tariff No. 13 — Gas, be, and hereby is, rejected; and it is

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FURTHER ORDERED, that Concord Natural Gas Corp. file revised tariff pages designed to reflect an increase in rates of \$127,995, said tariff pages to be in accordance with stipulation agreement 12;2 approved in Commission Order No. 17,179 (69 NH PUC 459); and it is

FURTHER ORDERED, that Concord Natural Gas Corp. be, and hereby is, permitted recoupment of the revenue deficiency realized from January 5, 1985 to the date of this order in accordance with the terms described in Concord Natural Gas Corporation's March 29, 1985 letter to the Commission at 2; and it is

FURTHER ORDERED, that Concord Natural Gas Corp. file revised tariff supplement 12;8, and calculations thereof, reflecting recoupment of the revenue deficiency from January 5, 1985 to the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1985.

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NH.PUC*04/23/85*[61047]*70 NH PUC 316*New England Telephone and Telegraph Company

[Go to End of 61047]

70 NH PUC 316

Re New England Telephone and Telegraph Company

DR 85-108, Order No. 17,561
New Hampshire Public Utilities Commission
April 23, 1985

ORDER approving tariff revisions.

By the COMMISSION:

ORDER

WHEREAS, on April 15, 1985, New England Telephone and Telegraph Company filed with this Commission certain revisions to its Tariff No. 75 by which it expands the offering of Measured Service to the Candia, Epping, and Raymond exchanges; and

WHEREAS, the Commission finds such expansion a step in compliance with its earlier order to provide such services to all New England Telephone exchanges by the end of 1985; and

WHEREAS, the terms and conditions for such services are the same as earlier offerings; and

WHEREAS, the Commission finds such to be in the public interest; it is

ORDERED, that Supplement No. 19 (Title Page and Original Pages 1-6) and Part A, Section 5, 3rd Revised Page 20.7, New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect on May 15, 1985.

By order of the Public Utilities Commission of New Hampshire this twentythird day of April, 1985.

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NH.PUC*04/23/85*[61048]*70 NH PUC 317*Timco, Inc.

[Go to End of 61048]

70 NH PUC 317

Re Timco, Inc.

DR 85-42, Order No. 17,563
New Hampshire Public Utilities Commission
April 23, 1985

ORDER approving twenty-year rate order.

By the COMMISSION:

ORDER

WHEREAS, on February 14, 1984, Timco, Inc. (Timco) filed a long term Late filing; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and WHEREAS, the

Commission will allow Public Service Company of New Hampshire the opportunity to respond to Timco's Petition for a Twenty-Year rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in all other respects; it is therefore,

ORDERED NISI, that Timco's Petition for a Twenty-Year Rate Order, including the interconnection agreement and the rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentythird day of April, 1985.

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NH.PUC*04/29/85*[61051]*70 NH PUC 329*Pennichuck Water Works

[Go to End of 61051]

70 NH PUC 329

Re Pennichuck Water Works

DE 85-112, Order No. 17,569

New Hampshire Public Utilities Commission

April 29, 1985

ORDER suspending tariff revisions pending investigation.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works has filed with this Commission certain tariff revisions relating to a cross-connection control program; and

WHEREAS, the Commission finds that this filing requires investigation before rendering a decision; it is

ORDERED that 1st Revised Page 11 and Original Page 11A, Pennichuck Water Works tariff NHPUC No. 4 Water, be, and hereby are, suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentyninth day of

April, 1985.

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NH.PUC*04/30/85*[61050]*70 NH PUC 319*New Hampshire Electric Cooperative, Inc.

[Go to End of 61050]

70 NH PUC 319

Re New Hampshire Electric Cooperative, Inc.

Intervenor: Office of Consumer Advocate

DF 83-360, 14th Supplemental Order No. 17,568

New Hampshire Public Utilities Commission

April 30, 1985

ORDER on procedural motion.

Page 319

Evidence, § 30 — Previous proceedings — Record — Administrative notice.

A motion by an electric cooperative that the commission take administrative notice of certain portions of the record in another proceeding before the commission was granted because the material was relevant and because such notice would facilitate a complete and orderly review of the issues in the instant proceeding. [1] p.320.

Evidence, § 30 — Previous commission orders — Findings.

A motion by an electric cooperative that the commission adopt certain findings from a previous commission order was granted in those instances where the findings were generic and equally applicable to both proceedings. [2] p.321.

(AESCHLIMAN, commissioner, concurs, p. 328.)

By the COMMISSION:

Appearances: As previously noted.

REPORT

The procedural history of this docket has been set forth at length in previous Orders. See e.g., Report and Thirteenth Supplemental Order No. 17,514 (70 NH PUC 127); Report and Tenth Supplemental Order No. 17,479 (70 NH PUC 83); Report and Ninth Supplemental Order No. 17,464 (70 NH PUC 71); Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26). It is sufficient to note that pursuant to the Court's remand of this matter, Re Easton, 125 N.H. 205,

480 A.2d 88 (1984) (Easton) the Commission established a procedural schedule in Report and Ninth Supplemental Order No. 17,464 (February 22, 1985). Evidentiary hearings commenced on April 23, 1985. The purpose of this Order is to rule on several outstanding procedural motions. Those are Motions to take Administrative Notice of the record in DF 84-200; Motion of the New Hampshire Electric Cooperative, Inc. (NHEC), to Adopt Certain Findings from Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349 (1985) (Order 17,558) and Motion to Exclude Certain Testimony and Data Responses. We shall address each in turn.

Motions to Take Administrative Notice

[1] On March 15, 1985, the NHEC filed a Motion to take Administrative Notice of certain portions of the record in DF 84-200. The Commission in Report and Thirteenth Supplemental Order No. 17,514 directed the parties to respond no later than April 5, 1985. On April 5, 1985, responses were filed by Gary McCool and the Consumer Advocate. Mr. McCool objected to certain portions of the NHEC request. The Consumer Advocate, on the other hand, requested that the Commission take administrative notice of the entire record in DF 84-200. The NHEC supported the Consumer Advocate's position. On April 23, 1985, Gary McCool filed a Motion to take Administrative Notice of certain portions of the record in DF 84-200. In an on the record oral statement, Mr. McCool represented that he preferred that the Commission take administrative notice of the entire record rather than excluding from such notice portions of the record that he identified in his Motion.

The Commission may take administrative notice of the entire record or portions thereof if, in its discretion, such notice would facilitate a complete and orderly review of the issues in the instant proceeding and if the material is relevant. RSA 541-A:18V. (Supp.

Page 320

1983). After review we have decided that much of the material in the DF 84-200 record meets the above requirements. We also believe that the positions of the Consumer Advocate and the NHEC are well taken. We will define herein the extent to which the record in DF 84-200 is germane to the issues of the instant proceeding. Notice will eliminate the need to hear certain evidence that has already been adequately developed. Accordingly, we will take administrative notice of the entire record to be applied to those issues material to this proceeding which have not been foreclosed by material findings of fact or conclusions of law in DF 84-200.

The parties should be cautioned that our decision to take administrative notice of the record in DF 84-200 should not be construed as a decision on the weight to be accorded to any evidence contained in that record or to allow the use of that record as a collateral attack on findings which we decide should be common to both proceedings. All parties are privileged to present argument about which portions of the record should or should not be relied upon for our decision in the instant proceeding.

Motion to Adopt Certain Findings from Order 17,558

[2] On April 23, 1985, the NHEC filed a Motion for Adoption of Certain Findings from Report and Order in DF 84-200. Representative Easton filed a response on April 25, 1985 and Mr. McCool filed a response on April 26, 1985. The Motion to Adopt Certain findings

necessarily raises the issue of the scope of the instant proceeding. Accordingly, we will initially address the Motion by a general discussion of the relevant issues to be adjudicated in this docket. We will then examine the particular findings in Order No. 17,558 which can or cannot be adopted here.

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, the ultimate issue in this proceeding is "... whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed borrowing." Easton, 125 NH at p. 213.¹⁽¹²⁰⁾

In DF 84-200, we refined the above standard by setting forth three issues:

- 1) Whether the terms, conditions and amount of the proposed ... financing are in the public good;
- 2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and
- 3) Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital

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structure which would result from the successful completion of Seabrook Unit I ... DF 84-200, Order of Notice of August 9, 1984; 70 NH PUC at p. 164, 66 PUR4th at pp. 354, 355. See also Re Seacoast Anti-Pollution League, 125 N.H. 465, 482 A.2d 509 (1984).

We shall address the applicability of each of the above issues to the instant proceeding. Our approach will be to evaluate which findings are generic, in that they are equally applicable to both proceedings, and which findings are particular to the Public Service Company of New Hampshire (PSNH) and NHEC financings.

The issue of terms, conditions and amount of the proposed NHEC financing must be addressed in the instant proceeding. There are significant differences between the proposed financing from the Federal Finance Bank (FFB) and the Rural Electrification Administration (REA) and the prefinancing through Deferred Interest Bonds and Pollution Control Revenue Bonds considered in DF 84-200. Accordingly, no findings applicable to terms, conditions and amount adopted in Order 17,558 may be considered as applicable to the instant proceeding.

Issue No. 2 is an examination of the purpose of the proposed financing including incremental cost and alternatives as previously set forth. In evaluating incremental costs (including the utilization of the incremental cost standard of analysis, Order 17,558) or alternatives in relation to the purpose of the proposed financing, many of the findings in Order 17,558 may be applicable to the instant proceeding. Thus, we will not allow in this proceeding a collateral attack on findings in the previous proceeding to the extent that those findings are applicable to PSNH. However, to the extent that factors particularly applicable to the NHEC are distinguishable from

PSNH (e.g., differences in the need for and sources of power and the financing costs reflected in different levels of capitalized AFUDC), the parties are privileged to present evidence and argument. This is particularly true in the area of alternatives to Seabrook Unit I which may be evaluated on the basis of costs and other factors applicable to the NHEC.

The issue of financial feasibility also appears to involve differing analyses for PSNH and the NHEC. Accordingly, the parties are privileged to present evidence and argument on this issue.

Having determined the general issues to be adjudicated, it remains to rule on the NHEC's April 23, 1985 request that certain findings in Order 17,558 be applied to the instant proceeding. We shall address each request in turn.

The first request pertained to the Commission's grant of authority to PSNH to proceed with its proposed financing subject to certain conditions. This finding is accurately set forth by the NHEC and it is conclusive on the instant proceeding, subject to any modification of the finding in the event that the Commission rules favorably on any Motions for Rehearing. That Order determined that the financing approved will enable PSNH to complete its own share of construction. As to the financial viability of PSNH, see also, *Re Public Service Co. of New Hampshire*, 69 PUC 558 (1984), *aff'd Re Seacoast AntiPollution League*, 125 N.H. 708, 484 A.2d 1196 (1984); *Re Public Service Co. of New Hampshire*, 69 NH PUC 275 (1984). appeal pending, *Re Campaign for Ratepayers' Rights*, S. Ct. Docket Nos. 84-325, 84-379 and 84-313. The parties are privileged to present argument

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on the effect of the findings in the above cited Orders to the instant proceeding.

The second request pertained to our finding which accepted PSNH's 1984 load forecast for the purposes of the Commission's analysis in Order 17,558. Representative Easton objected to allowing this finding to be conclusive in the instant proceeding. To the extent that Representative Easton's objection applies to the use of PSNH's forecast to determine the NHEC's future demand and energy growth, it will be sustained. The parties are privileged to present evidence and argument on that issue. However, to the extent that the NHEC wishes to rely on our findings to establish future PSNH demand and energy growth for the purpose of estimating PSNH rates, our finding is conclusive except to the limited extent that NHEC's future demand and energy growth through probative evidence in this proceeding may significantly alter the PSNH forecast and resulting rates. Additionally, our finding that PSNH reasonably relied upon its own load forecast is conclusive.

The third request pertained to the Commission's finding that Seabrook Unit I is a necessary capacity addition to serve the public interest of New Hampshire consumers. Representative Easton objected to allowing this finding to be conclusive in the instant proceeding. In Order 17,558, we found that Seabrook Unit I is a necessary capacity addition to serve the public interest. Also, we found that Seabrook Unit I is a necessary capacity addition to serve New England through the New England Power Pool (NEPOOL). To the extent that the wholesale obligations included in PSNH's load forecast were used to determine the necessity of the Seabrook I capacity addition, the wholesale requirements issue as it pertains to PSNH and NEPOOL has also been determined. We have not determined the interest of NHEC consumers in

DF 84-200. The question of whether consumers are better served remains to be determined here. The parties may address the issue of whether the NHEC's share of Seabrook Unit I is a needed capacity addition to serve the capacity requirements of the NHEC's consumers and, accordingly, whether the NHEC's continued participation in Seabrook I is in the public interest.

The fourth request pertained to the Commission's finding that a \$1 billion cost to go for Seabrook Unit I is reasonable for financing purposes. Representative Easton objected to allowing this finding to be conclusive. The cost of completing Seabrook is an issue that is common to both proceedings. To the extent that common elements are involved, our finding of a \$1 billion incremental cost is conclusive. To the extent that there are elements which are particularly applicable to the NHEC (such as financing costs), the parties are privileged to present evidence and argument.

The fifth request pertained to our findings that a commercial operation date of December, 1986 is attainable (although there is a possibility of schedule slippage). Representative Easton objected to allowing this finding to be conclusive. This finding was directed at the construction schedule of Seabrook Unit I; an issue which is common to both proceedings. Accordingly, in the absence of additional evidence or argument not considered in DF 84-200, we will apply that finding here. See also, 70 NH PUC at p. 221, N.40, 66 PUR4th at p. 400, n. 40 (Standard for

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estimating effect of delay due to inter alia, the inability of Seabrook Joint Owners to obtain requisite regulatory financing approvals.)

The sixth request pertained to the Commission's finding that Seabrook capital additions will cost \$15 million in 1984 dollars escalating at a nominal rate of 7.5% per year. See, 70 NH PUC 164, 66 PUR4th 349. This finding was directed at an element that is common to both proceedings. Accordingly, in the absence of additional evidence or argument not considered in DF 84-200, we will apply that finding here.

The seventh request pertained to the Commission's finding that the Seabrook Unit I capacity factor will range between 52.5% and 72% and that, for the purposes of the analysis in Order 17,558, a capacity factor of 60% will be assumed. Order 17,558. Representative Easton objected to allowing this finding to be conclusive. The capacity factor finding was directed at an element that is common to both proceedings. Accordingly, in the absence of evidence or argument not considered in DF 84-200, we will apply that finding here.

The eighth request pertained to the Commission's finding that nuclear fuel costs will range from .94/kwh in 1984 dollars to 2.4/kwh in 2005 and that for the analysis in Order 17,558 a nuclear fuel cost of 1.41/kwh in 1986 to (70 NH PUC 164, 66 PUR4th 349.) This finding was directed at an element that is common to both proceedings. Accordingly, in the absence of evidence or argument not considered in DF 84-200, we will apply that finding here.

The ninth request pertained to the Commission's finding that Seabrook I Operation and Maintenance (O&M) expenses will cost \$69 million per year escalating within a range of 0% to 4% per year in real terms and that for the analysis in Order 17,558 a real escalation rate of 1.5% to 2.0% was accepted. (70 NH PUC 164, 66 PUR4th 349.) This finding was directed at an element that is common to both proceedings. Accordingly, in the absence of evidence or

argument not considered in DF 84-200, we will apply that finding here.

The tenth request pertained to the Commission's finding that decommissioning costs will range from \$170 million in 1984 dollars to \$311 million in 1984 dollars and that for the analysis in Order 17,558, a decommissioning cost of \$170 million in 1984 dollars was accepted. (70 NH PUC 164, 66 PUR4th 349.) This finding was directed at an element that is common to both proceedings. Accordingly, in the absence of evidence or argument not considered in DF 84-200, we will apply that finding here.

The eleventh request pertained to the Commission's finding that plant life will range between 30 and 40 years and that for the analysis in Order 17,558, a 35 year plant life was accepted. (70 NH PUC 164, 66 PUR4th 349.) Representative Easton objected to allowing this finding to be conclusive. The plant life is an element that is common to both proceedings. Accordingly, in the absence of evidence or argument not considered in DF 84-200, we will apply that finding here.

The twelfth request pertained to the Commission's finding that PSNH's own cost of capital will be 15.4%. (70 NH PUC 164, 66 PUR4th 349.) To the extent that PSNH's cost of capital is an issue here, that finding is conclusive. The parties are privileged to present evidence or argument on the cost of capital of NHEC.

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The thirteenth request pertained to the Commission's finding that the consumer discount rate will range between 10% and 15.4% and that for the purposes of the analysis in Order 17,558, a 15% discount rate is a reasonable assumption. (70 NH PUC 164, 66 PUR4th 349.) To the extent that PSNH's and the NHEC's customers are similar, the discount rate finding would be common to both proceedings. Accordingly, in the absence of evidence or argument about differing characteristics of PSNH and NHEC customers or other evidence or argument not considered in DF 84-200, we will apply that finding here.

The fourteenth request pertained to the Commission's finding that Seabrook Unit I is preferred to the alternatives of conventional thermal generation, cogeneration or conservation. (70 NH PUC 164, 66 PUR4th 349.) Representative Easton objected to allowing this finding to be conclusive. Representative Easton's objection is well taken. Our findings in DF 84-200 were applicable to the alternatives available to PSNH; they were not applicable to the NHEC. There are several factors which may be distinguishable including, but not limited to, costs, service territory, load characteristics, the manner of supplying load and customer mix. Accordingly, our finding in Order 17,558 that Seabrook I is the preferred alternative for PSNH will not be applied to the NHEC. The parties are privileged to present evidence and argument on this issue.

The fifteenth request (labeled Request No. 16 in the NHEC's Motion) pertained to the Commission's finding that the bankruptcy of PSNH is not in the public interest. (70 NH PUC 164, 66 PUR4th 349.) Representative Easton objected to allowing this finding to be conclusive. To the extent that such a finding, directed at PSNH, is applicable to the instant proceeding, it is conclusive. However, issues relating to the consequences to the NHEC of Commission denial of the proposed financing are material. Accordingly, the parties are privileged to present evidence and argument on those issues.

In summary, we note that we have issued the above rulings pertinent to the applicability of

Order 17,558 here for the purpose of aiding the parties by eliminating needless relitigation. However, Order 17,558 was directed at whether the financing of Seabrook I construction by PSNH is in the public good; it was not directed at the financing of Seabrook I by the NHEC. Those NHEC issues have not been foreclosed and they are material to the instant proceeding. It is not our intent to constrain the parties from presenting evidence and argument they deem relevant; in particular, evidence and argument not considered in DF 84-200. The Commission sua sponte will make appropriate rulings on any proffered evidence or argument and will of course make further rulings in response to objections to the admission or use of evidence.

In this context, it is appropriate to address whether the issues set forth in the April 26, 1985 Memorandum of Gary McCool may appropriately be considered in this proceeding. Those issues will be discussed in the same numbered manner contained in the Memorandum.

The first issue is the quantification of the probable costs associated with the NHEC's Seabrook share. As noted previously, we have found in Order No. 17,558 that the to go cost of Seabrook

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I is \$1 billion. However, this to go cost figure has not been applied to the NHEC. Thus, to the extent that the NHEC's costs differ from PSNH's, the parties are privileged to present evidence and argument. To the extent that Mr. McCool is referring to Seabrook 2, the issue of the NHEC's continued participation in the project cannot be addressed in this proceeding. The purpose of the proposed financing is not directed at Seabrook Unit II. However, to the extent that the treatment of the sunk costs of Seabrook Unit II has a bearing on the financial feasibility of the proposed financing, the parties are privileged to present evidence and argument.

The second issue concerns the evaluation of the alternatives available to the NHEC. This is an issue that has not been foreclosed as it pertains to the NHEC by the Commission's findings and conclusions in Order 17,558.

The third issue involves an evaluation of the prudence of the NHEC's continued participation in Seabrook. Prudence cannot be an issue in the instant proceeding because it has not been noticed as a prudence hearing. *Re Public Serv. Co. of New Hampshire*, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982). The prudence of the NHEC's continued participation in Seabrook is a matter to be determined in a subsequent rate proceeding and any findings and conclusions issued in the instant docket cannot be used to foreclose evidence and argument in such a subsequent prudence evaluation. We note, however, that a forward looking evaluation of whether to approve the proposed financing necessarily involves a determination of whether the NHEC's continued participation in Seabrook is consistent with the public good. RSA 360:1; *Re Easton*, supra. Such an evaluation under the public good standard applicable to financings is being conducted in this docket and the parties are privileged to present evidence and argument on the issue.

The fourth issue involves an analysis of the potential effect of the NHEC's continued participation in Seabrook on rates. This is an issue that has not been foreclosed by the Commission's findings and conclusions in Order 17,558.

The fifth issue involves an analysis of the effect of Seabrook-based rates on demand for

electricity. To the extent that this issue is examined in the context of the effect of Seabrook-based rates on the demand by NHEC customers for electricity, it is an issue that has not been foreclosed by the Commission's findings and conclusions in Order 17,558.

The sixth issue involves an analysis and evaluation of NHEC load forecasts. This is an issue that has not been foreclosed by the Commission's findings and conclusions in Order 17,558.

The seventh issue involves an analysis of the specific alternatives of: 1) a Commission Ordered cost cap; 2) Commission Ordered partial sell down; and 3) a Commission Ordered complete disengagement. These alternatives involve the available remedies which may be considered in the instant proceeding; a matter which must be distinguished from the evidence material to the Commission's evaluation of which available actions it should take. It is important to emphasize that this docket involves a Commission evaluation of a proposed financing pursuant to RSA Chapter 369. Under the noticed issues in this docket the available Commission actions are: 1) approval of the requested financing authority (with or without

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conditions); or 2) denial of the requested financing authority. See also, Re PSNH, supra. In DF 84-200, we held as a matter of law that we could not impose a cost cap in that particular financing docket. (70 NH PUC 164, 66 PUR4th 349.) The material circumstances in the instant docket are the same as in DF 84-200. A subsequent prudency evaluation may or may not establish a de facto cost cap; the Commission cannot as a matter of law impose such a cap in the instant proceedings. Nor can we order a complete or partial disengagement. As noted previously, the Commission is evaluating whether or not a request for financing authority should be approved. Although the nature of the NHEC's involvement in Seabrook is germane to such an inquiry, the inquiry itself continues to be an evaluation of whether the NHEC's requested financing authority is consistent with the public good pursuant to RSA Chapter 369.

The eighth issue involves an evaluation of the consequences of Commission denial of the requested financing authority. This is an issue that has not been foreclosed by the Commission's findings and conclusions in Order 17,558.

In his Memorandum, Mr. McCool also raised the issue of whether the conditions imposed in Order 17,558 foreclose an evaluation of the NHEC's Seabrook participation for the purposes of the instant proceeding. The applicable condition was that "all Seabrook I Joint Owners have received regulatory authorization to finance their respective ownership shares of Seabrook I and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook I construction costs. ..." (70 NH PUC at p. 269, 66 PUR4th at p. 441). We note that the above condition was imposed based on our record evaluation of the circumstances surrounding PSNH. The condition was not intended to foreclose an evaluation of the NHEC's participation in Seabrook I. That evaluation will be based on the evidence in the instant proceeding applicable to the NHEC under the legal standards in RSA 369 and Re Easton, supra.

Motion to Exclude Certain Testimony and Data Responses

On April 19, 1985, the NHEC submitted a Motion to Exclude Certain Testimony and Data Responses and filed a Summary of Deadlines in support thereof. On April 24, 1985, Gary

McCool filed an objection to the NHEC Motion.

The NHEC Motion appears to be based entirely on the assertion that certain deadlines have been missed. As noted in Mr. McCool's objection, there has been no assertion that the NHEC has been prejudiced by the alleged missed deadlines. In ruling on this Motion, we must note our own interest in a complete record where all parties have had a fair opportunity to make a presentation. We further note that, thus far, the NHEC itself has presented testimony by Mr. Pillsbury and Mr. Kaminsky; neither of which had been prefiled. Thus, we cannot find that a missed deadline is sufficient reason, in and of itself, to exclude relevant and material evidence. Accordingly, the NHEC Motion will be denied.

Our Order will issue accordingly.

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SUPPLEMENTAL ORDER

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

ORDERED, that the Commission will take administrative notice of the entire record in Re Public Service Co. of New Hampshire (PSNH), DF 84-200; and it is

FURTHER ORDERED, that the Motion of the New Hampshire Electric Cooperative, Inc. to adopt certain findings from Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349 (1985), and the objections of Roger Easton and Gary McCool to the same be, and hereby are, granted in part and denied in part in accordance with the provisions of the foregoing Report; and it is

FURTHER ORDERED, that the Motion of the New Hampshire Electric Cooperative, Inc. to exclude certain testimony and data responses be, and hereby is denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1985.

Opinion of Commissioner Aeschliman

I concur in the rulings of the majority with respect to the Motions To Take Administrative Notice and the Motion to Exclude Testimony. I have difficulty in concurring with the majority's analysis of the applicability of certain findings in Order 17,558 to the instant proceeding because I did not adopt many of those findings. See Separate Opinion of Commissioner Aeschliman in Order 17,558 (70 NH PUC at p. 269, 66 PUR4th at pp. 442, 443). My separate opinion was based on my own analysis of the record in Re Public Service Co. of New Hampshire, DF 84-200 and, in the course of that analysis I weighted portions of that record differently than the majority and made different findings. In the absence of evidence and/or argument which I did not previously consider, I would continue to analyze that same record in the same manner. Accordingly, I cannot apply DF 84-200 findings to the instant proceeding when I did not agree with those findings in Order No. 17,558.

FOOTNOTE

¹RSA 369:1 provides, inter alia: "The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest.... "

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NH.PUC*05/02/85*[61052]*70 NH PUC 330*Fuel Adjustment Clause

[Go to End of 61052]

70 NH PUC 330

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-96, Order No. 17,575

New Hampshire Public Utilities Commission

May 2, 1985

ORDER establishing fuel adjustment clause rates in the absence of hearings.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; and

WHEREAS, this is one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 85-52, Order No. 17,516, dated March 28, 1985 (70 NH PUC 131) pertaining to the New Hampshire Electric Cooperative, Inc. established the rolled in rate of \$2.706/100KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 24th Revised Page 19A of Concord Electric Company tariff,

NHPUC No. 9 — Electricity, providing for a fuel surcharge credit of (\$0.295) per 100 KWH for the months of April, May, and June, 1985, be, and hereby is,

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permitted to remain in effect for the month of May, 1985; and it is

FURTHER ORDERED, that 24th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of (\$0.299) per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to remain in effect for the month of May, 1985; and it is

FURTHER ORDERED, that 13th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of \$0.278 per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to remain in effect for May, 1985; and it is

FURTHER ORDERED, that 15th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge for the months of April, May, and June, 1985 of \$0.204. per 100 KWH, be, and hereby is, permitted to remain in effect for May, 1985; and it is

FURTHER ORDERED, that 53rd Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.10 per 100 KWH for the month of May, 1985, be, and hereby is, permitted to become effective May 1, 1985; and it is

FURTHER ORDERED, that 104th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$1.20) per 100 KWH for the month of May, 1985, be, and hereby is, permitted to become effective May 1, 1985; and it is

FURTHER ORDERED, that 101st Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.33) per 100 KWH for the month of May, 1985; be, and hereby is, permitted to become effective May 1, 1985; and it is [sic]

The above noted rates may be 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 second day of May, 1985.

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NH.PUC*05/03/85*[61053]*70 NH PUC 332*New Hampshire Electric Cooperative, Inc.

[Go to End of 61053]

70 NH PUC 332

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 15th Supplemental Order No. 17,576

New Hampshire Public Utilities Commission

May 3, 1985

ORDER denying request for production of witness.

Witnesses, § 1 — Request for production — Benefits/burden test.

A request by an intervenor that an electric cooperative be required to produce a witness from the Rural Electrification Administration was denied because the burden of producing additional testimony outweighed the benefits of including additional information in the record; much of the information sought had already been developed in the record and the remainder involved legal analysis that could be derived from other sources.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

The purpose of this Order is to rule on the request of Intervenors that the New Hampshire Electric Cooperative, Inc. (NHEC) be directed to produce a witness from the Rural Electrification Administration (REA). This request was supported by a written memorandum submitted on April 24, 1985 by Intervenor McCool. The NHEC filed a response objecting to the request on April 25, 1985.

We have reviewed the request, including the description of the information sought. We have also reviewed the response of the NHEC and the information contained in the record as it has developed to date. Our analysis leads us to conclude that the request for production of a REA witness should be denied.

Our conclusion is based on a balancing of the benefits of including in the record the additional information sought against the burden of producing the additional testimony.

With respect to the benefits of the additional information we find that:

1) Much of the information sought has already been developed in the record; and 2) The remainder of the information sought is in the nature of legal analysis.

Our examination of the information described in Mr. McCool's Memorandum reveals that a REA witness is not

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the sole source of that information. The testimony of Mr. Anderson, Mr. Kaminski and Mr. Pillsbury has supplied much of the information sought to the extent that definitive answers can

be adduced. Additionally, the exhibits contain additional information sought by the Intervenor. See e.g., Exhs. 6 to 15. To the extent that information in the record to date is insufficient to meet all Intervenor concerns, it is because such information involves legal analysis. All parties are privileged to proffer any relevant legal argument based on the evidence of record and any inferences that can reasonably be drawn therefrom.

With respect to the burden of producing a witness, we are mindful of the NHEC's assertion that:

...[T]he list of questions ... would require the production of numerous government officials, from several government agencies, possibly reaching Cabinet level. As a practical matter the Cooperative doubts the ability of these individuals to adjust their schedules upon such late notice, to allow effective participation in this proceeding in a timely fashion. Furthermore, the Cooperative believes it lacks the power to require the production of government officials even if ordered to produce them by the Commission. NHEC Response at 2.

Such a burden would not be sufficient in and of itself if it was outweighed by the need for the additional information. However, as described above, that is not the case here. The additional information is not necessary to develop a complete record on which we can base a decision and the burden of providing the information involves undue expense, undue delay and tasks that may be impossible to accomplish.

Since the information sought is already part of the record or can be developed through legal argument, additional testimony by a witness from the REA is not necessary for our evaluation of whether the proposed financing is in the public good. We will therefore deny the Intervenor's request.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Request that the Commission direct the New Hampshire Electric Cooperative, Inc. to provide testimony from the Rural Electrification Administration be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1985.

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NH.PUC*05/06/85*[61054]*70 NH PUC 334*Manchester Gas Company

[Go to End of 61054]

70 NH PUC 334

Re Manchester Gas Company

Intervenor: Community Action Program

DR 85-89, Order No. 17,577

New Hampshire Public Utilities Commission

May 6, 1985

ORDER approving cost of gas adjustments.

Automatic Adjustment Clauses, § 23 — Storage — Demand charges — Gas.

A proposal to require a gas distribution company to use a last-in-first-out method for pricing liquid natural gas in the summer and an average inventory method for pricing it in the winter was rejected because the proposal was contrary to general accounting principles and would have required the company to change its method of pricing inventory twice each year. [1] p. 335.

Automatic Adjustment Clauses, § 23 — Storage — Demand charges — Gas.

A gas distribution company was denied authority to include in its summer cost of gas adjustment the cost of natural gas storage demand charges; the storage demand charges were applicable to the winter period and passing them on to summer customers would give customers in both periods the wrong price signal. [2] p. 336.

Automatic Adjustment Clauses, § 23 — Storage — Demand charges — Gas.

A gas distribution company was ordered to defer all storage demand charges that had been included in its summer cost of gas adjustment to the next succeeding winter period. [3] p. 336.

Automatic Adjustment Clauses, § 54 — Over/under collections.

The interest rate on over/under collections of cost of gas adjustments and on supplier refunds was increased to 10% because a recent revision of commission rules and regulations increased the interest rate on customer deposits to the same amount. [4] p. 337.

APPEARANCES: David Marshall, Esquire, for the petitioner; Gerald M. Eaton, Esquire, for the Community Action Program ("CAP"); Daniel D. Lanning, Assistant Finance Director, Mary Jean Newell, PUC Examiner, and James Lenihan, Rate Analyst, for staff.

By the COMMISSION:

REPORT

On March 29, 1985, Manchester Gas Company (the "Company"), a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a summer period Cost of Gas Adjustment ("CGA") of \$0.0871 per therm for effect May 1, 1985.

A duly noticed public hearing was

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accordingly held at the Commission's offices in Concord, New Hampshire on April 25, 1985.

Prior to and during the course of the hearing, the Company submitted one exhibit and was represented by three witnesses, Carolyn J. Huber, Michael J. Mancini, Jr., and Mr. C.P. Fleming. In addition, at staff's request, a late filed exhibit was submitted.

Through testimony and cross-examination of the witnesses, the following issues were examined:

A) Combining the CGA's of Manchester Gas Company and Gas Service, Inc.

CAP inquired about combining the CGA's for the two sister companies into one CGA for both. The Company stated this is not currently practical. The companies are separate utilities and as such file individually, based on costs included in their basic rates. The Company has indicated a desire to merge with its sister subsidiary of EnergyNorth, Inc. in another proceeding before this Commission (DF 85-21). The Commission will reserve judgment on this subject until such issues are presented by the Company. Until such time the utilities will continue as separate entities for the purposes of the CGA filing.

B) The proper price for Liquid Natural Gas ("LNG") used during the summer period.

[1] CAP avers that there is an inequity in the pricing of LNG for summer period customers. The company's expert witness explained, however, that the primary purpose of keeping the LNG product in storage facilities over the summer period is to keep the tanks cool. This reduces the complications of refilling a warm tank at the beginning of a winter period.

CAP contends that the product in inventory is more costly than the product purchased during the summer period when filling a tank after a period of "boil-off". He further argues, when the boil-off occurs and must be replaced, the summer customer should only be charged the replacement cost ("LIFO" method of inventory pricing). This would leave the more costly product in inventory to be passed on to winter period customers, who primarily benefit from storing the LNG.

The cost difference from using the average inventory pricing method versus a last-in-first-out ("LIFO") method of pricing LNG is approximately \$1,000. This would not significantly reduce the customer billings, although it would create significant problems for the Company.

In reviewing CAP's arguments it appears as if the pricing method proposed would be LIFO for summer period gas pricing and average inventory pricing for the winter. This is contrary to generally accepted accounting principles. The Company cannot change its method of inventory pricing twice every year. This Commission will not accept CAP's arguments regarding LNG costs for summer period customers.

C) Tennessee Gas Pipeline's ("TGP") Entitlement Case at the Federal Energy Regulatory Commission ("FERC") (CP 84-441).

Staff introduced an issue concerning TGP's filing with the FERC in which TGP proposes to realign its market. One of the results of this filing, if approved, will be an increased supply of

natural gas to New England utilities. The Company through it's parent, EnergyNorth, Inc. ("ENI"), has requested an increase in gas supply from its present contract amount of 23697

MCFD to 29725 MCFD (to be allocated proportionately among ENI's utility subsidiaries) in connection with this filing. The increased natural gas could be realized as early as November 1987, with the FERC's approval. The Commission expects the Company to actively participate at the Federal level in obtaining the increases. Based on the evidence provided in this docket, a favorable ruling by the FERC will be beneficial both to the Company and its ratepayers.

D) Natural gas storage demand charges as part of the summer CGA period.

[2,3] Historically the Company has been permitted to pass on to summer CGA ratepayers the cost of natural gas storage demand charges. This charge is billed to the Company monthly by the storage facility, which stores gas during the summer period for winter use.

In the 1984 summer CGA Northern Utilities, Inc. ("Northern") proposed to defer their storage demand charges and two months of TGP's gas billing demand charges to the following winter period (1984-85). This was approved by the Commission. In their current summer period CGA filing (DR 85-87) Northern continued the deferral of these costs and stated that this method was equitable and had little or no effect on their winter customers.

Staff questioned Manchester Gas Company concerning its practice of charging summer period customers for the storage demand charges. Staff argued that:

1. the summer CGA increased from the winter period and that, in part, the storage demand charge during the summer period contributed to this increase;
2. these costs are truly winter period costs;
3. deferral of these costs to the winter period would help to level rates from the summer to the winter period thereby providing rate continuity between periods; and
4. the customers in both periods are not receiving the proper price signal.

The Company disagrees. It is their opinion that:

1. this issue has been discussed in the past and the Commission has always allowed the costs in the summer CGA;
2. the deferral of these costs means additional financing by the Company to carry the costs not passed on to the customers as they occur; and
3. if these costs are deferred, winter customers, who for the most part are the same as the summer customers, would be obligated to pay additional costs at a time their bills are less manageable.

The Commission has reviewed the issue and finds that these costs are applicable to the winter period and should not be passed on to summer ratepayers. This will give the customer the correct price signal based on the true cost of gas for either period. This reverses prior decisions concerning these costs. The Commission is not bound to prior decisions if provided with persuasive arguments and actual

results which demonstrate that benefits can be gained by not reaffirming said decisions (Re Public Service Co. of New Hampshire, 58 NH PUC 588, 589, 95 PUR3 401 [1972]).

The Company's concern regarding financing of these costs is an issue which the Commission considers moot. When this Commission approved the Company's Fuel Inventory Trust Financing ("Trust") it was understood that the price of the fuel sold to the Trust would be "equal to the price payable by Manchester Gas to its supplier for the Fuel being sold to the Trust, plus

transportation charges, unloading charges and any other costs that would be properly chargeable by Manchester Gas for purposes of computing its CGA". (67 NH PUC 844, 846, 847.) (Emphasis added). The cost of the storage demand is properly included in the CGA, therefore these costs, when deferred, can be financed through the Trust.

Henceforth, all storage demand charges after May 1, 1985, payable during the summer period, will be deferred to the next succeeding winter period. The Company will revise the CGA in the instant proceedings to reflect the same. This will reduce the total anticipated cost for the Company by \$211,770 (\$598,050 total demand charge in ENI's gas pool multiplied by Gas Service, Inc.'s percentage of send out 35.41%).

E) Interruptible Sales Agreements.

Recent falling prices of oil have enabled fuel oil suppliers to offer alternate fuel to interruptible gas customers at a price below gas.

In order to allow gas companies to offer pipeline gas to interruptible firms at a comparable price to that of oil, the Commission has been requested in at least one case, to review a special interruptible sales agreement which would allow a gas company to offer product at a price below that of the average posted price of oil. The agreement was approved by the Commission and will be closely monitored to assure that the resultant sales and subsequent revenues will cover all commodity as well as non-commodity costs associated with providing service to the interruptible customer. Revenue deficiencies from sales to interruptible customers will be thoroughly scrutinized by the Commission before consideration in either a cost of gas adjustment or in the basic rates of the Company.

F) Unaccounted for Gas & Company Use of Gas.

At staff's request the Company filed an Exhibit which displays the average unaccounted for gas for the last five summer periods. The Company forecasts this unaccounted for based on a ten year average. The exhibit discloses that there is little difference in the average unaccounted for gas and company use of gas between five vs. ten years, hence no adjustment is necessary. However, for the next CGA filing (1985-1986 winter period) we will require separate line items for Company use and the unaccounted for gas. This will permit meaningful review of both these costs.

G) Increasing the interest rate on over/ under collections of CGA and supplier refunds from 8% to 10%.

[4] This issue deals with increasing the interest rate applied to pipeline refunds and over/under collections of

CGA revenues. In Commission report and Order No. 15,261 (66 NH PUC 454) the interest rate on customer deposits was used as an index for the interest rate in the CGA calculation. Recently the Commission has revised its rules and regulations. Part of this revision increased the annual rate of interest on customer deposits to 10%. Accordingly, the Commission will order that an interest rate of 10% be applied commencing May 1, 1985.

H) A "Trigger Mechanism" on the CGA.

The final issue to address in this docket concerns a "trigger mechanism" on over and under collections of the CGA. Staff, through cross-examination of the Company's witness, suggests that a mechanism which flags substantial over and under collections should become part of the CGA. This would give the Commission and all parties in the CGA proceedings a predetermined boundary on over/under collections. If this boundary is exceeded the CGA rate in effect would be subject to a midterm adjustment in order to avoid excessive over or under CGA recoveries.

The trigger level suggested by staff was five percent of total fuel costs. Although some companies had reservations on the mechanics of the trigger mechanisms none objected to the concept. Therefore, the Commission will take the trigger mechanism under advisement and give notice that the Company should be prepared to address the issue in the next CGA period (1985-1986 winter). Specific areas to be addressed will be:

1. The percent of over/under recovered fuel costs appropriate for the trigger mechanism; 2. A standard method of reporting to the Commission and parties to the CGA proceedings if the mechanism is triggered; and 3. A limit on the number of occasions which a company can, or must, adjust its rates during a CGA period.

In the interim the Company is required to report, on a monthly basis, the over/under recovery of the cost of gas estimated for the end of the summer period.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Section 4, 16th Revised page 26 of Manchester Gas Company, tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment of \$.0871/therm for the period May 1, 1985 through October 31, 1985 be, and hereby is, denied; and it is

FURTHER ORDERED, that Manchester Gas Company file a revised Page 26 of NHPUC tariff No. 6 — Gas, eliminating storage demand charges for the period May 1, 1985 through October 31, 1985, said page to be effective upon approval of this Commission; and it is

FURTHER ORDERED, that public notice of the revised 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 Manchester Gas Company apply an annual interest rate of 10% on all over/under collections of its CGA.

The above rate is to be adjusted by a factor of approximately 1% according

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to the utilities classification in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this sixth day of May, 1985.

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NH.PUC*05/06/85*[61055]*70 NH PUC 339*Gas Service, Inc.

[Go to End of 61055]

70 NH PUC 339

Re Gas Service, Inc.

Intervenor: Community Action Program

DR 85-88, Order No. 17,578

New Hampshire Public Utilities Commission

May 6, 1985

ORDER approving cost of gas adjustment.

Automatic Adjustment Clauses, § 23 — Inventory — Liquid natural gas.

A proposal to require a gas distribution company to use a last-in-first-out method for pricing liquid natural gas in the summer and an average inventory method for pricing it in the winter was rejected because the proposal was contrary to general accounting principles and would have required the company to change its method of pricing inventory twice each year. [1] p.340.

Automatic Adjustment Clauses, § 23 — Storage — Demand charges — Gas.

A gas distribution company was denied authority to include in its summer cost of gas adjustment the cost of natural gas storage demand charges; the storage demand charges were applicable to the winter period and passing them on to summer customers would give customers in both periods the wrong price signal. [2] p.341.

Automatic Adjustment Clauses, § 23 — Storage — Demand costs — Gas.

A gas distribution company was ordered to defer all storage demand charges that had been included in its summer cost of gas adjustment to the next succeeding winter period. [3] p.341.

Automatic Adjustment Clauses, § 54 — Over/under collections — Interest.

The interest rate on over/under collections of cost of gas adjustments and on supplier refunds was increased to 10% because a recent revision of commission rules and regulations increased the interest rate on customer deposits to the same amount. [4] p. 343.

APPEARANCES: David Marshall, Esquire, for the petitioner; Gerald M. Eaton, Esquire, for the Community Action Program ("CAP"); Daniel D. Lanning, Assistant Finance Director, Mary Jean Newell, PUC Examiner, and James Lenihan, Rate Analyst, for staff.

By the COMMISSION:

On March 29, 1985, Gas Service, Inc. (the "Company"), a public utility engaged in the business of supplying gas service in the state of New Hampshire,

filed with this Commission certain revisions to its tariff providing for a summer period Cost of Gas Adjustment ("CGA") of \$0.080 per therm for effect May 1, 1985.

A duly noticed public hearing was accordingly held at the Commission's offices in Concord, New Hampshire on April 25, 1985.

Prior to and during the course of the hearing, the Company submitted one exhibit and was represented by three witnesses, Carolyn J. Huber, Michael J. Mancini, Jr., and Mr. C.P. Fleming. In addition, at staff's request, a late filed exhibit was submitted.

Through testimony and cross-examination of the witnesses, the following issues were examined:

A) Combining the CGA's of Manchester Gas Company and Gas Service, Inc.

CAP inquired about combining the CGA's for the two sister companies into one CGA for both. The Company stated this is not currently practical. The companies are separate utilities and as such file individually, based on costs included in their basic rates. The Company has indicated a desire to merge with its sister subsidiary of EnergyNorth, Inc. in another proceeding before this Commission (DF 85-21). The Commission will reserve judgment on this subject until such issues are presented by the Company. Until such time the utilities will continue as separate entities for the purposes of the CGA filing.

B) The proper price for Liquid Natural Gas ("LNG") used during the summer period.

[1] CAP avers that there is an inequity in the pricing of LNG for summer period customers. The company's expert witness explained, however, that the primary purpose of keeping the LNG product in storage facilities over the summer period is to keep the tanks cool. This reduces the complications of refilling a warm tank at the beginning of a winter period.

CAP contends that the product in inventory is more costly than the product purchased during the summer period when filling a tank after a period of "boil-off". He further argues when the boil-off occurs and must be replaced, the summer customer should only be charged the replacement cost ("LIFO" method of inventory pricing). This would leave the more costly product in inventory to be passed on to winter period customers, who primarily benefit from storing the LNG.

The cost difference from using the average inventory pricing method versus a last-in-first-out ("LIFO") method of pricing LNG is approximately \$1,800. This would not significantly reduce the customer billings, although it would create significant problems for the Company.

In reviewing CAP's arguments it appears as if the pricing method proposed would be LIFO for summer period gas pricing and average inventory pricing for the winter. This is contrary to generally accepted accounting principles. The Company cannot change its method of inventory pricing twice every year. This Commission will not accept CAP's arguments regarding LNG costs for summer period customers.

C) Tennessee Gas Pipeline's ("TGP") Entitlement Case at the Federal Energy Regulatory Commission ("FERC") (CP 84-441).

Staff introduced an issue concerning TGP's filing with the FERC in which TGP proposes to realign its market. One of the results of this filing, if approved, will be an increased supply of natural gas to New England utilities. The Company through its parent, EnergyNorth, Inc. ("ENI"), has requested an increase in gas supply from its present contract amount of 23697 MCFD to 29725 MCFD (to be allocated proportionately among ENI's utility subsidiaries) in connection with this filing. The increased natural gas could be realized as early as November 1987, with the FERC's approval. The Commission expects the Company to actively participate at the Federal level in obtaining the increases. Based on the evidence provided in this docket, a favorable ruling by the FERC will be beneficial both to the Company and its ratepayers.

D) Natural gas storage demand charges as part of the summer CGA period.

[2,3] Historically the Company has been permitted to pass on to summer CGA ratepayers the cost of natural gas storage demand charges. This charge is billed to the Company monthly by the storage facility, which stores gas during the summer period for winter use.

In the 1984 summer CGA Northern Utilities, Inc. ("Northern") proposed to defer their storage demand charges and two months of TGP's gas billing demand charges to the following winter period (1984-85). This was approved by the Commission. In their current summer period CGA filing (DR 85-87) Northern continued the deferral of these costs and stated that this method was equitable and had little or no effect on their winter customers.

Staff questioned Gas Service, Inc. concerning its practice of charging summer period customers for the storage demand charges. Staff argued that:

1. the summer CGA increased from the winter period and that, in part, the storage demand charge during the summer period contributed to this increase; 2. these costs are truly winter period costs; 3. deferral of these costs to the winter period would help to level rates from the summer to the winter period thereby providing rate continuity between periods; and 4. the customers in both periods are not receiving the proper price signal.

The Company disagrees. It is their opinion that:

1. this issue has been discussed in the past and the Commission has always allowed the costs in the summer CGA; 2. the deferral of these costs means additional financing by the Company to carry the costs not passed on to the customers as they occur; and 3. if these costs are deferred, winter customers, who for the most part are the same as the summer customers, would be obligated to pay additional costs at a time their bills are less manageable.

The Commission has reviewed the issue and finds that these costs are applicable to the winter period and should not be passed on to summer ratepayers. This will give the customer

the correct price signal based on the true cost of gas for either period. This reverses prior decisions concerning these costs. The Commission is not bound to prior decisions if provided with persuasive arguments and actual results which demonstrate that benefits can be gained by

not reaffirming said decisions (Re Public Service Co. of New Hampshire , 57 NH PUC 588, 589, 95 PUR3d 401 [1972]).

The Company's concern regarding financing of these costs is an issue which the Commission considers moot. When this Commission approved the Company's Fuel Inventory Trust Financing ("Trust") it was understood that the price of the fuel sold to the Trust would be "equal to the price payable by Gas Service to its supplier for the fuel being sold to the Trust, plus transportation charges, unloading charges, and any other costs that would be properly chargeable by Gas Service for purposes of computing the CGA". (67 NH PUC 795, 797.) (Emphasis added.) The cost of the storage demand is properly included in the CGA, therefore these costs, when deferred, can be financed through the Trust.

Henceforth, all storage demand charges after May 1, 1985, payable during the summer period, will be deferred to the next succeeding winter period. The Company will revise the CGA in the instant proceedings to reflect the same. This will reduce the total anticipated cost for the Company by \$386,280 (\$598,050 total demand charge in ENI's gas pool multiplied by Gas Service, Inc.'s percentage of send out 64.59%).

E) Interruptible Sales Agreements.

Recent falling prices of oil have enabled fuel oil suppliers to offer alternate fuel to interruptible gas customers at a price below gas.

In order to allow gas companies to offer pipeline gas to interruptible firms at a comparable price to that of oil, the Commission has been requested in at least one case, to review a special interruptible sales agreement which would allow a gas company to offer product at a price below that of the average posted price of oil. The agreement was approved by the Commission and will be closely monitored to assure that the resultant sales and subsequent revenues will cover all commodity as well as non-commodity costs associated with providing service to the interruptible customer. Revenue deficiencies from sales to interruptible customers will be thoroughly scrutinized by the Commission before consideration in either a cost of gas adjustment or in the basic rates of the Company.

F) Unaccounted for Gas & Company Use of Gas.

At staff's request the Company filed an Exhibit which displays the average unaccounted for gas for the last five summer periods. The Company forecasts this unaccounted for based on a ten year average. The exhibit discloses that there is little difference in the average unaccounted for gas and company use of gas between five vs. ten years, hence no adjustment is necessary. However, for the next CGA filing (1985-1986 winter period) we will require separate line items for Company use and the unaccounted for gas. This will permit meaningful review of both these costs.

G) Increasing the interest rate on over/

under collections of CGA and supplier refunds from 8% to 10%.

[4] This issue deals with increasing the interest rate applied to pipeline refunds and

over/under collections of CGA revenues. In Commission report and Order No. 15,261 the interest rate on customer deposits was used as an index for the interest rate in the CGA calculation. Recently the Commission has revised its rules and regulations. Part of this revision increased the annual rate of interest on customer deposits to 10%. Accordingly, the Commission will order that an interest rate of 10% be applied commencing May 1, 1985.

H) A "Trigger Mechanism" on the CGA.

The final issue to address in this docket concerns a "trigger mechanism" on over and under collections of the CGA. Staff, through cross-examination of the Company's witness, suggests that a mechanism which flags substantial over and under collections should become part of the CGA. This would give the Commission and all parties in the CGA proceedings a predetermined boundary on over/under collections. If this boundary is exceeded the CGA rate in effect would be subject to a midterm adjustment in order to avoid excessive over or under CGA recoveries.

The trigger level suggested by staff was five percent of total fuel costs. Although some companies had reservations on the mechanics of the trigger mechanisms none objected to the concept. Therefore, the Commission will take the trigger mechanism under advisement and give notice that the Company should be prepared to address the issue in the next CGA period (1985-1986 winter). Specific areas to be addressed will be:

1. The percent of over/under recovered fuel costs appropriate for the trigger mechanism; 2. A standard method of reporting to the Commission and parties to the CGA proceedings if the mechanism is triggered; and 3. A limit on the number of occasions which a company can, or must, adjust its rates during a CGA period.

In the interim the Company is required to report, on a monthly basis, the over/under recovery of the cost of gas estimated for the end of the summer period.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 12th Revised Page 1 of Gas Service, Inc., tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment of \$.0800/therm for the period May 1, 1985 through October 31, 1985 be, and hereby is, denied; and it is

FURTHER ORDERED, that Gas Service, Inc. file a revised Page 1 of NHPUC tariff No. 6 — Gas, eliminating storage demand charges for the period May 1, 1985 through October 31, 1985, said page to be effective upon approval of this Commission; and it is

FURTHER ORDERED, that public notice of the revised 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 Gas Service, Inc. apply an annual interest rate of 10% on all over/under collections of its CGA.

The above rate is to be adjusted by a factor of approximately 1% according to the utilities

classification in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this sixth day of May, 1985.

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NH.PUC*05/06/85*[61056]*70 NH PUC 344*Manchester Gas Company

[Go to End of 61056]

70 NH PUC 344

Re Manchester Gas Company

DF 85-21, Supplemental Order No. 17,579

New Hampshire Public Utilities Commission

May 6, 1985

ORDER modifying previous commission order authorizing gas utility to issue and sell medium term promissory note.

Security Issues, § 120 — Conditions — Medium term debt.

A condition in a previous commission order requiring a gas distribution company to use the proceeds of an issuance of medium term promissory notes to retire unsecured long term notes before retiring short term debt was deleted from the order because the additional costs resulting from the necessity of seeking additional long term financing could negate the substantial interest and expense savings to be derived from the issuance of the medium term debt.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On January 22, 1985, Manchester Gas Company (Company) filed a petition pursuant to the provisions of RSA 369 for authority to issue and sell for cash its medium term (5 year) promissory note(s), 12 1/2% due 1990, in an aggregate principal amount of \$2,500,000. A public hearing on the petition was held on March 8, 1985. Thereafter, on April 19, 1985, the Commission issued Report and Order No. 17,559 (70 NH PUC 309) which found the proposed financing to be in the public good and therefore granted the Company's petition. On April 26, 1985, the Company filed a Motion For Modification and Other Relief (Motion) which we shall construe as a Motion For Rehearing (RSA 541:3).

In Order No. 17,559, the Commission stated in one of the ordering paragraphs as follows:

FURTHER ORDERED, that the proceeds of the issuance and sale of said medium term note, 12.5% due 1990, shall be applied to all of Manchester Gas Company's unsecured long term

revolving notes from New England

Merchants National Bank, and, to the extent not required therefore, to all of Manchester Gas Company's short term debt.

In its Motion, the Company argues that this specific order is not supported by the record. Specifically, it contends that Mr. Mancini's testimony establishes that the Company's primary, if not sole, purpose in obtaining the financing is to retire its outstanding short term debt. It did not seek authority to pay off the long term revolving note and therefore presented no evidence in that regard. The Company asserts that to the extent the testimony establishes an additional purpose for the financing, it was to use any funds remaining after the retirement of the short term debt for general company operations.

Moreover, the Company argues that the Report accompanying Order No. 17,559 does not support the above-cited paragraph from that Order. In the Report, the Commission stated therein as follows (70 NH PUC at p. 310).

The proceeds from the sale of the note will be used to retire short term debt and the outstanding balance of a revolving long term note (discussed below), both of which have been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. In addition the proceeds will also be used for increased construction activity the Company is forecasting for 1985.

While the Company disputes the Commission's finding therein that one of the financing's purposes was to pay off the long term revolving note, it argues that this section supports its contention that the primary purpose of the financing was to retire the Company's short term debt.

Our review of the record leads us to conclude that the testimony and exhibits support the Company's argument that the purpose of the financing was to pay off its existing short term debt and to utilize any excess for general company operations. Indeed, as illustrated above, both the Report and Order specifically approve that payment of the short term debt. However, the Order directs the Company to apply the financing proceeds first to the revolving long term note and then the remainder thereof to the short term debt. Thus, our approval was conditional upon the Company retiring the balance of the long term revolving note prior to paying off the short term debt.

Under RSA 369:1, approval of requests for financing authority shall be subject to "such reasonable terms and conditions as the commission may find to be necessary in the public interest." While not specifically discussed in the Report, this condition was placed in the Order as a result of our concern with the Company's failure to obtain authority regarding the long term revolver. That failure to obtain Commission approval is discussed at length in the Report. Therein we stated inter alia as follows (70 NH PUC at p. 311):

We therefore will require the Company to immediately file a petition whereupon a separate docket will be opened to examine whether this long term revolving note is consistent with the public good. RSA 369:1, 2 and 4. Accordingly, we will order the Company not to obtain further funds from this revolving note until it

obtains authority to do so from this Commission.

The Company argues that the Order should be amended to eliminate the condition requiring the Company to retire the balance of the long term revolving note. In support thereof, it states that the proceeds of the financing are needed to retire its short term debt, the amount of which is projected to exceed the Company's short term borrowing limit of \$3,000,000 by July, 1985. Unless the Order is modified, the Company will have to seek additional long term financing, raise its short term borrowing limit or curtail its summer construction program. The Company contends that none of these alternatives is desirable. It argues that in order to obtain an increase in its short term borrowing limit, the Company would need this Commission's approval as well as that of the majority of its preferred stockholders voting as a class.

Upon further review, we have determined that the above-stated condition should be deleted. The additional costs resulting from the necessity of seeking additional long term financing might negate the substantial interest and expense savings to be derived from this financing (70 NH PUC at p. 310). Moreover, the time needed to obtain the requisite approvals for raising the short term debt limit could have an adverse impact on the Company's summer construction program which is designed to ensure that the customers are afforded adequate and reliable service. Thus, given these potential results, we will delete this condition from our Order. We therefore will grant the Company's Motion. In so doing, it should be noted that our concern over the Company's failure to obtain Commission approval with respect to the long term revolving note remains. As we ordered originally, the Company shall immediately file a petition for approval.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Manchester Gas Company's Motion For Modification and Other Relief be, and hereby is, granted; and it is

FURTHER ORDERED, that Report and Order No. 17,559 be, and hereby is, amended by deleting the condition requiring application of the proceeds of this financing to the Company's long term revolving note therefrom; and it is

FURTHER ORDERED, that Report and Order No. 17,559 shall in all other respects remain valid; and it is

FURTHER ORDERED, that Manchester Gas Company be, and hereby is, authorized to sell and issue for cash its medium term note, 12.5% due 1990, in the aggregate principal amount of \$2,500,000, and to use the proceeds therefrom to retire its outstanding short term debt and for general Company purposes.

By Order of the Public Utilities Commission of New Hampshire this sixth day of May, 1985.

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NH.PUC*05/06/85*[61057]*70 NH PUC 347*Keene Gas Corporation

[Go to End of 61057]

70 NH PUC 347

Re Keene Gas Corporation

DR 85-91, Order No. 17,580

New Hampshire Public Utilities Commission

May 6, 1985

ORDER approving revisions of cost of gas adjustment.

Automatic Adjustment Clauses, § 54 — Over/under collections — Interest.

The interest rate applied to over/under collections of cost of gas adjustment revenues and to pipeline refunds was increased to 10% because the annual rate of interest on customer deposits had been increased to the same level.

APPEARANCES: John DiBernardo, for Keene Gas Corporation

By the COMMISSION:

REPORT

On April 5, 1985 Keene Gas Corporation (the "Company") a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions of its tariff providing for the 1985 Summer Cost of Gas Adjustment ("CGA"). On April 17, 1985 the Company adjusted the filed tariff pages to correct certain errors discovered in the filing, subsequent to April 5, 1985. The revised filing requests a CGA rate of \$.2064 per therm excluding franchise tax, which is an increase from the 1984-85 winter period rate of \$.1432 per therm. In addition to this amount \$.4214 per therm is included in base rates for the cost of gas.

A duly noticed hearing was held at the Commission's office in Concord, New Hampshire on April 25, 1985.

Through testimony and cross-examination of the Company witness, John DiBernardo, it was established that unaccounted for gas is forecasted to remain the same as the previous summer period, the Company has not found any difficulties with the present CGA mechanism; the Company had no objection to increasing the annual interest rate on over/under collected CGA balances from 8% per year to 10% per year; a trigger mechanism for the CGA to monitor and correct substantially over/under collected CGA rates would be acceptable to the Company.

The Company feels the unaccounted for gas will not change significantly from the past summer period. Small reductions may be realized as they add temperature compensating meters to the system, but not enough to warrant a change in their estimate. As the Commission has

stated in past CGA report and orders, the Company is to persist in exercising maximum effort toward reducing the unaccounted for gas in their system. In addition, for the next CGA filing (1985-86 winter period) we will require separate line items for Company use and the unaccounted for gas. This will permit meaningful review of both these costs.

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The next issue to be addressed in this report deals with increasing the interest rate applied to pipeline refunds and over/under collections of CGA revenues. In Commission report and order No. 15,261 the interest rate on customer deposits was used as an index for the interest rate in the CGA calculation. Recently the Commission has revised its rules and regulations. Part of this revision increased the annual rate of interest on customer deposits to 10%. Accordingly the Commission will order that an interest rate of 10% be applied commencing on May 1, 1985.

The final issue to address in this docket concerns a "trigger mechanism" on over and under collections of the CGA. Staff, through cross-examination of the Company's witness, suggests that a mechanism which flags substantial over and under collections should become part of the CGA. This would give the Commission and all parties in the CGA proceedings a predetermined boundary on over/under collections. If this boundary is exceeded the CGA rate in effect would be subject to a midterm adjustment in order to avoid excessive over or under recoveries.

The trigger level suggested by staff was five percent of total fuel costs. Although some companies had reservations on the mechanics of the trigger mechanism none objected to its concept. Therefore the Commission will take the trigger mechanism under advisement and give notice that the Company should be prepared to address the issue in the next CGA period (1985-86 winter). Specific areas to be addressed will be:

1. The percent of over/under recovered fuel costs appropriate for the trigger mechanism;
2. A standard method of reporting to the Commission and parties to the CGA proceedings if the mechanism is triggered; and
3. A limit on the number of occasions which a company can, or must, adjust its rates during a CGA period.

In the interim the Company is required to report, on a monthly basis, the over/under recovery of the cost of gas estimated for the end of the summer period.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 6th Revised Page 27 of Keene Gas Corporation, tariff, NHPUC No. 1 — Gas, providing for a cost of gas adjustment of \$0.2064/therm for the period May 1, 1985 through October 31, 1985 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, 1985; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one

time publication in newspaper having general circulation in the territories served; and it is

FURTHER ORDERED, that Keene Gas Corporation apply an annual interest rate of 10% to all over/under collections of its CGA.

The above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Docket, DR 83-205, Order No.

Page 348

15,624.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 1985.

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NH.PUC*05/06/85*[61058]*70 NH PUC 349*Northern Utilities, Inc.

[Go to End of 61058]

70 NH PUC 349

Re Northern Utilities, Inc.

Intervenor: Community Action Program

DR 85-87, Order No. 17,581

New Hampshire Public Utilities Commission

May 6, 1985

ORDER approving cost of gas adjustment.

Automatic Adjustment Clauses, § 23 — Inventory — Liquid natural gas.

A proposal to require a gas distribution company to use a last-in-first-out method for pricing liquid natural gas in the summer and an average inventory method for pricing it in the winter was rejected because the proposal was contrary to general accounting principles and would have required the company to change its method of pricing inventory twice each year. [1] p.350.

Automatic Adjustment Clauses, § 54 — Over- and undercollections — Interest.

The interest rate on over- and undercollections of cost of gas adjustments and on supplier refunds was increased to 10% because a recent revision of commission rules and regulations increased the interest rate on customer deposits to the same amount. [2] p. 350.

APPEARANCES: For Northern Utilities, Inc., Elias G. Farrah, Esq.; For Community Action Program, Gerald M. Eaton, Esq. For N. H. Public Utility Commission Staff, Daniel D. Lanning, Assistant Finance Director, Mary Jean Newell, PUC Examiner, James L. Lenihan, Rate Analyst.

By the COMMISSION:
REPORT

On April 1, 1985 Northern Utilities, Inc. (hereinafter referred to as "Northern" or "the Company") filed with this Commission a cost of gas adjustment ("CGA") credit of \$(.0585) per therm for the summer period, May 1 through October 30, 1985.

A duly noticed public hearing was held at the Commission office in Concord on April 25, 1985. Four exhibits were submitted by the Company.

Areas covered through direct testimony and cross-examination of the Company witness Joseph Ferro were on-system vs. off-system sales, unaccounted for/company use, interest rate on over- and undercollections, gas supplier refunds, a trigger mechanism, the LNG boil-off, and interruptible sales.

An explanation of the differences in pricing for on-system vs. off-system sales by Bay State Gas Company, Northern's parent, and how this relates to benefits Northern has derived from the merger with Bay State Gas

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Company will be an issue in the 1985/86 winter CGA hearing.

The unaccounted for/company use figures are combined in the calculation for the cost of gas adjustment filing. The Commission will require the Company to list these separately in future CGA filings. This will permit meaningful review of both these costs.

Staff introduced an issue concerning Tennessee Gas Pipeline's ("TGP") Entitlement Case at the Federal Energy Regulatory Commission ("FERC") (CP 84-441) in which TGP proposes to realign its market. One of the results of this filing, if approved, will be an increased supply of natural gas to New England utilities. The increased natural gas could be realized as early as November 1987, with the FERC's approval. A favorable ruling by the FERC will be beneficial both to the Company and its ratepayers. The Commission expects the Company to actively participate at the Federal level in this docket.

[1] During the hearing CAP argued that there is an inequity in the pricing of LNG for summer period customers. It was established by the company's witness that the primary purpose of keeping the LNG product in storage facilities over the summer period is to maintain system reliability.

CAP contends that the product in inventory is more costly than the product purchased during the summer period when filling a tank after a period of "boil-off". He further argues when the boil-off occurs and inventory must be replaced, the summer customer should only be charged the replacement cost ("LIFO" method of inventory pricing). This would leave the more costly product in inventory to be passed on to winter period customers, who primarily benefit from storing the LNG.

In reviewing CAP's arguments it appears as if the pricing method proposed would be LIFO for summer period gas pricing and average inventory pricing for the winter. This is contrary to generally accepted accounting principles. The Company cannot change its method of inventory

pricing twice every year. This Commission will not accept CAP's arguments regarding LNG costs for summer period customers.

Regarding Interruptible Sales Agreements, recent falling prices of oil have enabled fuel oil suppliers to offer alternate fuel to interruptible gas customers at a price below gas.

In order to allow gas companies to offer pipeline gas to interruptible firms at a comparable price to that of oil, the Commission has been requested in at least one case, to review a special interruptible sales agreement which would allow a gas company to offer product at a price below that of the average posted price of oil. The agreement was approved by the Commission and will be closely monitored to assure that the resultant sales and subsequent revenues will cover all commodity as well as non-commodity costs associated with providing service to the interruptible customer. Revenue deficiencies from sales to interruptible customers will be thoroughly scrutinized by the Commission before consideration in either a cost of gas adjustment or in the basic rates of the Company.

[2] The issue dealing with increasing the interest rate on over- and undercollections of CGA and supplier refunds from 8% to 10% applies to pipeline refunds and over- and undercollections of CGA revenues. In Commission report and order No. 15,261 the interest rate on customer deposits was used as an index for the interest

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rate in the CGA calculation. Recently the Commission has revised its rules and regulations. Part of this revision increased the annual rate of interest on customer deposits to 10%. Accordingly, the Commission will order that an interest rate of 10% be applied commencing May 1, 1985.

The final issue to address in this docket concerns a "trigger mechanism" on over- and undercollections of the CGA. Staff, through cross-examination of the Company's witness, suggests that a mechanism which flags substantial over- and undercollections should become part of the CGA. This would give the Commission and all parties in the CGA proceedings a predetermined boundary on over- and undercollections. If this boundary is exceeded the CGA rate in effect would be subject to a midterm adjustment in order to avoid excessive over or under CGA recoveries.

The trigger level suggested by staff was five percent of total fuel costs. Although some companies had reservations on the mechanics of the trigger mechanisms none objected its concept. Therefore, the Commission will take the trigger mechanism under advisement and give notice that the Company should be prepared to address the issue in the next CGA period (1985-1986 winter). Specific areas to be addressed will be:

1. The percent of over/under recovered fuel costs appropriate for the trigger mechanism;
2. A standard method of reporting to the Commission and parties to the CGA proceedings if the mechanism is triggered; and
3. A limit on the number of occasions which a company can, or must, adjust its rates during a CGA period.

In the interim the Company is required to report, on a monthly basis, the over/under recovery of the cost of gas estimated for the end of the summer period.

Our order will issue accordingly.

ORDER

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

ORDERED, that 53rd Revised Page 22A of Northern Utilities, Inc. tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment credit of \$(0.0585) per therm for the period May 1, 1985 through October 31, 1985 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, 1985; and it is

FURTHER ORDERED, that public notice of this 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 Northern Utilities, Inc. apply an annual interest rate of 10% to all over- and undercollections of its CGA; and it is [sic]

By Order of the Public Utilities Commission of New Hampshire this sixth day of May, 1985.

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NH.PUC*05/07/85*[61059]*70 NH PUC 352*Chester Telephone Company, Inc. d/b/a Granite State Telephone

[Go to End of 61059]

70 NH PUC 352

Re Chester Telephone Company, Inc. d/b/a Granite State Telephone

DF 85-56, Order No. 17,582

New Hampshire Public Utilities Commission

May 7, 1985

PETITION by local exchange telephone company for authority to issue mortgage notes; granted.

APPEARANCES: for the petitioner, Frederick J. Coolbroth, Esquire.

By the COMMISSION:

REPORT

By this unopposed petition filed February 7, 1985, Chester Telephone Company, Inc., d/b/a Granite State Telephone (the "Company"), 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, seeks authority pursuant to the provisions of RSA 369 to issue its mortgage note in the principal amount of \$2,205,000 to the United States of America, acting by and through the Rural Electrification Administration and the Rural Telephone Bank, and to

mortgage its property in connection therewith. A duly noticed hearing was held in Concord on March 28, 1985 at which the Company submitted the testimony of Hobart G. Rand, its President, and John L. Labonte, its Treasurer and Accounting Manager.

Mr. Rand stated that the proceeds of the issuance of the mortgage note will be used (a) to finance the acquisition of facilities and equipment necessary to serve present and future customers in all exchanges; (b) to finance the purchase of new digital electronic central dial office switching equipment for the Chester exchange; (c) to finance related system improvements; (d) to reimburse the Company's treasury for expenditures made for the foregoing purposes; and (e) to purchase \$105,000 of Class B stock of the Rural Telephone Bank, which is required as a condition to the loan. The Company submitted evidence regarding its construction program for the years 1985-1989, which is proposed to be financed through (i) this mortgage loan, (ii) the remaining committed funds from a previous government loan and (iii) internally generated Company funds.

The Company submitted a balance sheet as at December 31, 1984, actual and proformed to reflect the proposed \$2,205,000 mortgage loan. Exhibits

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were also submitted showing: 1985-1989 construction program; estimated expenses of the financing; and statements of income and capitalization, actual and proformed to reflect the proposed financing. Certified copies of authorizing votes of the Company's stockholders and board of directors were put in evidence.

Mr. Rand also described the mortgage to be entered into in connection with this proposed financing. The proposed mortgage will be supplemental to the existing government mortgages on substantially all of the Company's property, including franchises and after-acquired property. The mortgage will secure this loan and will further secure the Company's other government loans. A copy of the form of supplemental mortgage used in a prior company financing was submitted into evidence.

Mr. Rand testified that the proposed loan is required for the Company to construct facilities necessary to meet the needs of its customers in its growing service area.

Based upon all the evidence, the Commission finds that the proceeds from the proposed financing will be expended to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase \$105,000 of Class B stock of the Rural Telephone Bank, and further finds that the proposed financing will be consistent with the public good.

Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof, it is:

ORDERED, that Chester Telephone Company, Inc. be, and hereby is, authorized to issue its mortgage note or notes in the aggregate principal amount of \$2,205,000 to the United States of America, acting by and through the Rural Electrification Administration and/or the Rural

Telephone Bank, in accordance with the foregoing Report; and it is

FURTHER ORDERED, that Chester Telephone Company, Inc. be, and hereby is, authorized to mortgage its present and future property, tangible and intangible, including franchises, as security for such mortgage note or notes and as further security for its loans from the United States of America; and it is

FURTHER ORDERED, that the proceeds from this proposed financing shall be used to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase \$105,000 of Class B stock of the Rural Telephone Bank; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, Chester Telephone Company, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed financing 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 seventh day of May, 1985.

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NH.PUC*05/10/85*[61060]*70 NH PUC 354*Concord Natural Gas Corporation

[Go to End of 61060]

70 NH PUC 354

Re Concord Natural Gas Corporation

Intervenor: Community Action Program

DR 85-90, Order No. 17,586

New Hampshire Public Utilities Commission

May 10, 1985

ORDER establishing cost of gas adjustment for six-month period.

Accounting, § 25 — Interest rates — Cost of gas adjustments — Gas utility.

The interest rate on over- and undercollections of cost of gas adjustment and supplier refunds for gas utility was increased from 8% to 10% in order to correspond with the interest rates on customer deposits.

APPEARANCES: For Concord Natural Gas Corporation, David W. Marshall, Esquire; For Community Action Program, Gerald M. Eaton, Esq.; for New Hampshire Public Utilities Commission Staff, Daniel L. Lanning, Assistant Finance Director, Mary Jean Newell, PUC

Examiner, James L. Lenihan, Rate Analyst.

By the COMMISSION:

REPORT

On March 29, 1985 Concord Natural Gas Corporation (the Company) filed a summer period, May 1, 1985 through October 31, 1985, Cost-of-Gas Adjustment (CGA) for Commission consideration. The CGA proposed was \$.0524 per therm.

A duly noticed public hearing was held at the Commission office on April 25, 1985.

On May 3, 1985, the Company revised its filing decreasing the 1985 summer period CGA to \$.0261 per therm.

During the proceeding a Company witness discussed the elements of the proposed CGA. Areas covered through direct testimony and cross-examination of Company witness Ronald Bisson included customer growth; unaccounted for forecast comparisons for 1984 and 1985; Company use; interest rate on over- and undercollections; a trigger mechanism; and the rate effect, if any, that would result from the Tennessee Gas Pipeline Company (Tennessee) proposed settlement in Docket CP84-441000 filed with the Federal Energy Regulatory Commission (FERC).

During the hearing staff inquired about the Company's forecast of unaccounted for gas which had increased greatly over the prior summer period (1984 — 44,707 therms, 1985 — 224,357 therms). The Company

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reviewed this matter and discovered two errors in their calculation of 43rd Revised tariff Page No. 21. The first error was due to misreading September 1985 sales volume and results in an understatement of total estimated therms sold. The second was a conversion error, i.e., Mcf's to therms. The conversion had been performed on the Company's supply/demand forecast and was inadvertently applied a second time when the forecast was used in the CGA filing. This resulted in an overstatement of supply. The effect of the two errors caused the Company to recalculate the CGA and refile. The CGA proposed in 44th Revised Page No. 21 is \$0.0261 per therm. This is a decrease of \$0.0263 per therm from the original filing.

The unaccounted for/Company use figures are combined in the calculation for the cost of gas adjustment filing. The Commission will require the Company to list these separately in future CGA filings. This will permit meaningful review of both of these costs.

In 1983 the Company received a 35% increase in its Annual Volumetric Limitation (AVL) from Tennessee. The Company has recently applied for an additional increase in AVL and Maximum Daily Quantity of natural gas. Staff introduced an issue concerning Tennessee's Entitlement Case at the FERC (CP 84-441) in which Tennessee proposes to realign its market. One of the results of this filing, if approved, will be an increased supply of natural gas to New England utilities. The increased natural gas could be realized as early as November 1987, with the FERC's approval. A favorable ruling by the FERC will be beneficial both to the Company and its ratepayers. The Commission expects the Company to actively participate at the Federal

level in this docket.

Staff introduced an issue dealing with increasing the interest rate on over- and undercollections of CGA and supplier refunds from eight percent (8%) to ten percent (10%). In Commission Report and Order No. 15,261 the interest rate on Customer Deposits was used as an index for the interest rate in the CGA calculation. Recently the Commission has revised its Rules and Regulations. Part of this revision increased the annual rate of interest on Customer Deposits to ten percent. Accordingly, the Commission will order that an interest rate of ten percent be applied commencing May 1, 1985.

The final issue to address in this docket concerns a "trigger mechanism" on over- and undercollections of the CGA. Staff suggests that a mechanism which flags substantial over- and undercollections should become part of the CGA. This would give the Commission and all parties in the CGA proceedings a predetermined boundary on over- and undercollections. If this boundary is exceeded the CGA rate in effect would be subject to a mid-term adjustment in order to avoid excessive over- or under CGA recoveries.

The trigger level suggested by Staff was five percent of total fuel costs. Although some companies had reservations on the mechanics of the trigger mechanism none objected to the concept. Therefore, the Commission will take the trigger mechanism under advisement and give notice that the Company should be prepared to address the issue in the next CGA period (1985-1986 Winter). Specific areas to be addressed will be:

1. The percent of over/under

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recovered fuel costs appropriate for the trigger mechanism;

2. A standard method of reporting to the Commission and parties to the CGA proceedings if the mechanism is triggered; and

3. A limit on the number of occasions which a company can, or must, adjust its rates during a CGA period.

In the interim the Company is required to report, on a monthly basis, the over/under recovery of the cost of gas estimated for the end of the summer period.

Our order will issue accordingly.

ORDER

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

ORDERED, that 43rd Revised Page No. 21 of Concord Natural Gas Corporation Tariff NHPUC No. 13 — Gas be, and hereby is, rejected; and it is

FURTHER ORDERED, that 44th Revised Page No. 21 of Concord Natural Gas Corporation Tariff, NHPUC No. 13 — Gas, providing for a cost of gas adjustment of \$0.0261 per therm for the period May 1, 1985 through October 31, 1985 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, 1985; and it is

FURTHER ORDERED, that public notice of this 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, the Concord Natural Gas Corporation apply an annual interest rate of 10% to all overand undercollections of its CGA.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61061]*70 NH PUC 357*Manchester Gas Company

[Go to End of 61061]

70 NH PUC 357

Re Manchester Gas Company

DR 85-89, Supplemental Order No. 17,593

New Hampshire Public Utilities Commission

May 10, 1985

ORDER establishing cost of gas adjustment for six-month period.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,577 rejected Manchester Gas Company's Cost of Gas Adjustment, Section 4, 16th Revised Page 26 of NHPUC Tariff No. 6 — Gas, and ordered revised tariff pages eliminating natural gas storage demand charges; and

WHEREAS, on May 9, 1985 Manchester Gas Company filed Section 4, 17th Revised Page 26 of NHPUC Tariff No. 6 — Gas in accordance with said Commission Report and Order No. 17,577 (70 NH PUC 334); and

WHEREAS, upon consideration of the filing it is found that the revised tariff page is in compliance with said Order; it is hereby

ORDERED, that Section 4, 17th Revised page 26 of Manchester Gas Company tariff, NHPUC No. 6 — Gas, providing for cost of gas adjustment of \$0.0442/therm for the period May 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this order become effective with all billings issued on or after May 1, 1985.

The above rate is to be adjusted by a factor of approximately 1% as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61062]*70 NH PUC 358*Gas Service, Inc.

[Go to End of 61062]

70 NH PUC 358

Re Gas Service, Inc.

DR 85-88, Supplemental Order No. 17,594
New Hampshire Public Utilities Commission
May 10, 1985

ORDER establishing cost of gas adjustment for six-month period.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,578 (70 NH PUC 339) rejected Gas Service, Inc.'s Cost of Gas Adjustment, 12th Revised Page 1 of NHPUC Tariff No. 6 — Gas, and ordered revised tariff pages eliminating natural gas storage demand charges; and

WHEREAS, on May 9, 1985 Gas Service, Inc. filed 13th Revised Page 1 of NHPUC Tariff No. 6 — Gas in accordance with said Commission Report and Order No. 17,578; and

WHEREAS, upon consideration of the filing it is found that the revised tariff page is in compliance with said Order; it is hereby

ORDERED, that 13th Revised page 1 of Gas Service, Inc. tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment of \$0.0376/therm for the period May 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this order become effective with all billings issued on or after May 1, 1985.

The above rate is to be adjusted by a factor of approximately 1% as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61064]*70 NH PUC 360*Granite State Telephone Company

[Go to End of 61064]

70 NH PUC 360

Re Granite State Telephone Company

DR 85-35, Order No. 17,596

New Hampshire Public Utilities Commission

May 10, 1985

ORDER granting motion for rehearing.

By the COMMISSION:

ORDER

WHEREAS, this Commission on March 21, 1985 denied the petition of Granite State Telephone (the Company) to amortize annuities over a five year period; and

WHEREAS, Granite State Telephone Company has filed a motion for a rehearing in respect to Order No. 17,509 (70 NH PUC 121); and

WHEREAS, the Company contends that the order of this Commission is unlawful and unreasonable because it does not contain any findings of fact forming the basis for the order; and

WHEREAS, the Company further contends that the Commission erred in its findings; and

WHEREAS, the decision took into account an analysis of the records of the Company filed with this Commission which were not made part of the record in this case; it is

ORDERED, that the motion for rehearing is granted; and it is

FURTHER ORDERED, that a hearing is set for June 19, 1985, at 10:00 A.M. at which the Company will be given the opportunity to present it's case; and it is

FURTHER ORDERED, that Granite State Telephone will provide its written testimony by June 5, 1985.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61065]*70 NH PUC 361*Southern New Hampshire Water Company, Inc.

[Go to End of 61065]

70 NH PUC 361

Re Southern New Hampshire Water Company, Inc.

DE 85-39, Order No. 17,597

New Hampshire Public Utilities Commission

May 10, 1985

PETITION for authority to establish a water public utility; granted.

APPEARANCES: Edmund J. Boutin, Esquire for the Petitioner; Daniel D. Lanning and Robert B. Lessels for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

By a petition filed on February 4, 1985, Southern New Hampshire Water Company, Inc. (Southern) seeks authority to establish a water public utility in the Town of Windham. A public hearing on this matter was held on April 10, 1985.

Southern is presently franchised to serve in several towns in New Hampshire including two limited areas in the Town of Windham, by water systems known as the W & E Artesian Well and Goldenbrook Divisions. It is the Company's position that the acquisition of that remaining area within the Town of Windham that is not presently served by another water system, is a logical extension of its existing systems and will enable the Company to better meet its long term goal of a regional water system.

Southern testified that they have met with and discussed this petition with the Selectmen of the Town of Windham. No correspondence has been received by the Commission from the Town of Windham, nor was any appearance made at the hearing.

In view of the operating history of Southern of its water systems in the State of New Hampshire, we find that it is in the public good to grant the authority here sought.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Southern New Hampshire Water Company, Inc., be, and hereby is, authorized to operate as a public water utility in that area in the Town of Windham not presently being served by another water system.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61066]*70 NH PUC 362*Gas Service, Inc.

[Go to End of 61066]

70 NH PUC 362

Re Gas Service, Inc.

DF 85-22, Supplemental Order No. 17,598

New Hampshire Public Utilities Commission

May 10, 1985

ORDER clarifying time allowed to file petition for approval of short term debt level.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on April 19, 1985 the Commission issued Report and Order No. 17,560 (70 NH PUC 312) which authorized Gas Service, Inc. to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its medium term promissory note, 12.5% due 1990, in the aggregate principal amount of \$2,500,000; and

WHEREAS, in said Report at page 5 the Commission stated that "We therefore will order the Company to file a petition within 30 days seeking approval of whatever short term debt level it feels is appropriate in light of the approval of this financing;" and

WHEREAS, in Order No. 17,560, which incorporated the said Report, the Commission stated as follows (70 NH PUC at p. 315):

FURTHER ORDERED, that within 90 days of the date of this order the Company shall file a petition within 30 days stating the appropriate maximum short term debt level for Gas Service, Inc; and

WHEREAS, despite these different numbers of days, it was the intention of the Commission to allow the Company 90 days to file said petition; it is hereby

ORDERED, that Gas Service, Inc. shall file said petition within 90 days of the date of Order No. 17,560.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

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NH.PUC*05/10/85*[61067]*70 NH PUC 363*New Hampshire Electric Cooperative, Inc.

[Go to End of 61067]

70 NH PUC 363

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 16th Supplemental Order No. 17,599

New Hampshire Public Utilities Commission

May 10, 1985

ORDER authorizing emergency financing for Seabrook nuclear generating plant.

Security Issues, § 44 — Generally — Cooperatives — Emergency financing — Electric.

An electric cooperative that was awaiting rehearings was granted a partial increase in emergency financing because the potential adverse consequences of default outweighed the consequences of the incremental additional exposure associated with the granting of emergency relief. [1] p. 364.

Orders, § 2 — Effective date — Modification.

All commission orders are valid as of their effective date unless subsequently altered, amended, suspended, annulled, set aside or otherwise modified by the commission or the court. [2] p. 365.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

This Order will address the Motion of the New Hampshire Electric Cooperative, Inc. (NHEC) to enlarge our Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26) in this proceeding. The Motion was filed on May 3, 1985. Pursuant to the schedule directed by the Commission, objections to the Motion were filed on May 7, 1985 by Intervenors McCool and Easton.

In Order 17,411, the Commission granted to NHEC the authority to borrow an additional \$5,290,484 in order to meet its obligations up to May 15, 1985. In the same Order, the Commission set a procedural hearing to establish a schedule to adjudicate the remaining issues in this docket by May 15, 1985. Order 17,411 was appealed to the Supreme Court which, inter alia, affirmed the Commission's decision to grant emergency financing authority. *Re McCool*, 125 N.H. —, — A.2d — (1985). As the proceedings have progressed, it has become apparent that we will be unable to complete our adjudication of the issues in this docket by May 15, 1985. The last day of evidentiary hearings was May 3, 1985. The briefing process will conclude on May 24, 1985 and the Commission anticipates that it will issue its Report and Order on or about mid-June 1985. Accordingly, the NHEC 41has requested additional emergency

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authority to incur up to \$3,260,581 in additional debt.¹⁽¹²¹⁾ The NHEC represented that the funds would be sufficient to meet its obligations through July 30, 1985; a time sufficient to encompass the Commission's Report and Order and the rehearing process. The NHEC argued that the rehearing process should be included because a Commission Order granting the requested financing authority cannot be considered "valid" until the rehearing process is completed. *Re Seacoast AntiPollution League*, 125 N.H. —, 490 A.2d 1329 (1985) (Appeal of SAPL). The NHEC also argued that without additional emergency authority from the Commission, it will be unable to meet its obligations after May 27, 1985. It would, therefore, be in the position of defaulting on its obligations to its lender and to the Seabrook Joint Owners.

The Intervenors objected to the Motion. Mr. McCool argued that the granting of additional emergency financing authority is:

1) violative of the decision of the Court in *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984) (Easton);

2) inconsistent with the Commission's previous suspension of the financing authority sought in this docket;

- 3) inconsistent with the status quo;
- 4) inconsistent with the evidence pertinent to the risks of default;
- 5) inconsistent with the Court's Order in *Re McCool*, supra; and
- 6) inconsistent with the Commission's condition in *Re Public Service Co. of New Hampshire*, 70 NH PUC 164, 66 PUR4th 349 (1985), see also, the May 3, 1985 Order of the Vermont Public Service Board.

Representative Easton argued that:

- 1) there could not be a default;
- 2) payment of Seabrook funds to the joint Owners is inconsistent with the Commission's condition in DF 84-200, supra; and
- 3) further emergency borrowing authority is unwarranted given the regulatory uncertainty surrounding the project.

[1] After review and consideration, we have decided to grant the NHEC's Motion in part. We will authorize additional emergency financing in the amount of \$2,682,017. To the extent that the NHEC requested authority to borrow in excess of that amount, the request is denied.

Our decision is based on the same rationale which formed the basis of Order 17,411 (70 NH PUC 26). There we balanced the risks and benefits of denying emergency relief with those of granting emergency relief. Even without reaching the Easton merits, the record leads us to find that the potential adverse consequences of default²⁽¹²²⁾ far outweigh the consequences of the incremental additional exposure associated with the granting of emergency relief. We note that the NHEC has already invested approximately \$90 Million in the Seabrook project to date. We do not believe it is reasonable regulatory policy to place both the \$90 Million and the potential benefits of the

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underlying investment (i.e., the Seabrook power) at risk to prevent an additional \$2.7 Million in exposure; particularly when an adjudication of the Easton issues is imminent.

We are mindful of the Court's language in *Re McCool*, supra. In affirming the Commission's decision to grant emergency relief in Order 17,411, the Court cautioned:

We wish to note that our conclusions are not to be taken as any indication that further emergency expenditure authorizations may be permissible, pending completion of the hearings presently scheduled to comply with *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984).

The Court's language must be read to mean that any determination made by the Commission continues to be subject to the review of the Court and that we cannot simply rely on *Re McCool*, supra as support for any additional financing. We note that our decision herein is based on an evaluation of the current circumstances surrounding the NHEC. As noted above, those circumstances include:

- 1) a balancing of the risks and benefits of granting or denying the requested relief;

2) the practical impossibility of issuing an Easton Order by May 15, 1985, the date on which the Order 17,411 emergency relief was based, despite the best efforts of the Commission and all the parties to bring the matter to a timely conclusion; and

3) the tailoring of the relief granted herein to the particular circumstances confronting the NHEC.

Accordingly, we conclude that under the circumstances, additional emergency relief is lawful and warranted.

[2] Having decided that the granting of emergency authority is proper, we turn to the issue of the level of relief. The NHEC has requested \$3,260,581 to carry it to July 30, 1985. The NHEC argued that such a time period is necessary because a Commission Order cannot be considered "valid" until the rehearing process is concluded. *Re SAPL*. We disagree. We do not believe that *Re SAPL* was intended to disturb the existing law which provides that all Commission Orders are valid as of their effective date unless subsequently altered, amended, suspended, annulled, set aside or otherwise modified by the Commission or the Court. See e.g., RSA 365:26. In any event, when no securities are to be issued and sold and the financing consists of authority to borrow against an existing line of credit with the Federal Finance Bank, the reason for the suspension of an order until rehearing to impose protective conditions for the public good no longer exists. Thus, we believe that our midJune Report and Order, which will resolve the Easton issues, is the proper place to rule on whether any portion of the NHEC borrowing request which had yet to be drawn down as of that effective date continues to be consistent with the public good. We will therefore grant only the emergency authority necessary to carry the NHEC through our projected mid-June decision date to June 30, 1985. According to the Projected Use of Funds attached to the NHEC's May 7, 1985 argument, an amount of \$2,682,017 will allow the NHEC to meet all obligations through June 30, 1985. That is the emergency authority which will be

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approved herein.³⁽¹²³⁾

We do not believe the arguments of Intervenors Easton and McCool outweigh the necessity of granting the emergency relief. Such relief is not necessarily inconsistent with Easton, the Commission's past Orders or the status quo. See e.g., *Re McCool*, supra, and Order 17,411. The record amply supports our concerns about the risks associated with default. See e.g., Exhs. 6-1 to 6-15 and Testimony of J. Peter Williamson. We also believe that further emergency relief is consistent with the condition in *Re PSNH*, supra. That condition is intended to maintain the status quo of construction at a reduced level pending the resolution of the regulatory uncertainty surrounding the financing requests of several Joint Owners. It cannot be read as requiring a disruption of the status quo of construction at the current reduced level by [sic] at the same time causing a default by the NHEC, a Seabrook Joint Owner.

For the above reasons, we conclude that an additional emergency financing in the amount of \$2,682,017 is consistent with the public good.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the request of the New Hampshire Electric Cooperative, Inc. for emergency authority to borrow an additional \$3,260,581 out of the previously approved and remanded \$111,000,000 be, and hereby is, denied; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, granted emergency authority to borrow an additional \$2,682,017 out of the previously approved and remanded \$111,000,000.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

FOOTNOTES

¹In its May 3, 1985 Motion, the NHEC requested authority to borrow an additional \$2,682,017. In its May 7, 1985 argument supporting its Motion, the NHEC modified its request to \$3,260,581. The NHEC stated that the previous request did not contain sufficient funds to carry it through the rehearing process.

²Our findings with respect to the consequences of default are based in part on Exhs. 6-1 to 6-15; documents which were part of the record prior to the time of the remand.

³The approval granted herein will, of course, be subject to, inter alia, modification or other conditions which may or may not be imposed in our Order adjudicating the Easton issues.

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NH.PUC*05/10/85*[61068]*70 NH PUC 367*Public Service Company of New Hampshire

[Go to End of 61068]

70 NH PUC 367

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Office of Consumer Advocate, Campaign for Ratepayers Rights, and Seacoast Anti-Pollution League

DF 84-200, Tenth Supplemental Order No. 17,601

New Hampshire Public Utilities Commission

May 10, 1985

MOTIONS for rehearing denied on issues concerning financing of a nuclear generating facility.

Return, § 26.1 — Reasonableness — Evaluation standard — Nuclear generating facility — Capital structure.

The commission employed an incremental cost standard for the purpose of determining

whether a nuclear generating facility or alternative generating resources should be pursued; a total cost standard was employed for the purpose of assessing the level of rates necessary to support a capital structure which included the proposed financing. [1] p. 370.

Bankruptcy — Evaluation — Level of uncertainty — Nuclear generating facility.

An attempt to identify and quantify what would occur in bankruptcy is an impossible task; the commission is not required to engage in such speculation and was therefore entitled to conclude that where the level of uncertainty is high, there exists significant risk that such uncertainty will be resolved in a manner that is not consistent with the public good. [2] p. 372.

Security Issues, § 129 — Burden of proof — Nuclear generating facility.

The burden of proof rested on an electric utility on the overall issue of whether the proposed financing of a nuclear generating facility was consistent with the public good. [3] p. 373.

Evidence, § 11 — Burden of proof — Substantial evidence — Commission standard.

The commission rests its findings in all instances on substantial evidence; an allegation that the commission had reached a per se conclusion that bankruptcy was not in the public good was rejected. [4] p. 374.

Valuation, § 1 — Generally — Prudency determination — Capital investment — Nuclear generating facility.

Although the construction of a nuclear generating facility was found to be an economically justified investment, the possibility of a prudency determination of capital investment in rate base was not foreclosed by a finding that the proposed financing was consistent with the public good. [5] p. 375.

Rates, § 120 — Reasonableness — Capital investment — Nuclear generating facility.

It was not an error to find that rates based on the construction of a nuclear generating facility "may" be reasonable because any of the capital investment found to be imprudent in a subsequent proceeding may

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then be disallowed and appropriate adjustments made. [6] p. 379.

Valuation, § 224 — Allowance for funds used during construction — Rate scenarios — Sunk investment — Nuclear generating facility.

It was not error to treat allowance for funds used during construction (AFUDC) costs on sunk investments symmetrically in the completion and cancellation scenarios; the commission believes that an incremental standard was appropriate to the evaluation of alternatives and that such a standard requires symmetrical treatment of the financing cost of sunk investment. [7] p. 381.

Procedure, § 2 — Separate docket — Nuclear plant funding.

Statement, in separate opinion, that the commissioner would only allow an electric utility to fund the construction of a nuclear generating facility through June, the original time set for completion of the facility, at which time another docket should be required for the utility to show

cause why it is in the public interest to continue payments. p. 383.

Valuation, § 193 — Property used and useful — Economic waste — Market test.

Commissioner states in a separate opinion that both the prudence standard and the used and useful standard should be used in reviewing projects for inefficiency and economic waste because the used and useful standard as a market test is only partially effective in identifying economic waste and inefficiency due to the fact that regulated industries are only partially competitive. p. 384.

(AESCHLIMAN, commissioner, separate opinion, p. 383.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

By its Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164, 66 PUR4th 349) (Order 17,558), the Commission, inter alia, conditionally approved a Petition of Public Service Company of New Hampshire (PSNH or Company) for authority to issue and sell certain securities for the purpose of completing construction of Seabrook Unit I.¹⁽¹²⁴⁾ On May 8, 1985, Motions for Rehearing were filed by the Conservation Law Foundation of New England, Inc. (CLF), the Consumer Advocate and PSNH.²⁽¹²⁵⁾ PSNH filed a reply to the CLF and Consumer Advocate Motions on May 9, 1985. The purpose of this Order is to rule on the Motions for Rehearing. We shall address each Motion in turn.

PSNH MOTION

On May 8, 1985, PSNH filed a Motion for Clarification Or In The Alternative For Modification Of A Condition In Order No. 17,558. PSNH represented that the Commission's condition limiting Seabrook expenditures to 10% of the net proceeds of the December, 1984 Units financing would prohibit it from meeting its Seabrook payments as of approximately May 15, 1985. Such a failure by PSNH to meet its obligations to the Joint Owners would result in a default and a halt to Seabrook construction. PSNH claimed that such consequences are inconsistent with the Commission's findings in

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Order 17,558 and, additionally, the 10% limitation is not required by law.

In Order 17,558, we found that the issue and sale of the proposed securities in the amount of \$525 million by PSNH subject to conditions specified therein was consistent with the public good as defined in RSA 369:1 and 4. See also, *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984). Based on substantial evidence we further emphasized that Seabrook I generating capacity and power were needed to serve the public interest in New Hampshire, the interest of PSNH ratepayers, and the interest of New England through the New England Power Pool (NEPOOL). We determined that Seabrook I would be constructed and in commercial operation by December, 1986 based on continued construction and funding by the Joint Owners at a level prescribed to

accomplish the objective of a 1986 completion date and commercial operation within the \$1 billion "cost to go" for planning purposes.

While we were mindful that the construction commitment for Seabrook I should be increased above the \$5 million per week level to assure completion within the planning time frame of the Joint Owners, we recognized that funding at a level of \$10 Million per week commencing in April 1985 could not be accomplished in view of the equivocal status of financing by several of the Joint Owners. We imposed two basic conditions in Order No. 17,558 (70 NH PUC at p. 269, 66 PUR4th at pp. 441, 442):

(1) FIRST CONDITION

FURTHER ORDERED, that the approval of the issuance and sale of the proposed securities be, and hereby is, subject to the condition that all Seabrook I Joint Owners have received regulatory authorization to finance their respective ownership shares of Seabrook I and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook I \&... .

(2) SECOND CONDITION

FURTHER ORDERED, that until further Order of the Commission, PSNH's request that the Commission remove the conditions imposed in Re PSNH, DF 84-167, Seventh Supplemental Order No. 17,222 (September 21, 1984) [69 NH PUC 522] which prohibits the Company from contributing cash for the purpose of Seabrook construction at a level exceeding its ownership share of \$5,000,000 per week be, and hereby is, denied provided, however, that any amount of expenditures less than PSNH's 35.6942% share of \$5,000,000 per week since December 1984 may be aggregated and spent for any increase in joint funding levels for Seabrook I construction, but in no event more than 10% of the net proceeds of the \$425,000,000 in Order No. 17,222 (See also, Seventh Supplemental Order No. 17,495 in this docket dated March 13, 1985)\&... . [70 NH PUC 110]

By the imposition of these conditions, we did not intend to place PSNH in breach of its obligations under the Joint Ownership Agreement, nor to force a hiatus in construction of Seabrook I. To the contrary, we intended

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that PSNH should be able to fund its pro rata share of construction of \$5 Million per week. We trust that the Joint Owners will also fund their respective shares of construction as due.

Pending resolution of questions of regulatory authorization to finance the ownership shares of the Joint Owners or reasonable assurances that Joint Owners will finance their share to fulfill contractual commitments to pay Seabrook I construction costs on a timely basis, the limitation on the issue and sale of the proposed securities must continue temporarily. Upon receipt of reasonable assurance of financing the construction of Seabrook I by the Joint Owners, the Commission will issue such further order as may be required for PSNH to issue and sell the proposed securities consistent with the public good.

Pending the issue and sale of the proposed securities, it is essential to authorize construction funding by PSNH to avoid default in its obligation under the Joint Owners Agreement.

Accordingly, the restriction imposed by Order 17,558 (Second Condition above) on the use of the net proceeds of the \$425 Million sale of securities approved in Re Public Service Co. of New Hampshire, 69 NH PUC 522 (1984), will be removed. We order herein that until further order of this Commission, PSNH may spend or contribute cash from the proceeds of the securities sold pursuant to Order No. 17,222 at a level up to 35.56942% of \$5 Million per week. See also, Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110) in this docket. Such expenditures in excess of 10% in the aggregate of \$406 Million shall be credited against the proposed \$525 Million financing and restored to PSNH for general corporate purposes and monthly accounting of the proceeds of the sale in DF 84-167 pursuant to the requirements of Seventh Supplemental Order No. 17,222.

CLF MOTION

On May 8, 1985, CLF et al. filed a Motion for Rehearing pursuant to RSA 541:3 which asserted that Order 17,558 was unlawful or unreasonable on a number of grounds. After due consideration, we have decided to deny the Motion for Rehearing. Our analysis of each of the grounds specified by CLF et al. follows.

1. The Standard of Analysis

[1] CLF asserted in its Motion at 1 that the Commission "erred in determining 'public good' on the basis of Seabrook incremental cost". Motion at 1-4. CLF's assertion is incorrect. We believe that it is manifestly clear that the Commission applied both an incremental cost standard and a total cost standard depending on the issue to be analyzed. For the purpose of determining whether Seabrook or alternative generating (or conservation) resources should be pursued, we employed an incremental cost standard. (See, 70 NH PUC at pp. 214-217, 66 PUR4th at pp. 394397.) For the purpose of assessing the level of rates necessary to support a capital structure which included the proposed financing, a total cost standard was employed. In fact, it is difficult to ascertain how the Intervenors could have such a thorough misunderstanding of our order in view of the clear and explicit language adopting a total cost standard for the evaluation

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of rates. (70 NH PUC at pp. 235, 236, 66 PUR4th at pp. 413, 414.)

There we flatly stated (70 NH PUC at p. 236, 66 PUR4th at p. 414):

...Since Seabrook costs cannot be reflected in rates until the plant is operational, the before and after difference perceived by ratepayers will be calculated on the basis of the total cost of the project. Thus, for the purposes of a financial feasibility analysis which focuses particularly on what ratepayers will be asked to pay so that investors may recover a reasonable return on prudent investment in property used and useful in the public service (RSA 378:27-38), total cost is the measure of reasonableness. Accordingly, we have received evidence on the total cost effect of the completion of Seabrook Unit I ... and in this Order we are applying a total cost analysis to the financial feasibility issues.

After our adoption of the total cost standard, the Commission applied that standard to its evaluation of the possible rate consequences of Seabrook I completion. (See e.g., 70 NH PUC at pp. 237-242, 66 PUR4th at pp. 415-420.) Such a total cost analysis of the possible rate

consequences of a proposed financing is in full compliance with the requirements of RSA Chapter 369 as construed by the Court. *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 (1984); *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984).

CLF argued in paragraph 1.b) and 1.c) that the application of an incremental cost standard in the absence of a cost cap is contrary to the Court's requirements as set forth in *Easton*. This ignores, however, the legal conclusion that we cannot impose such a cap absent findings of prudent investment. (70 NH PUC at p. 247 n. 64, 66 PUR4th at p. 424 n. 64.) We are bound to follow applicable law which provides that utilities may only recover a return on prudent investments which are used and useful in the service of the public. RSA 378:27 and 28; *Re Public Service Co. of New Hampshire*, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982). There is substantial evidence to support the Commission's findings that such a subsequent prudence investigation will provide a realistic opportunity to establish just and reasonable rates. See e.g., *Testimony of Mr. Trawicki*, Exh. 95.

2. Value to Shareholders

CLF argued that the Commission erred in approving a financing plan which it claimed is designed to restore the lost value of equity securities to the Company's stockholders (characterized as "speculators"). We believe that PSNH's response is correct. This assertion does not relate to any issue within the scope of the proceedings, nor considered in Order 17,558. There is no evidence that compels a conclusion that PSNH's equity investors are "speculators". Even if such evidence existed, the Commission continues to be required to give due weight to both the interests of the customer and the interests of the utility. RSA 363:17-a. In the absence of a prudency investigation, which would result in the allocation of costs between utility ratepayers and investors, the only reasonable course is to take the appropriate actions, consistent with the public good, which preserves for realistic adjudication the interests of all concerned.

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3. Record Support for Bankruptcy Findings

[2] CLF argued that the record did not contain sufficient evidence to support the Commission's findings applicable to the financial consequences of bankruptcy. We must initially note that this and subsequent assertions pertinent to bankruptcy, even if true, are not determinative. As explicitly stated in Order 17,558, "... our finding that PSNH's proposed financing to complete the construction of Seabrook Unit I is in the public good is independent of the probable bankruptcy of the Company if its Petition is denied." (70 NH PUC at p. 249, 66 PUR4th at p. 426. See also, 70 NH PUC at pp. 232, 233, 66 PUR4th at p. 411.) However, even though the issue is not determinative, our evaluation of the arguments proffered by CLF leads us to conclude that they are without merit. Substantial evidence lead us to conclude that there exists a high level of uncertainty in the bankruptcy alternative. PSNH was correct in its response that an attempt to identify and quantify what would occur in bankruptcy is an impossible task. The Commission is not required to engage in such speculation and accordingly, was entitled to conclude that where the level of uncertainty is high, there exists significant risk that such uncertainty will be resolved in a manner that is not consistent with the public good.

4. The Commission's Bankruptcy Findings

CLF argued that, to the extent that the Commission did attempt to assess the consequences of bankruptcy, its findings were erroneous.³⁽¹²⁶⁾ We shall address each allegation of error as they were argued in the CLF Motion.

a) CLF argued that it was error to find that a bankruptcy court would subordinate ratepayers' interests to creditors' interests. Our finding was that such subordination could result. Our review of the evidence and of the law leads us to continue to believe that our finding is correct and constitutes a reason why bankruptcy is not an appropriate public policy approach. See e.g., 70 NH PUC at p. 250, 66 PUR4th at p. 427; Testimony of Dean Viles, Exh. 83 at 11; Exh. 9.

b) CLF argued that the Commission erred in its finding that a bankruptcy court could "artificially" revalue ratebase to satisfy creditors. Substantial evidence leads us to continue to believe that there exists a significant risk of a revaluation of PSNH property. See e.g., Exh. 95, 22 Tr. 4003-04.

c) CLF argued that the Commission erred in its finding that the cost of capital to a reorganized PSNH would be higher than that of a PSNH with continued Seabrook construction or completion. Substantial evidence leads us to continue to believe that "capital markets will continue to raise the cost of borrowed capital above pre-bankruptcy levels". 70 NH PUC at p. 251, 66 PUR4th at p. 428. See also, Devine, Millimet Report, Exh. 9 at 33; Trawicki Testimony, 22 Tr. 4016.

d) CLF argued that the Commission erred in finding that the Commission or the State of New Hampshire would probably not be granted party status in a bankruptcy proceeding. CLF has misstated the Commission's finding. Our

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Order clearly found that (70 NH PUC at p. 252, 66 PUR4th at p. 429):

[t]he Bankruptcy Code is equivocal regarding the official standing of the Commission as a party in a bankruptcy proceeding ... Probably §1109(b) would entitle the Commission and ratepayer representatives a right of permissive intervention subject to bankruptcy court approval since the term "party in interest" is not defined in the Bankruptcy Code. Exh. 9 at 4-5; 20 Tr. 3708-09.

Substantial evidence supports the Commission's actual finding. *Id.*, 70 NH PUC at p. 252, 66 PUR4th at p. 429. The case of *Re Amatex Corp.*, 53 U.S.L.W. 2434 (March 12, 1985) is consistent with that finding. There, the Court held that it is within the discretion of the bankruptcy judge to determine who is a "party in interest". Such discretion will, of course, be exercised on the basis of the facts relevant to a particular bankruptcy proceeding.

e) CLF argued that the Commission erred in its finding that bankruptcy would trigger a detrimental tax impact and impair the quality of service. CLF has misstated the Commission's findings. As reflected in Order 17,558, (70 NH PUC at p. 254, 66 PUR4th at p. 430), we did not find that the described consequences are inevitable; rather, we found that there exists a significant risk that such consequences could occur. Substantial evidence leads us to conclude that our findings were correct. See e.g., Exh. 9 at 25-26; 15 Tr. 2631-42; 19 Tr. 3471-73; 21 Tr. 374647, 3758-59.

f) CLF argued that the Commission erred in its finding that there exists a reasonable possibility that creditors could force a sale of PSNH's generating assets. Substantial evidence leads us to continue to believe that creditors are empowered to force a sale of generating assets if such a sale is necessary to protect creditors' interests in bankruptcy. See, 70 NH PUC at p. 254, 66 PUR4th at p. 431, and support cited therein. We agree with PSNH's response that, contrary to CLF's assertion, Witness Trawicki's testimony pertained to the unlikelihood of a liquidation of the Company, rather than a sale of all or part of its generation.

g) CLF also asserted that the Commission erred in numerous other unspecified findings. Such an assertion is inconsistent with the requirement of specificity set forth at RSA 541:4 and, accordingly, neither the Commission nor an appellate court has a basis of review.

5. The Burden of Proof

[3] CLF asserted that the Commission reversed the burden of proof on the bankruptcy issue and that such a reversal is error. CLF is correct that the Order is not explicit on which party bears the burden of proof on the bankruptcy issue. However, the allocation of the burden of proof had no bearing on our determination because substantial evidence from all witnesses and supporting exhibits taken as a whole lead us to conclude that bankruptcy is not a desirable public policy alternative. Additionally, we note that the burden of proof on the overall issue of whether the proposed financing is consistent with the public good rested, as it should, with PSNH. See, 70 NH PUC at p. 260, 66 PUR4th at p. 436. ("The Company has sustained its burden to prove that the proposed financing will

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serve the public good.") Given the overall weight of the evidence, regardless of its source, and the allocation of the ultimate burden to PSNH, we continue to be satisfied that our findings are correct.

6. Per Se Bankruptcy Finding

[4] CLF argued that the Commission erred in finding that bankruptcy is per se not in the public good. CLF has misstated the Commission's finding. In fact, we balanced the interests of ratepayers and investors. We have observed the mandate of RSA 363:17-a. In Order 17,558 (70 NH PUC at p. 250, 66 PUR4th at p. 427), we cited the New Hampshire Supreme Court for the proposition "a bankrupt utility is not in the public interest." *Re Legislative Utility Consumers' Council*, 120 N.H. 173, 174, 412 A.2d 738 (1980). We did not find that bankruptcy per se is not in the public good. In our Report at 198 (70 NH PUC at p. 260, 66 PUR4th at p. 436); we found that bankruptcy would not serve the public good based on substantial evidence. We specifically found that the testimony of Mr. Vaughn, Mr. Trawicki and various company witnesses, e.g., Plett, Staszowski, and Hadley constituted substantial evidence proving that the Company's financing plan offers greater protection for the ratepaying public and the public interest than bankruptcy reorganization. Here again, CLF erred in alleging per se conclusions when the Commission opinion plainly rests its findings — as in all instances — on substantial evidence.

7. The Risks of Further Construction

CLF argued that the Commission failed to balance the risks of further Seabrook construction

against the risks of bankruptcy. CLF is incorrect. Our evaluation of the risks of continued construction was explicit, detailed and based on substantial evidence. See e.g., 70 NH PUC at pp. 217-231, 66 PUR4th at pp. 397-409. Uncertainty and risk were explicitly recognized by our establishment of ranges for the applicable findings and, were supported by substantial evidence and the adoption of assumptions more "pessimistic" than those supported by the PSNH base case. Indeed, the Commission balanced the risks of construction against the risks of bankruptcy and found that the completion of Seabrook would better serve the public good. Substantial evidence leads us to continue to believe that the risks of bankruptcy substantially outweigh the risks of continued construction.

8. The Efficacy of a Future Prudency Determination

CLF argued that the Commission foreclosed its inquiry into ratepayer exposure because it deferred the actual rate determination to a subsequent proceeding. We do not accept the CLF assertion. As noted supra, we engaged in a thorough assessment of ratepayer exposure by, inter alia, evaluating the potential level of rates under various contingencies on a total cost basis. (See, 70 NH PUC at pp. 235-247, 66 PUR4th at pp. 413-424.) We found, inter alia, that:

1. Future capital structures resulting from various scenarios, (70 NH PUC at p. 244, 66 PUR4th at p. 422) appear to be within a zone of reasonableness for the purpose of prescribing rates. Capital structures conform to the

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norm. (70 NH PUC at p. 245, 66 PUR4th at p. 421.)

2. From the standpoint of rate support of capital investment in the range of \$4.6 to \$4.7 Billion, we found that the capital structure resulting from PSNH's financing of its proportionate share of such capital investment may be supported by future rates designed to yield a reasonable return on prudent investment in property of the utility used and useful in the public service less accrued depreciation. In essence our finding was and is that estimated rates to support the capital structure and the capital investments resulting from this financing are within a reasonable range for purposes of financing Seabrook I to completion, subject to a later determination in a rate proceeding of reasonable rates to support prudent investment.

3. We further found as mandated by Easton and SAPL that the projected investment resulting from this and associated financing may be supported by a level of rates to enable PSNH to earn operating costs, depreciation and other charges to enable consumers to receive service at reasonable rates. (70 NH PUC at p. 246, 66 PUR4th at p. 423.)

4. The capital issue will not exceed the fair cost of the property reasonably requisite for present and future use to supply reliable electric service to New Hampshire ratepayers and its economy. Re Easton, 125 N.H. 205, 480 A.2d 88 (1984); Re New Hampshire Gas & Electric Co., 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl. 602 (1936).

5. The capitalization ratios and capital structure fall within a zone of reasonableness for the purpose of rate determination.

6. If in a subsequent rate proceeding it is found that part of the capital investment in Seabrook I is imprudent so as to cause excessive and unduly burdensome rates not economically

justified, the Commission may disallow all or part of the Seabrook investment. (70 NH PUC at p. 246, 66 PUR4th at p. 423.)

7. There is substantial economic leverage to establish a rate level that will not be oppressive to consumers or to the New Hampshire economy or which is unfair to stockholders in the event of disallowance of any portion of the capital investment on the basis of improvidence. (70 NH PUC at p. 246, 66 PUR4th at p. 423.)

8. Reasonable rates on a just and reasonable rate base cannot be finally prescribed without a prudence determination of the capital investment in rate base. (70 NH PUC at p. 246, 66 PUR4th at p. 424.)

[5] We have found that Seabrook I is an economically justified investment, which if found to be prudent will require rate support in a subsequent proceeding. We require Seabrook I for reliable reasonably priced electric service. The public good is served by completion of Seabrook I to secure a return on investment for ratepayers as well as stockholders and other investors through power and energy generation from a working plant. We find it inconceivable from a public interest perspective to abandon over \$3 Billion of investment precipitating the bankruptcy of PSNH, foreclosing New Hampshire, Massachusetts, Vermont and Maine from the benefit of needed generating capacity by ill advised regulatory action, however well intended. As a matter of public policy, unnecessary economic waste should be avoided. We do not foreclose a prudence determination

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by finding here that the proposed financing is consistent with the public good.

9. Finding of Requirement to Plan for Maximum Demand

CLF argued that the Commission erred in its conclusion that RSA Chapter 162-F requires PSNH to provide for maximum projected demand. In Order 17,558, (70 NH PUC at p. 197, 66 PUR4th at p. 379), we stated that PSNH is required to plan for maximum probable demand (not "projected" demand — the term used by CLF). RSA Chapter 162-F pertains, inter alia, to the planning, siting and construction procedure of electric generating and transmission facilities. Electric utilities are required to prepare plans for future generating facilities. RSA 162-F:4. During its evaluation of an application for a Certificate of Site and Facility the Commission is required to consider the present and future need for power. RSA 162-F:8 II (Supp. 1983) provides, inter alia:

In its decision, the commission must find that the construction of the facility:

(a) Is required to meet the present and future need for electricity. A finding that the construction of the facility is required to meet the present and future need for electricity may be based upon a determination of need for capacity to generate electricity, need for a greater supply of energy, or need for more economic, reliable, or otherwise improved sources of either capacity or energy. The commission shall consider economic factors when considering whether or not the facility will meet the present and future needs for electricity\&... .

See also, RSA 374:1. Clearly, PSNH as a regulated utility must provide and plan to continue to provide power without interruption, around the clock, for all seasons to meet the peaks and

ebbs of power demand flow. Substantial evidence leads us to continue to believe that the granting of authority to engage in the proposed financing will enable PSNH to meet its obligations.

10. Error in Factual Findings

CLF argued that the Commission erred in several of its factual findings. Specifically:

a) CLF asserts that the Commission incorrectly found that the cost of Seabrook I is likely to be between \$4.6 to \$4.7 billion.

Our finding a total Seabrook cost of \$4.6 — \$4.7 Billion is based on substantial evidence. A lack of full funding in April, May or June may result in slippage of several months to completion. However, the difference between \$1 Billion cost to go and \$882 Million offers flexibility so that the Company will be able to meet its construction costs even if it fails to meet a December 1986 commercial operating date by several months. (70 NH PUC at p. 223 n. 43, 66 PUR4th at p. 402 n. 43.) CLF's further supporting argument misstates the record or the Commission's decision. PSNH's annual report (Exh. 173) cannot be read as an admission that the facility will cost \$5.364 billion. The record clearly indicates that the extrapolation of PSNH's share of the cost to total cost is improper because, inter alia, PSNH's

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financing costs are higher than those of the Joint Owners. See e.g., 38 Tr. 7506-07. We did not, as CLF asserted, rely on the St. Lucie II experience for our findings. That experience was pertinent to Mr. Derrickson's track record and credentials, but our estimate of Seabrook cost was based on substantial evidence applicable to Seabrook. In addition, we did evaluate the cost of Seabrook I utilizing a probability analysis. That evaluation included both the probability analysis of Management Analysis Corporation (Exh. 106) and the sensitivity analysis performed by witnesses Staszowski, Hadley and Trawicki. We have fully evaluated all the evidence on cost, including an evaluation of the circumstances under which the evidence was prepared and substantial evidence continues to lead us to the conclusion that the completion cost will be \$1.0 billion.

b) Completion date

As indicated in Order 17,558, (70 NH PUC at p. 219, 66 PUR4th at p. 399), the issues of cost and completion schedule are inextricably intertwined. Accordingly, the substantial evidence which leads us to conclude that our analysis of the probable cost was correct also leads us to conclude that our analysis of the probable schedule was correct. (70 NH PUC at p. 220, 66 PUR4th at pp. 399, 400.)

c) Load forecasts

In Order 17,558, (70 NH PUC at p. 207, 66 PUR4th at pp. 387, 388), we found: "Based on our review of the record evidence, we conclude that PSNH's 1984 load forecast is a reasonable basis for evaluating the economics of completing Seabrook relative to alternatives." This conclusion was preceded by our evaluation of the load forecast at 63-71 (70 NH PUC at pp. 195-199, 66 PUR4th at pp. 377-381), price elasticity and conservation at 71-83 (70 NH PUC at pp. 199-207, 66 PUR4th at pp. 381-388). Our conclusion is fully justified by the record

evidence.

d) Discount rate

See, Order 17,558, 135 (70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409). Our review of the evidence leads us to find that the appropriate consumer discount rate is within the range of 10% — 15.42%. Our analysis and reliance on record evidence is summarized at 133 and 136 of the Report (70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409).

e) Consequences of Denial

Apparently intervenors by implication support our finding that bankruptcy will result from denial of financing for Seabrook I. Intervenors assert that a challenge to the constitutionality of RSA 378:30-a should be considered by this Commission as if it had successfully been consummated in an opinion by the New Hampshire Supreme Court. We cannot assume that RSA 378:30-a will be held unconstitutional. The statute is a valid enactment by the New Hampshire General Court unless and until overturned by the New Hampshire Supreme Court or other appellate authority. If Construction Work in Progress (CWIP) or the costs of abandoned construction prove to be recoverable in rates and Seabrook is not completed, ratepayers will sustain the burden of paying for abandoned plant

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without the benefits of its power generating capability. If bankruptcy ensues after RSA 378:30-a is declared to be unconstitutional, debt incurred for CWIP could theoretically be extinguished by bankruptcy; however, CWIP and Allowance for Funds Used During Construction (AFUDC) would be collectible in rates. Such a scenario cannot be construed in any way as being consistent with the public good.

f) Capital availability

The Commission properly relied on record evidence concerning generating supply deficiencies and capital unavailability or higher cost of capital in the event of bankruptcy. Exhibit 102, Attachment E. Staszowski, Vaughn Exhibit 9, Plett and Trawicki, Order 17,558, (70 NH PUC at pp. 250, 251, 66 PUR4th at pp. 427, 428).

g) Supply deficiencies without Seabrook

Our analysis of the need for Seabrook power and the inadequacy of alternatives to Seabrook to serve the power needs of PSNH, its ratepayers and NEPOOL was based on substantial evidence. See e.g., 70 NH PUC at pp. 208-217, 66 PUR4th at pp. 389-397; See also, 70 NH PUC at pp. 230-235, 66 PUR4th at pp. 408-413, concluding that Seabrook is the preferred alternative compared to alternative conventional thermal generation, coal generation or conservation.

h) Incremental analysis

We continue to believe that our application of the incremental standard of analysis is sound. Such a standard must treat all alternatives equally. Since financing costs on sunk investment will be incurred in both the completion and cancellation alternatives, it was proper to treat those costs symmetrically. (70 NH PUC at pp. 216, 217, 66 PUR4th at p. 396; Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 [1984]; Re Seacoast Anti-Pollution League, 125 N.H.

465, 482 A.2d 509 [1984].)

11. Standards for Evaluating the Reasonableness of Rate Impacts

CLF argued that the Commission erred by not giving due weight to the possibility of economic dislocation resulting from projected rate increases. CLF is incorrect. We evaluated the economic impact of projected rate increases and found that even at the high level of rate increases contained in the record, the completion of Seabrook is necessary and that the proposed financing is in the public good. *Re Easton*, supra. See also *Missouri ex. rel. Southwestern Bell Teleph. Co. v. Missouri Pub. Service Commission*, 262 U.S. 276, 289, 290, PUR1923C 193, 67 L.Ed. 981, 43 S.Ct. 544 (1923) Brandeis J. dissenting. Apparently, CLF is dissatisfied that we did not more heavily weigh the testimony of Witness Palast who testified that 9000 jobs would be lost if Seabrook costs are reflected in rates. Mr. Palast's testimony was based on an econometric study which assumed a plant cost of \$6 billion. It projected a linear relationship between the size of the rate increase and the loss of jobs. The study did not purport to be an in-depth analysis. 15 Tr. 2774-75. Mr. Palast himself conceded that his estimate could be more than offset by increases in employment resulting from a robust New Hampshire economy. 15 Tr. 2763-64. We, therefore, cannot accept Mr. Palast's

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testimony regarding the impact of rates on the economy for the purposes of this proceeding. However, we must state directly that the impact of rates on the New Hampshire economy will clearly be an issue to be addressed in depth in a subsequent rate proceeding.

12. Larger Policy Consequences

CLF argued that the Commission erred by ignoring the larger policy consequences of approving the proposed financing. Specifically, CLF asserted that approval of the financing will promote waste and inefficiency and will be an obstacle to other least cost power alternatives. We disagree. Substantial evidence leads us to continue to conclude that economic waste would be the result of the abandonment of Seabrook, not its completion. (See also, 70 NH PUC at p. 235, 66 PUR4th at p. 413).

15. [sic] Violations of Statutes and Rules

CLF made a generalized assertion that Order 17,558 is in violation of RSA 541:2, Puc Rule 203.12 and RSA 363:17-B, III.

This assertion by intervenors is incomprehensible. RSA 541:2 refers to Motions for Rehearing; Puc Rule 203.12 refers to continued session of hearings. Apparently intervenors have cited the wrong statute and rule for whatever they are trying to prove. RSA 363:17-B, III requires a decision on each issue including the reasoning behind the decision. We have made our decision and have articulated the reasoning behind the decision for each issue as required by RSA 363:17-B, III. We can only speculate regarding the issues which the intervenors claim were not addressed properly. We cannot respond in the absence of the intervenors identifying specific issues, nor can the Court engage in appellate review of general assertions not in compliance with RSA 541:4.

CONSUMER ADVOCATE MOTION

On May 8, 1985, the Consumer Advocate et al. filed a Motion for Rehearing pursuant to RSA 541:3 which asserted that Order 17,558 was unlawful or unreasonable on a number of grounds. After due consideration, we have decided to deny the Motion for Rehearing. Our analysis of each of the grounds specified by the Consumer Advocate et al. follows:

1. Finding on Reasonableness of Rates

[6] The Consumer Advocate argued that the Commission erred because it only found that Seabrook based rates "may" be reasonable. In fact, in Order 17,558, we stated (70 NH PUC at p. 246, 66 PUR4th at p. 423):

We do not adjudicate in this proceeding that the projected rates will be ultimately determined to be reasonable. We find that for purposes of completing Seabrook the projected investment resulting from this and associated financings may be supported by a level of rates based on prudent investment in a subsequent rate proceeding, which will enable PSNH to earn operating costs, depreciation and other charges to enable consumers to receive service at reasonable rates. If in a subsequent rate proceeding it is found that part of the capital investment in Seabrook

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I is imprudent so as to cause excessive and burdensome rates not economically justified, the Commission may disallow part of the Seabrook investment.

The above language, based on our evaluation of a range of total cost rates, is fully consistent with our obligation to evaluate whether the proposed financing is in the public good pursuant to RSA Chapter 369. Re Seacoast AntiPollution League, 125 N.H. 708, 482 A.2d 1196 (1984); Re Easton, 125 N.H. 205, 480, A.2d 88 (1984).

2. Specification of Rate Scenario

The Consumer Advocate argued that the Commission erred because it did not specify which rate scenario it found to be the most likely to occur. We believe that we adequately stated our reasons for our conclusion. In Order 17,558 (70 NH PUC at pp.237-247, 66 PUR4th at pp.415-424), we examined a range of rate scenarios. We noted that in real dollars (rates adjusted to remove inflation effects) the rate levels do not skyrocket per se. We further examined the sensitivity of the various rate scenarios to changes in assumptions. See e.g., Trawicki pessimistic case, Exh. 95. Substantial evidence continues to lead us to the same conclusion based on the range of scenarios in the record. RSA 363:17-b does not require us to select one scenario which is most likely to occur when all parties acknowledge the uncertainty inherent in projecting future events.

3. Assumption on UNITIL Load

The Consumer Advocate argued that the Commission erred in including the UNITIL load in its evaluation of the need for Seabrook. Substantial evidence leads us to continue to believe that it is unlikely that PSNH will lose 100% of the UNITIL sales. See, Order 17,558, (70 NH PUC at pp. 233, 234, 66 PUR4th at pp. 411, 412), and evidence cited therein. Given the unlikelihood of 100% loss of UNITIL sales and the evidence indicating that Seabrook completion produces a negative Net Present Value (NPV) only if 100% loss of UNITIL load is assumed on top of all

other "pessimistic" assumptions, it was reasonable to conclude that Seabrook is needed.

4. Excess Capacity

The Consumer Advocate argued that the evidence compels a finding that without the UNITIL load, PSNH will have excess capacity until the late '90s. Substantial evidence leads us to continue to conclude that there is a need for Seabrook power with or without the UNITIL capability responsibility. (70 NH PUC at pp. 195-235, 66 PUR4th at pp. 377-413.)

5. Capacity Factor

The Consumer Advocate argued that the record does not permit the finding of a 60% capacity factor. Substantial evidence leads us to continue to find that the capacity factor will range from 52.5% to 72% and that a 60% assumption is reasonable for the purposes of Commission analysis. See, Order 17,558, (70 NH PUC at pp. 224-226, 66 PUR4th at pp. 403-405), and evidence cited therein.

6. Discount Rate

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The Consumer Advocate argued that the Commission erred in adopting a range of discount rates of 10% to 15.4%. We note initially that the Consumer Advocate's argument with respect to our adoption of a 10% discount rate is misleading given that we tested PSNH's analysis with a 15% discount rate in all instances. Substantial evidence leads us to continue to believe that our analysis was correct. See, Order 17,558, (70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409), and evidence cited therein.

7. NPV Scenario

The Consumer Advocate argued that the Commission erred in failing to select one NPV scenario which most closely matched the Commission's findings. We disagree. We believe that it was proper to examine a range of scenarios to test the sensitivity of the analysis to various changes in assumptions. Such a range is particularly appropriate given the uncertainty of projecting future events. (70 NH PUC at p. 218, 66 PUR4th at pp. 397, 398.) It is noteworthy that out of the 60+ scenarios evaluated, even the most pessimistic resulted in a positive NPV. *Id.*, 70 NH PUC at pp. 232-233, 66 PUR4th at p. 411.

⁴⁽¹²⁷⁾ See also Exh. 137.

8. NPV Without UNITIL

The Consumer Advocate argued that the Commission erred by not evaluating an NPV scenario without the UNITIL load. The Consumer Advocate is incorrect. As noted previously, the Commission did evaluate such a scenario. Order 17,558, (70 NH PUC at pp. 233, 234, 66 PUR4th at pp. 411, 412), and evidence cited therein. One cannot conclude that a scenario was not evaluated simply because the Commission did not weigh the evidence as the Consumer Advocate might have wished.

9. AFUDC on Sunk Costs

[7] The Consumer Advocate argued that the Commission erred in treating AFUDC costs on sunk investment symmetrically in the completion and cancellation scenarios. This argument was also considered in the CLF Motion. We continue to believe that an incremental standard was appropriate to the evaluation of alternatives and that such a standard requires symmetrical treatment of the financing cost of sunk investment. (See, 70 NH PUC at p. 232, n. 62, 66 PUR4th at p. 411 n. 62.) As PSNH noted in its Response: "Whatever else the anti-CWIP law may do, it does not overrule sound principles governing the determination of the true economic costs of alternate generation plans." PSNH Objection to Consumer Advocate Motion at 3.

10. Reliance on Mr. Derrickson

The Consumer Advocate argued that the Commission erred in relying on the testimony of Mr. Derrickson. Substantial evidence leads us to continue to conclude that our analysis is correct. See e.g., Order 17,558, (70 NH PUC at p. 220, 66 PUR4th at pp. 399, 400, and evidence cited therein. The Consumer Advocate's reference to PSNH's reports to the Securities and

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Exchange Commission can only be read as restating the same erroneous analysis in the CLF Motion at Paragraph 10 a. 2) (Exh. 173 indicates a total cost of \$5,364 billion). As noted previously, the extrapolation of PSNH's cost to a full cost of the entire plant is an analysis which is erroneous on its face.

11. Reliance on Report in DE 81-312

The Consumer Advocate argued that the Commission erred in applying our analysis in the Report and Order in DE 81-312 to the interval between fuel load and commercial operation. The Consumer Advocate is incorrect. Our finding of a six-month interval was based on substantial evidence in the instant record. This is reflected in the analysis in the Report. See, Order 17,558, (70 NH PUC at pp. 221-223, 66 PUR4th at pp. 400-402), and evidence cited therein.

12. Conservation Demand

The Consumer Advocate argued that the Commission failed to weigh properly the conservation alternative. As PSNH argued, the Consumer Advocate is incorrect. The Commission's rejection of Mr. Lovins' conservation alternative was based on Mr. Lovins' own assertions. If conservation does increase prices, as implied in the Consumer Advocate's Motion, then Mr. Lovins' argument that conservation is the least cost alternative could not be accepted for that reason. In any event, substantial evidence leads us to continue to conclude that, while conservation should be pursued, it cannot replace Seabrook. See, Order 17,558 (70 NH PUC at pp. 234, 235, 66 PUR4th at p. 413), and evidence cited therein.

13. Demand Under Various Scenarios

The Consumer Advocate argued that the Commission erred in accepting evidence that did not vary demand projections based on whether or not Seabrook rates were phased in. Substantial evidence, including the sensitivity analysis found at Exh. 143, leads us to continue to conclude that our analysis was reasonable. (See, 70 NH PUC at pp. 202, 205, 206, 66 PUR4th at pp. 384, 385, 387.)

14. The Conservation Alternative

The Consumer Advocate argued that the Commission erred in rejecting the conservation alternative. PSNH is correct in its analysis that the Commission did not reject Mr. Lovins' alternative solely because of unproven technology, but also for additional reasons set forth in Order 17,558 (70 NH PUC at pp. 234, 235, 66 PUR4th at pp. 412, 413). In addition, substantial evidence leads us to continue to believe that neither the conservation nor the cogeneration alternatives should be considered as a replacement for needed Seabrook power.

15. The Effect of Seabrook Rates on the New Hampshire Economy

The Consumer Advocate argued that the Commission erred in rejecting the economic analysis of Witness Palast. This assertion has already been addressed in our analysis of the CLF Motion at paragraph 11. The Consumer Advocate's argument is rejected for the same reasons set forth supra.

CONCLUSION

For the reasons set forth herein, the CLF and Consumer Advocate Motions will be denied and the PSNH Motion will be granted.

Our Order will issue accordingly.

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Opinion of Commissioner Aeschliman

Given the great uncertainty that timely regulatory approval and financing clearance will be granted to the Seabrook joint owners in Maine, Massachusetts and Vermont, I cannot agree to an open-ended approval for continued spending on the Seabrook project. The findings in my prior opinion were based upon attainment of full construction by June. Consequently, I would allow PSNH to continue to fund its share of the Seabrook project through June. However, the Commission should set a further hearing in this docket for the end of June, at which time PSNH should be required to show cause why it is in the public interest to continue Seabrook payments.

In accordance with my previous opinion in this docket, I would grant in part the joint motion of Conservation Law Foundation (CLF), Seacoast Anti-Pollution League (SAPL), and Campaign for Ratepayers Rights (CRR), and the motion of the Consumer Advocate, joined by SAPL. The points in the motions are addressed below.

Point 1 in the joint motion relates to the use of an incremental cost standard in determining the public good. I agree with the majority that an incremental analysis is appropriate for economic analysis relative to alternatives, but that a total cost analysis is required for assessing the reasonableness of rates. (See Separate Opinion of Commissioner Aeschliman [70 NH PUC at pp. 298, 299, 66 PUR4th at p. 469].) Since the majority opinion includes no conditions limiting rate recovery, it would be necessary for the majority to find that full cost rate support (at least at a maximum) is reasonable. (70 PUC at p. 243, 66 PUR4th at p. 421.) However, this finding has not been explicitly made. (70 NH PUC at pp. 246, 247, 66 PUR4th at pp. 423, 424.)

In addition, the majority order relies upon a future determination of prudent investment (70 NH PUC at pp. 243, 245, 246, 66 PUR4th at pp. 421, 423), but makes no specific commitment to

initiate a prudency investigation or to hire the consultants necessary to assist the Commission Staff in such an investigation. The time required for an appropriate investigation prior to the commencement of rate hearings necessitates action now to define the scope of the investigation and to obtain the funding for expert assistance. The joint motion also refers to other Commission dockets opened in order to address Seabrook rate recovery in which no action has been taken.¹⁽¹²⁸⁾

The Supreme Court has clearly indicated that the primary purpose of the financing statute is the protection of the consuming public. Since I believe that the majority opinion has not adequately addressed rates or ratepayer exposure, I would grant the motion for rehearing in regard to point 1 and also points 2, 8 and 11 as they relate to the level of rates and ratepayer exposure.

Points 3, 4, 5, 6 and 7 relate to Commission findings relative to bankruptcy. To the extent that the intervenors contend that the record relative to the bankruptcy issue is insufficient, I would deny the motion. The uncertainties relative to bankruptcy could not be resolved with additional testimony, but

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rather are inherent in the fact that there are no recent precedents of utility bankruptcy upon which the Commission could rely.

However, I agree with the intervenors relative to points 6 and 7. The Commission is required to balance the risks and possible benefits of bankruptcy against the risks and benefits of proceeding with Seabrook. It is not appropriate to determine that bankruptcy per se is not in the public good. This analysis relates again to the primary purpose of the financing statute — protecting the consuming public. At some point the cost of the plant may so far exceed its value and the rates required to support the investment may be so high that the risks of bankruptcy may be preferable. This is an assessment which the Commission must make.

I would also grant the motion relative to several parts of point 4 since I believe the conclusions of the majority are not supported by the weight of the evidence. In particular, I do not believe the evidence supports a conclusion that the public interest in maintaining reliable electric service would be subordinated to creditor and shareholder interests. (Point 4a, See Separate Opinion.) A rehearing should also be granted relative to points 4c, d, c and f. (See also Separate Opinion, supra.)

I would deny the motion relative to point 9. The relevant point is the reasonableness of the Company's load forecast for planning purposes and not the semantics of the statute and the majority report. I agree with the intervenors that the Company has not demonstrated the reasonableness of the prices underlying its load forecast and, consequently, I would grant the motion relative to point 10c.

Consistent with the findings of fact in my opinion, I would also grant the motion relative to points 10a, b, f and g. I would deny the motion relative to 10d and e. The record supports the use of a consumer discount rate of about 15%. A 15% rate is supported both by the testimony of Mr. Chernick (Exh. 63 at 96-98) and the testimony of Mr. Trawicki (22 Tr. 4057, 4058). Regarding

the recovery of costs from abandoned plant, the Commission must assume that the statute is constitutional in assessing the consequences of denial. Since the Commission is aware that the constitutionality of the statute has not finally been resolved, it is appropriate to consider this fact in assessing ratepayer exposure. (See Separate Opinion, supra.) The points raised in 10f and 10g are discussed at length in my prior opinion.

I would grant the motion for rehearing in part relative to point 12. Although I determined that the financing petition should be approved, the conditions were critical to my finding of the public good and were formulated specifically with larger policy considerations in mind.

It is critical that the Commission use both the prudence standard and the used and useful standard in reviewing projects for inefficiency and economic waste. The market is the basic test for economic waste for competitive industries. Managers of competitive companies often make major investment decisions which may be reasonable at the time, but are not sufficiently marketable to return a profit. In regulated industries, the used and useful test substitutes for the market test of demand for the product.²⁽¹²⁹⁾ Because regulated

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industries are only partially competitive, the regulated company retains significant monopoly market power and can charge prices which are higher than a fully competitive market would allow. For this reason, the used and useful standard as a market test is only partially effective in identifying economic waste and inefficiency and must be applied in combination with the prudence test.

I also agree with the intervenors regarding the implications for future utility generation planning. The concern about obstacles and disincentives to conservation is legitimate. It is also important for the Commission to specifically identify risk allocation and policy incentives for future generation planning. (See Separate Opinion.) Risk allocation and incentives should be designed to achieve balanced generation planning which avoids significant over-capacity or insufficient capacity, and which satisfies the least-cost standard. Without conditions which address these concerns, I agree with the intervenors that use of the incremental cost standard may result in waste and/or overinvestment.

I would deny the motion relative to point 13 because the joint intervenors have not identified any grounds to support the contention that there is a violation.

In reference to the motion of the Consumer Advocate, joined in by SAPL, I would grant the motion relative to points 1, 2, 3, 4, 7, 8, 10, 13, 14 and 15 and deny the motion relative to the other points. These points have been previously addressed or are adequately addressed in my opinion and do not need amplification here.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion of Public Service Company of New Hampshire for Clarification Or In the Alternative For Modification Of A Condition In Order No. 17,558 be (70 NH PUC 164, 66 PUR4th 349) and hereby is, granted; and it is

FURTHER ORDERED, that until further order of this Commission, Public Service Company of New Hampshire may spend or contribute cash from the proceeds of the securities sold pursuant to Order No. 17,222 (69 NH PUC 522) at a level up to 35.56942% of \$5 million per week; such expenditures in excess of 10% of \$406 million shall be credited against the proposed \$525 million financing and after the issuance and sale of the proposed \$525 million in securities, restored to Public Service Company of New Hampshire for general corporate purposes and monthly accounting of the proceeds in accordance with the requirements of Order No. 17,222; and it is

FURTHER ORDERED, that the Joint Motion for Rehearing of Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League and Campaign for Ratepayers' rights be, and hereby is, denied; and it is

FURTHER ORDERED, that the Consumer Advocate Motion for Rehearing on Report and Order No. 17,558 be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this tenth day of May, 1985.

FOOTNOTES

¹Unless otherwise specifically indicated, a reference to Seabrook in this Order is directed at Seabrook Unit I and common facilities. It is not intended that such a general reference include Seabrook Unit II.

²The Campaign for Ratepayers Rights (CRR) and the Seacoast Anti-Pollution League (SAPL) joined in the CLF Motion. SAPL also joined in the Motion of the Consumer Advocate. No other parties joined in the PSNH Motion.

³This ground is inconsistent with that argued at paragraph 3.

⁴As noted in the Report, the only negative NPV's resulted from scenarios which postulated unlikely events (100% loss of UNITIL sales and 100% life extensions) on top of the most "pessimistic" of assumptions. (70 NH PUC at p. 233, 66 PUR4th at pp. 411.)

Opinion of Commissioner Aeschliman

¹DE 83-152 was opened in April 1983 to investigate ways of mitigating rate shock, and DE 83-331 was opened in October 1983 to consider a Seabrook cost cap. Both of these dockets were closed in April 1985 by Chairman McQuade without consultation with or notice to the other Commissioners. DE 83-153 to investigate long term conservation and load management was also closed.

²See National Regulatory Research Institute, The Prudent Investment Test In The 1980's, April 1985 at 170-175.

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NH.PUC*05/13/85*[61069]*70 NH PUC 386*Town of Northfield

[Go to End of 61069]

70 NH PUC 386

Re Town of Northfield

DX 85-140, Order No. 17,602

New Hampshire Public Utilities Commission

May 13, 1985

ORDER revoking requirement for the adoption of an ordinance to provide a stop sign.

By the COMMISSION:

ORDER

WHEREAS, Order Number 8468 as set forth in I-T 12,260 on November 29, 1965 ordered that the Town of Northfield be required to adopt an ordinance to provide for the erection of a standard highway stop sign at the right hand side of the westerly approach to Sargent Street crossing; and

WHEREAS, all train movements over said Sargent Street crossing are conducted on a Stop and Protect rule whereby the crossing is protected by a member of the train crew; it is

ORDERED, that Order Number 8468 as set forth in I-T 12,260 on November 29, 1965 be, and hereby is, revoked so long as the Stop and Protect rule remains in place; and it is

FURTHER ORDERED, that this Commission shall be notified of any intended changes to the Stop and Protect rule as it applies to this crossing, at least 60 days before implementation of the change, at which time this order shall be rescinded and the requirement for a stop sign shall be reinstated.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1985.

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NH.PUC*05/13/85*[61070]*70 NH PUC 387*Merrimack County Telephone Company

[Go to End of 61070]

70 NH PUC 387

Re Merrimack County Telephone Company

DF 85-74, Order No. 17,603

New Hampshire Public Utilities Commission

May 13, 1985

ORDER authorizing issuance of a mortgage note by a local exchange telephone utility.

APPEARANCES: for the petitioner, Douglas S. Hatfield, Jr. Esquire; for staff Eugene F.

Sullivan, Finance Director and Edgar D. Stubbs, Jr., Assistant Chief Engineer.

By the COMMISSION:

REPORT

By this unopposed petition filed March 22, 1985, Merrimack County Telephone (the "Company"), 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, seeks authority pursuant to the provisions of RSA 369 to issue its mortgage note in the principal amount of \$2,520,000 to the United States of America, acting by and through the Rural Electrification Administration and the Rural Telephone Bank, and to mortgage its property in connection therewith. A duly noticed hearing was held in Concord on April 30, 1985 at which the Company submitted the testimony and accompanying exhibits of Paul E. Violette, Vice President of Operations.

Mr. Violette stated that the proceeds of the issuance of the mortgage note will be used (a) to finance the acquisition of facilities and equipment necessary to serve present and future customers in all exchanges; (b) to finance the purchase of new host digital electronic central dial office switching equipment for the Contoocook Central office; (c) Warner, Bradford and Sutton exchanges central office field remotes linking to the Coontoocook digital central office; (d) to finance related system improvements; (e) to reimburse the Company's treasury for expenditures made for the foregoing purposes; and (f) to purchase \$120,000 of Class B stock of the Rural Telephone Bank, which is required as a condition to the loan. The Company submitted evidence regarding its construction program for the years 1985-89, which is proposed to be financed through (i) this mortgage loan, (ii) internally generated Company funds.

The Company submitted exhibits of actual and budgeted balance sheets,

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income statements, cash flow statements and capital additions for the five years 1984 through 1989. Certified copies of authorizing votes of the Company's stockholders and board of directors were put in evidence.

Mr. Violette testified that the proposed loan is required for the Company to construct facilities necessary to meet the needs of its customers in its growing service area.

Based upon all the evidence, the Commission finds that the proceeds from the proposed financing will be expended to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase \$120,000 of Class B stock of the Rural Telephone Bank, and further finds that the proposed financing will be consistent with the public good.

Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that Merrimack County Telephone Company be, and hereby is, authorized to issue its mortgage note or notes in the aggregate principal amount of \$2,520,000 to the United

States of America, acting by and through the Rural Electrification Administration and/or the Rural Telephone Bank, in accordance with the foregoing Report; and it is

FURTHER ORDERED, that Merrimack County Telephone Company be, and hereby is, authorized to mortgage its present and future property, tangible and intangible, including franchises, as security for such mortgage note or notes as further security for its loans from the United States of America; and it is

FURTHER ORDERED, that the proceeds from this proposed financing shall be used to finance the Company's construction program, to reimburse the Company's treasury for expenditures in connection therewith and to purchase \$120,000 of Class B stock of the Rural Telephone Bank; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, Merrimack County 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 of said proposed financing 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 thirteenth day of May, 1985.

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NH.PUC*05/13/85*[79652]*68 NH PUC 339*Birchmere Water Company

[Go to End of 79652]

Re Birchmere Water Company

Intervenor: White Birch Point Water Association

DE 82-245, Supplemental Order No. 16,425

68 NH PUC 339

New Hampshire Public Utilities Commission

May 13, 1985

PETITION for authority to establish a water utility in a limited area; granted.

1. FRANCHISES, § 25 — Water system — Granting of franchise.

[N.H.] The commission recognized that the subject water systems had been serving customers for years and that the laws of New Hampshire made the company a public utility subject to commission regulation. .Pg p. 339.

2. VALUATION, § 36 — Rate base determination — Criteria — Original cost.

[N.H.] The traditional formula used by the commission for determining rate base involved a determination of the total utility plant in service valued at original cost, less accumulated depreciation, contributions in aid of construction, consumer deposits, and accumulated deferred

income taxes; the above calculation produced a net investment in plant to which was added working capital to arrive at a total rate base. p. 340.

APPEARANCES: Joseph J. Byk, Jr., for the petitioner; Vincent J. Franco, Murray Johnson and Dr. Ross for the White Birch Point Water Association; Kenneth E. Traum and Robert B. Lessels for the New Hampshire Public Utilities Commission staff.

BY THE COMMISSION:

REPORT

[1] Birchmere Water Company, a public utility as defined by New Hampshire Statute RSA 362:4, filed a petition seeking authority to establish a water utility in Antrim, New Hampshire and set rates.

A hearing scheduled on this matter for September 28, 1982, was continued at the request of Birchmere.

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On April 26, 1983, a duly noticed public hearing was held at the Commission's office in Concord. Prior to that date the Commission Staff had reviewed the Company's original filings, sent out numerous data requests, and had received some responses. Other responses were supplied on the day of the hearing.

Through the course of the proceeding 21 Exhibits were submitted and resulted in extensive testimony and cross-examination by Company representatives, customer association representatives, and Commission Staff.

Recognizing that the water system is operating and has been serving customers for many years the Commission finds that the Laws of New Hampshire make the company a public utility and it is subject to regulation by this Commission. (See RSA 362 and 362:4.)

In the past the Commission has experienced many problems with companies that operate water systems without utilizing public utility accounting procedures. The Commission has adopted the Uniform System or Chart of Accounts for water companies and Chapter 600 of the Commission's Rules and Regulations pertain exclusively to water companies. Most water companies not subject to regulation do not maintain the type of records needed to adequately protect the public in a non competitive environment; therefore, it is necessary to have the company prepare proper accounting records to protect its customers and its investors.

In accordance with the foregoing, the Commission will establish the following treatment for the company's utility plant and for ratemaking purposes.

RATE BASE

[2] The Birchmere Water Company requested a rate base of \$16,677 (see Exhibit 18). The traditional formula used by the Commission for determining rate base involves a determination of the total utility plant in service valued at original cost, less accumulated depreciation, contributions in addition to construction, consumer deposits and accumulated deferred income

taxes. This produces a net investment in plant to which is added working capital to arrive at a total rate base.

Cross examination by Staff members Lessels and Traum revealed that the proposed rate base contained therein accumulated depreciation and customer advances.

The proposed rate base of \$16,677 was computed as follows:

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

(1) Land	\$ 4,730
(2) Bldg., reservoir, well	6,130
(3) Equipment	2,500
(4) New pump & check valve	2,750
(5) Misc.	567
	\$16,677

As to item (1) the land referred to consisted of 5 acres. Staff inquiries reveal that only 3.8 acres is necessary for utility use; therefore, the Commission will approve the sum of \$3,593 for land. The Company recognized this adjustment in its revision filed April 27, 1983.

The Commission will accept and approve items (2), (3), (4), and (5) with two adjustments thereto. First, recognition must be made of the pump that was retired in 1982, thus reducing rate base. Secondly, the replacement pump and check valve were partly funded through customer advances so rate base will be reduced by an additional \$1,457.50. These changes were also reflected

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in the Company's filing of April 27, 1983.

Consistent with Commission policy, accumulated depreciation reduces rate base, so recognizing that the system was acquired by its current owner approximately two years ago, two years of depreciation will be assumed on the original pump house, reservoir, well, lines and valves, but only one year on the new pump. Similarly, the accumulated amortization figure is \$189.

The revised rate base thus becomes:

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

Land	\$ 3,593
Bldg., reservoir, well, equip.	5,800
New pump & check valve drain	3,080
Misc.	567
	\$13,040
Less Cust. Advances	(1,457)
Less Accum. Deprec.	(660)
Less Accum. Amort.	(189)
Working Capital	-
Deferred taxes	-
	\$10,734

The Commission adopts \$10,734 as the rate base figure.

COST OF CAPITAL

The Company's capital structure is comprised 100% of equity for which a return of 13.5% was requested. This rate was not contested by any party and will be accepted by the Commission.

The requested return on capital is thus calculated by multiplying rate base by 13.5% for a result of \$1,449.

DEPRECIATION AND AMORTIZATION

The requests for annual depreciation and amortization expenses were calculated by the Company after consultation with the Commission Staff and amounts to \$662. The Commission accepts the amount.

OPERATION AND MAINTENANCE

The Company requested an amount of \$2,429 which the Commission accepts, giving recognition to the fact that an absentee owner has the prerogative to hire outside experts to oversee and operate his investment in his absence, to his specifications, as long as those specifications comport with Commission standards.

INCOME TAXES

In Exhibit 18 the Company requested \$360 to cover Federal Income Taxes. During the course of the hearing Mr. Traum of the Commission Staff pointed out that the water system should have the benefit of carrying losses forward, and the Company as part of its April 27, 1983 revised filing, incorporated a figure of \$92 which the Commission accepts.

REVENUE REQUIREMENT

The forward looking revenue requirement for this Company, which is to be spread evenly over its 16 customers is calculated as follows:

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

Operation	\$2,429
Income Taxes	92
Depreciation & Amortization	662
Return of Rate Base	1,449
	\$4,632 or \$290 per customer

FUTURE REQUIREMENTS

As the Birchmere Water Company is a regulated water utility under the

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jurisdiction of the N.H.P.U.C., it will be required to keep its accounting records according to N.H.P.U.C. accepted Charts of Accounts for Water Utilities, file an annual report with the Commission, and meet all of the Commission's other regulations and requests.

The Company is directed to confer with the Engineering Department and the Finance

Department to determine the necessary documents, maps, etc. that are required to be filed with the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report which is made a part hereof; it is

ORDERED, that Birchmere Water Company shall be granted a franchise to supply water to its customers along the Smith Shore of Greg Lake in Antrim, New Hampshire as outlined in Exhibits 2 & 3; and it is

FURTHER ORDERED, that for all service rendered on or after the date of this order, the Company may charge its unmetered customers at the rate of \$290 per year; and it is

FURTHER ORDERED, that Birchmere shall file a tariff, setting forth the terms and conditions under which it will supply service, and specifying the rate for such service in accordance with the Commissions tariff filing rules, and bearing the effective date as of the date of this Report and Order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1983.

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NH.PUC*05/14/85*[61071]*70 NH PUC 389*Mad River Power Associates

[Go to End of 61071]

70 NH PUC 389

Re Mad River Power Associates

DR 85-72, Order No. 17,604

New Hampshire Public Utilities Commission

May 14, 1985

ORDER nisi approving a twenty-year cogeneration and small power production rate order.

By the COMMISSION:

ORDER

WHEREAS, on March 21, 1985, Mad River Power Associates (Mad River) filed a long term rate filing; and

WHEREAS, Mad River filed an amendment to its filing on April 5, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that Mad River's Petition for a Twenty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1985.

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NH.PUC*05/14/85*[61072]*70 NH PUC 390*New England Telephone and Telegraph Company

[Go to End of 61072]

70 NH PUC 390

Re New England Telephone and Telegraph Company

Intervenors: Town of Merrimack et al.

DE 85-30, Order No. 17,607

New Hampshire Public Utilities Commission

May 14, 1985

ORDER granting exemption from zoning ordinance.

Zoning — Exemption from ordinance — Commercial versus residential use —
Telecommunications facility.

The commission has the authority to exempt a public utility from the operation of a town's zoning ordinance and so approved the installation of an "80-Type Community Service Cabinet" to provide telecommunications service, a commercial use, on residential-zoned property.

APPEARANCES: For the New England Telephone and Telegraph Company, Robert E. Jauron, Esquire; for the Town of Merrimack, Jay L. Hodes, Esquire; pro se, Pamela J. Cheney.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 28, 1985, New England Telephone and Telegraph Company (NET) filed a Petition for Exemption From the Town of Merrimack Zoning Ordinance. An Order of Notice was issued on February 21, 1985 setting a hearing for March 15, 1985. At the hearing, the Town of Merrimack and Pamela J. Cheney were granted full intervenor status.

II. APPLICABLE LAW

Under RSA 674:30 the Commission may exempt a public utility from the operation of a town's zoning ordinance. It provides as follows.

674:30 Exemptions. Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision if, upon petition of such utility, the public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.

III. COMMISSION ANALYSIS

By this petition, NET seeks to be able to install an "80-Type Community Service Cabinet" on the property of Stanley R. and Connie M.

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Osborne located at 4 Greenwood Drive, Merrimack, New Hampshire, land which is situated in a residentially zoned area. Toward that end, NET purchased an option for an easement on that property from the Osbornes and sought a building permit from the Town of Merrimack. NET was denied a building permit on the grounds that the cabinet constituted a commercial use and as such was not allowed in residentially-zoned areas under the Merrimack Zoning Ordinance. NET then filed an application for a variance from the Merrimack Zoning Board of Adjustment which was denied by a vote of 3-2. Thereafter, NET filed the instant petition.

NET presented two witnesses in support of its petition. Karen B. Morin, District Manager for Construction and Engineering, testified that the outside plant facilities in the Baboosic Lake area of Merrimack were inadequate to meet future growth and its resulting telecommunications requirements. Regarding the need for additional lines, Ms. Morin testified that of the 450 private lines available, 400 are currently in use. She stated that there are a number of homes under construction in the area today and additional homes are forecasted to be constructed in that general service area in the near future. Based on its forecast, NET envisions that it will no longer be able to provide any new service in the area by April of next year. According to Ms. Morin, NET is seeking exemption at this time because a project of this nature generally takes nine to 12 months to implement.

Studies conducted by NET revealed two alternatives to provide additional plant to meet this need. The first was the recabling of the area to provide the additional cable pairs required. According to Ms. Morin, the cost of such cable plant was \$165,000. The other alternative is the use of "loop electronics", the cost of which is \$118,000, a savings of \$47,000 over the first

alternative. Ms. Morin testified that with the latter, multiple conversations could be multiplexed over a single pair allowing use of existing cable plant to meet the needs of added growth. Ms. Morin indicated the community service cabinet required by the utilization of "loop electronics" would house four SLC 96 devices, each of which could permit 96 derived pairs on a single copper pair. The four units proposed would give an added capacity of 384 one-party lines.

Ms. Morin cited flexibility as another advantage of the electronic alternative. Should growth of the area be less than forecast, the SLC equipment could be removed and used elsewhere. With added cable plant, the installation would be permanent. Additional safety aspects of this type of installation were discussed and Ms. Morin indicated that she was unaware of any accident or injury resulting from the NET placement of the Community Service Cabinet in other areas.

Douglas B. Allen, Engineer, testified regarding the procedures followed in selecting a site for the service cabinet and attempts for its approval. He entered as exhibits photographs of the area and a plot plan. Extensive cross examination of Witness Allen revealed information regarding NET studies and forecasts of

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needs and the procedures followed to meet these needs. He testified the selection of an alternate site in the serving area would also be subject to the same variance requirements, and would present the same problems as the current site.

Mrs. Pamela J. Cheney made a statement of her concerns and those of others in the area and presented the Commission with petitions signed by 10 abutters to the Osborne lot on which the Community Service Cabinet is proposed. On behalf of the petitioners, she expressed concerns regarding safety and the potential detrimental effect of the cabinet on their property values. She suggested other sites be sought. Mrs. Cheney was also concerned with another NET "box" situated on the public way at Greenwood and Baboosic. Detailed explanation of the differences between that box and the "80-Type" cabinet was discussed, both in function and configuration.

The Town of Merrimack acknowledges the Commission's jurisdiction under RSA 674:30. However, it argues that the Commission should give deference to the abutters who are opposed to the installation of the cabinet on the proposed site. It therefore argues that the Commission should send the matter back to the Town of Merrimack for further consideration in an effort to pick an alternative site.

The Commission agrees that the plant and operations of the New England Telephone are, indeed, commercial; yet the Company's presence in the residentially zoned Baboosic Lake area of Merrimack is to provide those residential customers with the required telecommunications service that each wants and demands. The lack of an exception for utilities in the zoning regulations of Merrimack could very well preclude service to those lots forecasted for development in that area. This certainly impacts the convenience and welfare of those citizens. Accordingly, the Commission has determined that the petition of the New England Telephone should be granted. However, to ensure that the selected site does not degrade the value of surrounding property, the Commission visited the site on the day of the hearing to view a full-size plywood mockup of the Community Service Cabinet and to determine its effect on the surroundings. With adequate screening, we have determined that the impact of the actual cabinet

will be minimal. Our Order will issue accordingly.

ORDER

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

ORDERED, that an exemption be, and hereby is, granted to the New England Telephone and Telegraph Company from the operation of zoning requirements of Merrimack, New Hampshire, such that said Company can install and operate an "80-Type" Community Service Cabinet to be located on an easement granted by Stanley R. and Connie M. Osborne, 4 Greenwood Drive in said town; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company coordinate its detailed plans for said installation and associated screening or landscaping with the Planning Board of Merrimack and the Osbornes; and it is

FURTHER ORDERED, that

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adequate screening be provided the small, green cabinet located in the public way at the corner of Greenwood Drive and South Baboosic Lake Road to make it less offensive to the residents of the area.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1985.

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NH.PUC*05/14/85*[61073]*70 NH PUC 393*New Hampshire Electric Cooperative, Inc.

[Go to End of 61073]

70 NH PUC 393

Re New Hampshire Electric Cooperative, Inc.

DR 84-348, Order No. 17,609

New Hampshire Public Utilities Commission

May 14, 1985

ORDER approving procedural schedule for the determination of an electric utility's permanent rates.

APPEARANCES: Maurice H. Muzzey, Director, Budgets and Finance, New Hampshire Electric Cooperative, Inc.; Eugene F. Sullivan, Finance Director, Melinda H. Butler and James L. Lenihan, New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

New Hampshire Electric Cooperative, Inc., a public utility engaged in the business of supplying electric service in the State of New Hampshire, having filed with this Commission on December 31, 1984 its proposed tariff, NH PUC No. 12 - Electricity, providing for an aggregate increase in base revenues of \$1,316,305, a rate increase of 3.8%, to become effective February 1, 1985. The Commission suspended said effective date pending investigation in Order No. 17,423 dated January 13, 1985.

On December 31, 1984, the New Hampshire Electric Cooperative, Inc. also filed a petition for temporary rates requesting that it be granted its existing rates as temporary rates under RSA 378:27 with certain reallocation of fuel base.

On February 8, 1985 the Commission issued an Order of Notice opening DR 85-38 to, inter alia, determine if the Co-op's rate case (DR 84-348) should be bifurcated so that the Fuel Adjustment Clause (FAC) could be determined as a separate matter.

On February 26, 1985 the Commission held a duly noticed hearing to consider 1) bifurcation of the Co-op's rate increase filing (DR 84-358) between the Fuel Adjustment Clause and an increase in rates, and 2) establishing an appropriate FAC for the forthcoming year.

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The parties agreed to bifurcate the rate proceedings in DR 84-348. Docket DR 85-38 considered the FAC as set forth in Order No. 17,516 (70 NH PUC 131). DR 84-348 remained open for review of the increase in base rates. In addition the parties agreed that a hearing should be scheduled as expeditiously as possible for temporary rates.

On April 18, 1985, the Commission received a letter from the New Hampshire Electric Cooperative, Inc.'s attorneys which withdrew its petition for temporary rates.

After due notice, a hearing was held before said Public Utilities Commission to address procedural matters regarding permanent rates pursuant to RSA 378:28 and Puc 203.05, in Concord, 8 Old Suncook Road, Building No. 1 in said State at ten o'clock in the forenoon on the second day of May, 1985. The hearing therefore addressed the remaining procedural matters regarding the petitioner's request for permanent rates. No motions to intervene were filed with the Commission prior to the hearing and no appearances were made by intervenors desiring to be heard during the proceeding.

A brief opening statement outlining the New Hampshire Electric Cooperative's petition for permanent rates was presented by Mr. Muzzey. No further motions were heard. The parties then conferred to address the procedural matters. The parties agreed to and proposed the following schedule:

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

May 24, 1985 Staff data requests.
 June 14, 1985 Company responses to data requests.
 June 28, 1985 Staff testimony if deemed necessary.
 July 10, 1985 Company data requests.
 July 19, 1985 Staff responses to data requests.
 July 23, 24, Hearings.
 25, 1985

The Commission will accept the proposed schedule. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is ORDERED, that the procedural schedule shall be as set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1985.

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NH.PUC*05/14/85*[61074]*70 NH PUC 395*New England Telephone and Telegraph Company

[Go to End of 61074]

70 NH PUC 395

Re New England Telephone and Telegraph Company

DR 85-120, Order No. 17,610

New Hampshire Public Utilities Commission

May 14, 1985

ORDER approving discount rate for direct dialing intrastate telephone toll service.

By the COMMISSION:

ORDER

WHEREAS, on April 25, 1985, New England Telephone and Telegraph Company filed with this Commission certain revisions to its tariff NHPUC No. 75 by which it proposes to offer a so-called Impulse Calling Program; and

WHEREAS, Commission review indicates that this program offers intrastate, direct distance dialing service at discounted rates for those subscribers participating in the program; and

WHEREAS, the Commission also is assured that such incentives will result in more efficient use of the network during the off-peak periods in which the service is offered; and

WHEREAS, such discounts and efficiency are in the public interest; it is

ORDERED, that Supplement No. 20 (Title Page and Original Page 1) and Part A, Section 9, Original Page 9.1 of New England Telephone and Telegraph Company tariff NHPUC No. 75 be, and hereby are, approved for effect on May 25, 1985.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1985.

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NH.PUC*05/14/85*[61075]*70 NH PUC 396*Public Service Company of New Hampshire

[Go to End of 61075]

70 NH PUC 396

Re Public Service Company of New Hampshire

DR 84-308, Second Supplemental Order No. 17,612

New Hampshire Public Utilities Commission

May 14, 1985

ORDER approving reduction in an electric utility's coal supply and rescinding previous order requiring larger supply due to lack of storage capacity.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on November 13, 1984 this Commission in its Order No. 17,335, (69 NH PUC 673), directed Public Service Company of New Hampshire, inter alia, to maintain a 45 to 60 day supply of coal at Schiller Station for each unit after said unit is converted to coal; and

WHEREAS, on December 20, 1984 the Company filed a Motion for Limited Rehearing of PUC Report and Order No. 17,335 requesting the deletion of that portion of the Order; and

WHEREAS, the Company's [sic] argues that testimony in the proceeding cites a maximum estimated storage capacity at the Schiller Station of up to 60,000 tons or approximately 45 days supply; and

WHEREAS, the Company inferred that the site characteristics at Schiller do not allow the establishment of a coal supply in excess of 45 days; and

WHEREAS, upon consideration of the foregoing, the Commission finds that the public good will be served by revision of its Order No. 7,335; it is

ORDERED, that the portion of Commission Order No. 17,335 relative to the maintenance of a 45 to 60 day supply of coal at the Schiller Station for each unit, be and hereby is, rescinded; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire maintain at least a 40 day supply of coal at the Schiller Station for each unit as each unit is converted to coal, with allowances for normal usage and delivery schedules; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire be prepared to implement the alternatives necessary to assure that during winter periods, it has secure and ready access to coal supplies which would equate to a 70 day level of supply, and during periods of strike threats that it will maintain similar access to a 90 day reserve supply of coal.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 1985.

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NH.PUC*05/15/85*[61063]*70 NH PUC 359*Pittsfield Hydropower Company, Inc.

[Go to End of 61063]

70 NH PUC 359

Re Pittsfield Hydropower Company, Inc.

DR 84-367, Order No. 17,595

New Hampshire Public Utilities Commission

May 15, 1985

ORDER nisi approving a thirty-year cogeneration and small power production rate order.

By the COMMISSION:

ORDER

WHEREAS, on December 19, 1984, Pittsfield Hydropower Company, Inc. (Pittsfield) filed a long term rate filing; and

WHEREAS, Pittsfield filed amendments to its filing on February 4, 1985, and April 15, 1985; and

WHEREAS, the Petition requested inter alia a thirty-year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety bond or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Pittsfield has averred that it is prepared to offer Public Service Company of New Hampshire (PSNH) a "junior lien" on the Project; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire the opportunity to respond to Pittsfield's Petition for Thirty-Year Rate Order; and

WHEREAS, Pittsfield's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra in all respects other than the lien; it is therefore

ORDERED NISI, that Pittsfield's Petition for Thirty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1985.

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NH.PUC*05/21/85*[61076]*70 NH PUC 397*Promulgation of Rules for Gas Service

[Go to End of 61076]

70 NH PUC 397

Re Promulgation of Rules for Gas Service

DRM 85-165, Order No. 17,614

New Hampshire Public Utilities Commission

May 21, 1985

ORDER reenacting gas safety standards as emergency rules.

Procedure, § 1 — Readoption versus reenactment of rules — Emergency rules — Gas safety standards.

Where the commission had inadvertently failed to readopt its gas safety rules and standards every two years as required by state law, it found that it would have to reenact the standards instead, but because the gas safety standards were vital to the public's health and welfare and official reenactment requires a substantial amount of time, the commission approved the standards, which followed federal guidelines, as emergency rules, so that they could be implemented on a more expedited basis.

By the COMMISSION:

REPORT

On December 31, 1970, the Commission issued Third Supplemental Order No. 10,169 in Docket D-E3978 (55 NH PUC 797) which adopted the following amendments to its rules and regulations regarding gas service:

(1) Rule 20 be, and hereby is, amended to read as follows:

20. Standard Practice

The Commission adopts, as gas safety standards, Federal standards as set forth under 49 CFR Part 192, as published in the Federal Register on August 19, 1970, (35 FR 13247), and subsequent amendments published on November 11, 1970, (35 FR 17335) and November 17, 1970, (35 FR 17659), together with such subsequent amendments as may properly become effective.

(2) Rule 21 be, and hereby is, amended to read as follows:

2. Construction and Maintenance

Except as modified herein or by municipal regulations within their jurisdiction, where in either case the provisions are not less stringent than the Federal Safety Standards, each utility shall construct, install, operate and maintain its plant structures, equipment and gas pipe lines in accordance with the Federal standards adopted by Rule 20

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and in such a manner as to best accommodate the public, and to prevent interference with service furnished by other utilities insofar as practical.

(3) Rule 21k be, and hereby is, amended to read as follows:

21k. Operating and Maintenance Procedures

Each utility shall operate, inspect and maintain its system in accordance with a plan required to be filed with this office not later than February 1, 1971, as provided for under the provisions of 49 CFR 192.17, issued October 16, 1970, (35 FR 16405, October 21, 1970), and any subsequent amendments thereto as may become effective.

These amendments were adopted by the Commission in response to the Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481) (Act) and the Minimum Federal Safety Standards (Standards) promulgated pursuant thereto by the Department of Transportation (DOT). The Act provides that enforcement of the Standards can be delegated to a state agency if that agency certified annually to DOT that it, inter alia, had adopted the Standards as set forth in 49 CFR 191, 192 and 193 as part of its own rules and regulations. This was accomplished by the Commission in the above-stated Order. Beginning on November 8, 1971, and continuing to the present, the Commission has certified to DOT on an annual basis that these Standards were part of its rules.

On May 4, 1982, the Commission readopted its rules (Chapters 100-1600) in accordance with the pertinent provisions of RSA 541-A.¹⁽¹³⁰⁾ In March, 1983, the Commission became aware that the amendments to its rules as adopted by Third Supplemental Order No. 10,169 were inadvertently omitted from the 1982 repromulgation. It therefore opened Docket DRM 83-52, Rules and Regulations For Gas Service, and issued Order No. 16,281 on March 18, 1983 (68 NH PUC 131), which reenacted the above-stated rules and added one additional amendment as follows:

PUC 501.01 Application of Rules and Regulations (c) Any inter-state gas transmission company subject to the Federal Energy Regulatory Commission is exempt from all but Parts PUC 501, PUC 506, PUC 508.01, PUC 508.02, PUC 508.03 of these rules.

PUC 506.01 Standard Practice

The Commission adopts, as Gas Safety Standards, the federal standards as set forth under 49 CFR Part 191, 192, and 193 together with such subsequent amendments as may properly become effective.

PUC 506.02 Construction and Maintenance

Except as modified herein or by municipal regulations within their jurisdiction, where in either case the provisions are not less stringent than the Federal Safety Standards, each utility shall construct, install, operate and maintain its plant structures,

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equipment and gas pipelines in accordance with the Federal standards adopted by PUC 506.01, and in such a manner as to best accommodate the public, and to prevent interference with service furnished by other utilities insofar as practical.

(k) Operating and Maintenance Procedures

Each utility shall operate, inspect, and maintain its system in accordance with a plan required to be filed with this office under the provisions of 49 CFR 192.17 issued October 16, 1970 (35 FR 16405, October 21, 1970), and any subsequent amendments thereto as may properly become effective.

In 1984, the Commission again readopted its rules and regulations pursuant to the requirement in RSA 541:2 IV.²⁽¹³¹⁾ Once again, the above-stated rules (PUC 501.01, 506.01 and 501.02) were inadvertently omitted from that promulgation and, accordingly, they may be read as being no longer part of the Commission rules. To clear up any possible ambiguity, the Commission will begin a rulemaking to reenact these rules in accordance with the provisions of RSA 541-A.

Under RSA 541-A, to adopt a rule an agency must, inter alia, publish a notice of the proposed rule in the New Hampshire Rulemaking Register, provide an opportunity for public comment and obtain approval from the Joint Legislative Committee on Administrative Rules. This procedure usually takes between 60 and 90 days to accomplish. Thus, under normal circumstances, the Commission could be without the above-stated rules for a substantial period of time.

The above-stated rules contain gas safety standards and are thus of vital importance to the public health, safety and welfare. It is essential that the Commission protect the public during the pendency of the forthcoming rulemaking. We therefore find it necessary to reenact the above-stated rules as emergency rules under the provisions of RSA 541-A:3-g which provides in pertinent part as follows:

I. If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule with fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed to adopt an emergency rule. The rule may be adopted without having been filed in proposed or final proposed form, and may be adopted after whatever notice and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.

IV. Emergency rules adopted under this section shall include:

(a) as much of the information required for the filing of a proposed rule as is practicable

under the circumstances; and

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(b) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety or welfare and approving the contents of the rules.

In the absence of enforcement of these rules, utilities would be free to disregard the numerous standards established therein. While we feel such an occurrence is unlikely, it is indeed a situation which the public should be protected against. Given this, we conclude that without these rules there is an imminent peril to the public health, safety and welfare. We, therefore, will approve and adopt the above-stated rules. A copy of this Report and Order and the rules are this day being filed with the Director of Legislative Services and with the Legislative Committee on Administrative Rules pursuant to RSA 541-A:3-g III.

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 rules be, and hereby are, adopted as emergency rules pursuant to RSA 541-A:3-g III:

PUC 501.01 Application of Rules and Regulations

(c) Any inter-state gas transmission company subject to the Federal Energy Regulatory Commission is exempt from all but Parts PUC 501, PUC 506, PUC 508.01, PUC 508.02, PUC 508.03 of these rules.

PUC 506.01 Standard Practice

The Commission adopts, as Gas Safety Standards, the federal standards as set forth under 49 CFR Part 191, 192, and 193 together with such subsequent amendments as may properly become effective.

PUC 506.02 Construction and Maintenance

Except as modified herein or by municipal regulations within their jurisdiction, where in either case the provisions are not less stringent than the Federal Safety Standards, each utility shall construct, install, operate and maintain its plant structures, equipment and gas pipelines in accordance with the Federal standards adopted by PUC 506.01, and in such a manner as to best accommodate the public, and to prevent interference with service furnished by other utilities insofar as practical.

(k) Operating and Maintenance Procedures

Each utility shall operate, inspect, and maintain its system in accordance with a plan required to be filed with this office under the provisions of 49 CFR 192.17 issued October 16, 1970 (35 FR 16405, October 21, 1970), and any subsequent amendments thereto as may properly become effective.

By Order of the Public Utilities Commission of New Hampshire this twentyfirst day of May, 1985.

FOOTNOTES

¹Prior to this repromulgation, the Commission's rules were last readopted in 1980. The 1982 reenactment was undertaken to meet the requirements of RSA 541-A:2 IV which at that time provided that no rule could be effective for a period longer than two years.

²In August, 1983, the New Hampshire Legislature enacted a substantial revision of RSA 541-A which included, inter alia, an extension from 2 to 6 years of the time an agency's rules may remain in effect without further action. If applicable, the Commission's rules would have been in effect until 1988. However, according to the Office of Legislative Services' interpretation of the statute, the revision only applied to rules promulgated subsequent to its August, 1983 enactment. Thus repromulgation was necessary in 1984.

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NH.PUC*05/22/85*[61077]*70 NH PUC 401*Fuel Adjustment Clause

[Go to End of 61077]

70 NH PUC 401

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department and Littleton Water and Light Department,

DR 85-96, Supplemental Order No. 17,615

New Hampshire Public Utilities Commission

May 22, 1985

ORDER allowing a fuel surcharge change to go into effect without normal hearings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department that FAC hearings will not be automatically scheduled unless it is the third month of a quarter for those utilities which have a quarterly FAC rate, or upon request of any utility maintaining a monthly FAC; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; it is

ORDERED, that 137th Revised Page 6 of the Littleton Water and Light Department tariff,

NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$0.71 per 100 KWH for the month of May, 1985, be, and hereby is, permitted to become effective May 8, 1985.

By Order of the Public Utilities Commission of New Hampshire this twentysecond day of May, 1985.

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NH.PUC*05/24/85*[61078]*70 NH PUC 402*Pembroke Hydroelectric Project

[Go to End of 61078]

70 NH PUC 402

Re Pembroke Hydroelectric Project

Additional petitioner: Gregg Falls Hydroelectric Project

DR 84-233, DR 84-234, Third Supplemental Order No. 17,616

New Hampshire Public Utilities Commission

May 24, 1985

ORDER clarifying an earlier order on security interests associated with a hydroelectric power project.

Cogeneration, § 23 — Operating practices — Liability — Security interest requirements.

Developers of a hydroelectric power site were authorized to assign a security interest in the site to any lender to their project, subject only to the approval of such assignment by the utility that would be purchasing the power generated by the project.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission approved the Petitions of Pembroke Hydroelectric Project and Gregg Falls Hydroelectric Project (jointly Petitioners) by Second Supplemental Order No. 17,473 (70 NH PUC 79), and Second Supplemental Order No. 17,474 (70 NH PUC 80), respectively; and

WHEREAS, on May 1, 1985, Petitioners filed Petitions for Clarification of the above-referenced orders; and

WHEREAS, the Petitions for Clarification averred that Petitioners lenders are requiring a security interest in Petitioners' rights to receive payments from Public Service Company of New Hampshire (PSNH); and

WHEREAS, the Petitions for Clarification requested that the Commission confirm that

Petitioners have the power and authority to assign to any lender to their projects, and to successors and assigns of any such lender, a security interest in the above-referenced Orders, as they have been or may be amended, as collateral for financing provided by such lender, provided that any person who acquires the benefit of such rate order through any such lender shall assume Petitioners' obligations under such Order as of the date such person begins to receive payments thereunder; and

WHEREAS, PSNH filed comments on the Petitioners on May 15, 1985 which stated that PSNH does not object to the Petitioners' request; it is therefore

ORDERED, that the Petitioners' requests be, and hereby are, granted subject to the following condition; and it is

FURTHER ORDERED, that PSNH

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must be notified of any assignment of the rights in said Orders authorized herein and PSNH must approve of any such assignment so long as such approval is not unreasonably withheld.

By order of the Public Utilities Commission of New Hampshire this twentyfourth day of May, 1985.

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NH.PUC*05/27/85*[61079]*70 NH PUC 403*Concord Steam Corporation

[Go to End of 61079]

70 NH PUC 403

Re Concord Steam Corporation

DR 82-239, Order No. 17,617

New Hampshire Public Utilities Commission

May 27, 1985

ORDER suspending a steam company's tariff filings pending an investigation into additional revenues collected by the company.

By the COMMISSION:

ORDER

WHEREAS, Concord Steam Corporation on May 10, 1985 filed a motion to reopen this docket case in accordance with the provisions of the "Agreement" dated April 28, 1983 and filed as Exhibit 3 in this case, and accepted in Report and Order No. 16,408 dated May 5, 1983 (68 NH PUC 334); and

WHEREAS, Concord Steam Corporation has included in the subject motion a revised tariff page to reflect the collection of \$297,500 (10.3%) in additional revenues to adjust for a

significant loss in steam sales, as provided by the terms and conditions of the "Agreement"; and

WHEREAS, the Commission finds that this filing requires investigation before rendering a decision thereon; it is

ORDERED, that 6th Revised Page 11, Concord Steam Corporation tariff NHPUC No. 2 be, and hereby is, suspended without prejudice pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of May, 1985.

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NH.PUC*05/27/85*[61082]*70 NH PUC 410*White Rock Water Company, Inc.

[Go to End of 61082]

70 NH PUC 410

Re White Rock Water Company, Inc.

DE 85-145, Order No. 17,624

New Hampshire Public Utilities Commission

May 27, 1985

PROPOSAL by a water utility for an extension of service into a previously unserved area of a town; approved.

Service, § 210 — Extensions — Water — Notice.

A water utility was conditionally allowed to extend its pipes and mains into an area of a town not franchised to any other entity as long as no party filed a petition in opposition to the extension once notice of the proposed extension was published in a local newspaper.

By the COMMISSION:

ORDER

WHEREAS, White Rock Water Company, Inc. a water public utility operating under the jurisdiction of this Commission, by a petition filed May 10, 1985 seeks authority under RSA 374:22 and 26 as amended, to extend its mains and service further in the Town of Bow; 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 Office of the Selectmen, Town of Bow, have stated that it is in accord with the Petition; and

WHEREAS, the nature of the installation of water mains to serve the new area sought

justifies departure from the general tariff and the issuance of a Special Contract; and

WHEREAS, upon investigation and consideration, this Commission is satisfied that the granting of the authority here sought will be for the public good; and

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 this petition be notified that they may submit their comments or a written request for a hearing in this matter to the Commission no later than June 10, 1985; and it is

FURTHER ORDERED, that White Rock Water Company, Inc. effect said notification by publication of an attested copy of this Order once in a newspaper having general circulation in that

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portion of the State in which operations are proposed to be conducted, such publication to be no later than May 31, 1985 and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that the White Rock Water Company, Inc. be authorized, pursuant to RSA 374:22, to further extend its mains and service in the Town of Bow in an area known as "The Woods at Village Shores" and as described and shown on documents on file at this office; and it is

FURTHER ORDERED, that such authority shall be effective on June 14, 1985, unless a request for hearing is filed with the Commission as provided above or the Commission orders otherwise prior to the effective date; and it is FURTHER ORDERED, that the Special Contract for the installation of mains in this area shall become effective as of June 14, 1985.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of May, 1985.

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NH.PUC*05/27/85*[61087]*70 NH PUC 416*Manchester Water Works

[Go to End of 61087]

70 NH PUC 416

Re Manchester Water Works

DE 85-132, Order No. 17,633

New Hampshire Public Utilities Commission

May 27, 1985

PETITION by a water utility for authority to extend service into a previously unserved area of a town; granted.

 Service, § 210 — Extensions — Water — Notice.

Conditional approval was given to a water utility's plan to extend service into an area of a town that was previously uncertificated as long as no party filed a petition in opposition to the extension upon publication of notice of the extension proposal.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed May 6, 1985, seeks authority under RSA 374:22 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, after investigation and consideration, this 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 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 June 14, 1985.

FURTHER ORDERED, that Manchester Water Works 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 31, 1985 and designated in an affidavit to be made on a copy of this

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Order and filed with this office; 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:

A block area, beginning at the northerly most limit of existing franchise for Hooksett Road, (Daniel Webster Highway-North, U.S. Rte 3), granted in D-E6356 on October 12, 1982, from this point continuing northerly along the path and contour of the centerline of Hooksett Road 265 feet, more or less, to the northerly most lot line of property now or formerly of Roger A. Letendre, of 1166 Hooksett Road, Hooksett, New Hampshire, said property identified as site lot

#36 on town of Hooksett tax map #39, located on the westerly side of Hooksett Road, with the intention of providing water service to the westerly side of Hooksett Road along this aforesaid 265+ feet only. Thence, westerly, southerly and easterly along the perimeter lot lines of said site lot #36, and continuing easterly by the last direction shown to the centerline of Hooksett Road; thence, southerly along the path and contour of the centerline of Hooksett Road to the centerline of Smith Avenue and Leonard Avenue, said point being the northerly most limit of existing franchise for Hooksett Road, and the westerly most limit of existing franchise for Smith Avenue and Leonard Avenue, granted by DE3428D on August, 1955; thence easterly along Smith Avenue, northerly along Mammoth Road and westerly along the southerly most property line of land now or formerly of Gladstone properties.

and it is

FURTHER ORDERED, that such authority shall be effective on June 21, 1985 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 twentyseventh day of May, 1985.

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NH.PUC*05/28/85*[61080]*70 NH PUC 404*New England Telephone and Telegraph Company

[Go to End of 61080]

70 NH PUC 404

Re New England Telephone and Telegraph Company

DE 85-79, Order No. 17,618

New Hampshire Public Utilities Commission

May 28, 1985

PETITION by a local exchange telephone carrier for authority to install underwater plant; granted.

Telephones, § 2 — Construction and equipment — Underwater cables — Approval of environmental control boards.

A local exchange telephone carrier was authorized to construct submarine cables in state-owned waters where no objection to the crossing had been filed and where the carrier had already obtained the approval of all applicable environmental control agencies.

APPEARANCES: for New England Telephone and Telegraph Co. — Arthur Millette, Engineer; for the Public Utilities Commission Staff— Edgar D. Stubbs, Jr., Asst. Chief Engineer.

By the COMMISSION:

REPORT

On March 26, 1985, New England Telephone and Telegraph Company (NET or Company) filed with this Commission a Petition seeking license under RSA 371:17 for a submarine plant crossing of Lake Winnepesaukee. Specifically, NET sought to construct a 200-pair submarine cable from Pole 858/12 on the shore of Long Island in Moultonboro, New Hampshire to Pole 87CE/12 on Cow Island in Tuftonboro, New Hampshire, about 6,500 feet distant. The new telephone plant would supplement existing facilities in the Center Harbor exchange to meet the growing demand for telephone service on Cow Island.

An Order of Notice was issued by the Commission on April 1, 1985 setting the matter for hearing on April 30, 1985 at 10 a.m. in the Commission's Concord offices. Notices were issued to the Chief of Land Management (DRED), the Director of Safety Services, and the Attorney General, as well as to the Company. The duly noticed public hearing was held as scheduled, with NET represented by Company Engineer, Arthur Millette. No intervenors appeared.

Mr. Millette offered three exhibits. Exhibit 1 comprised the Company's Petition, a map of the affected area on which the routing of the crossing was outlined, and Plan 29-73 detailing the crossing. Exhibit 2 was the approval of

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the crossing by the Water Supply and Pollution Control Commission. Exhibit 3 was the approval of the Wetlands Board.

Millette described the crossing in detail and indicated all construction would be according to applicable codes.

Finding no objection to this crossing by any party, the Commission finds further that it is in the public interest, and will issue the license accordingly.

Our Order will issue accordingly.

ORDER

In consideration of the foregoing Report, which is made a part hereof, it is

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted license for the construction, operation, and maintenance of a 200-pair submarine cable beginning at Pole 858/12 on Long Island in Moultonboro, New Hampshire, extending approximately 6,500 feet beneath Lake Winnepesaukee to the shore of Cow Island in the town of Tuftonboro, New Hampshire and terminating at Pole 87CE/2; and it is

FURTHER ORDERED, that all construction comply with the National Electrical Safety Code and other applicable standards.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

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NH.PUC*05/28/85*[61081]*70 NH PUC 405*Pennichuck Water Company, Inc.

[Go to End of 61081]

70 NH PUC 405

Re Pennichuck Water Company, Inc.

Intervenor: Anheuser-Busch, Inc.

DR 85-2, Order No. 17,619

New Hampshire Public Utilities Commission

May 28, 1985

PETITION by a water utility for a temporary increase in rates; denied.

Page 405

Rates, § 630 — Temporary rates — Rate of return as a factor — Water utility.

A water utility's petition for a temporary rate increase pending resolution of its full increase request was denied where, after recalculating the utility's rate base to exclude construction work in progress and to match expenses and revenues, it was found that the utility was already earning in excess of its authorized rate of return.

 APPEARANCES: Gallagher, Callahan and Gartrell by John B. Pendleton, Esquire and James L. Kruse, Esquire; Eugene F. Sullivan, Robert Lessels and Sarah P. Voll on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 1, 1985, Pennichuck Water Company, Inc. (Company), a public utility engaged in gathering and distributing water to the public in Nashua and Merrimack, New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of \$1,457,979 (27%) to be effective April 1, 1985. In addition, pursuant to RSA 378:29, the Company filed a Petition for Temporary Rates in the amount of its revenue deficiency or at such other level the Commission determines to be fair and reasonable. It seeks to have temporary rates applied to all service rendered after April 1, 1985.

Thereafter, by Order No. 17,487 dated March 12, 1985, the Commission suspended the effective date of the tariff revisions. An Order of Notice was issued on March 13, 1985 setting a

hearing for April 2, 1985 for the purpose of determining temporary rates and to discuss the procedural aspects of the permanent rate increase. No petitions to intervene were filed at or before this hearing. However, on April 8, 1985, Anheuser-Busch, Inc. filed a Petition For Intervention, to which the Company has filed no objection.

II. COMMISSION ANALYSIS

On the issue of temporary rates, the Company presented the testimony of Charles J. Staub, its treasurer. In addition, the Company submitted two exhibits, its original two-volume filing (Exhibit 2) and revised Schedules A and 1 of the filing (Exhibit 1).

Mr. Staub testified that the Company is currently earning an overall rate of return of 10.16%. This figure derives from a rate base calculation of 15,530,079 (the actual test year rate base pro formed to include property used and useful as of April 1, 1985)¹⁽¹³²⁾ and an adjusted net operating income of \$1,578,533 (the income statement expenses pro formed for known expenses). Mr. Staub further testified that this is substantially lower than the Company's allowed rate of return which he

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contends is 11.70%.²⁽¹³³⁾ He calculated this figure by utilizing the cost of the Company's embedded debt as of September 30, 1984 and the 14.5% cost of common equity found reasonable by the Commission in the Company's last rate case (65 NH PUC 363). Given these figures, the Company argues that because it is not currently earning its allowed rate of return, it is entitled to temporary rates. Exhibit 1 details the resulting revenue deficiency of \$510,559. This amounts to a 9.5% revenue increase. In the event the Commission does not grant such an increase, the Company would accept their current rates as temporary rates.

Staff disagrees with the Company's rate base calculation. Mr. Eugene F. Sullivan, the Commission's Finance Director, testified that the Company's calculation is not consistent with the ratemaking principle of matching revenues and expenses which requires that the test year average rate base be calculated using the same period in which the revenues and expenses were booked. Mr. Sullivan pointed out that the Company used an average rate base which included only the last three quarters of the test year instead of the full four quarters during which the test year's revenues and expenses were booked.

Applying this regulatory principle, Mr. Sullivan calculated a rate base figure based on the test year's four quarters of \$14,914,247 (Exhibit 3). However, he stated that this was not entirely accurate given the Company's failure to include an updated investment tax credit figure. He pointed out that a higher investment tax credit figure would lower the Company's rate base. Utilizing this inaccurate rate base, Mr. Sullivan calculated that the Company is currently earning an overall return of 11.63%. The Staff's calculation is fully set forth in Exhibit 3.

The Staff also disputed the Company's computation of its allowed rate of return. Mr. Staub agreed on crossexamination that the deferred taxes contained in the Company's 11.77% rate of return should be calculated as of September 30, 1984 instead of December 31, 1983. As pointed out in footnote 1 above, the Company subsequently revised its calculation to reflect the September 30, 1984 figure. This resulted in an

11.70% allowed rate of return.

RSA 367:26 et. seq., sets forth the Commission's authority to set temporary rates. It provides as follows:

In any proceeding involving the rates 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

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ground for questioning the figures in such reports.

We have reviewed the testimony and exhibits presented at the hearing as well as the Company's recently filed 1984 annual report. We disagree with the Company's contention that it is earning a 10.16% rate of return. Our analysis leads us to conclude that the Company's actual return was 11.75% for the test year ended September 30, 1984. Based upon information provided by the record and the annual report, we calculated that rate of return as follows:

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

Plant in Service	23,595,822
Less: Accum. Depreciation	5,053,055
Contr. In Aid of	
Construction	1,980,336
Customer Advances for	
Construction	1,309,812
Net Plant	15,252,619%
Operations and Maintenance	
Four months of \$1,644,043	548,014
Add: Materials and Supplies	244,682
Less: Customer Deposits	170,650
Unamortized ITC	1,112,062
Deferred Taxes	
Rate Base	14,762,603
Net Operating Income	1,734,006
Rate of Return	11.75%

In addition, we agree with Staff and the Company that Company's allowed rate of return (cost of capital) as of September 30, 1984 is 11.70%. We have calculated this as follows:

(Cost of capital)

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

COST OF CAPITAL
SEPTEMBER 30, 1984

	Composit Amount	Cost Ratio	Weight Rate	Cost	
Common Stock	4,850,812	0.344	14.50%	0.0499	
Preferred Stock	1,235,038	0.088%	10.37%	0.0091	
Long Term Debt	7,242,750	0.514	11.29%	0.0580	
Deferred Taxes	768,070	0.054	0	0	
Total	14,096,670	1.000	0.1170		

It is apparent from the above figures that as of September 30, 1984, Pennichuck was earning in excess of its allowed rate of return (11.70% allowed, 11.75% earned). We therefore find that the Company has not sustained its burden of establishing a need for temporary rates.

In addition to analyzing the earned rate of return as of September 30, 1984, we also calculated the allowed and actual return for the twelve months ending December 31, 1984 by utilizing the information contained in the 1984 annual report. Our preliminary analysis indicates that the Company's allowed rate of return for that period was 11.68%; it actually earned 11.47%. While the actual is less than the earned, the difference is not substantial. We cannot conclude from this analysis that the Company is entitled to temporary rates.

Given the above findings, we find

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that the public interest does not require the fixing of temporary rates in this case. We therefore will deny the Company's petition.

Two further issues need to be addressed. First, all parties agreed to the following schedule for the remainder of the proceedings. We will adopt it as such.

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

May 2, 1985 Deadline for Staff to
submit data requests
May 16, 1985 Deadline for the Company
responses to Staff data
requests
May 30, 1985 Deadline for Staff to
submit testimony
June 13, 1985 Deadline for Company to
file data requests
June 27, 1985 Deadline for Staff
responses to data requests
June 28, 1985 Prehearing conference to
narrow issues
July 8, 9 and 10 Hearings

The Commission also received a request from State Senator Richard E. Boyer to hold at least one public hearing in Nashua. We will grant Senator Boyer's request. Accordingly, we will direct the Executive Director and Secretary to schedule a public hearing in Nashua at a convenient time in June, 1985.

Lastly, as mentioned above, a latefiled Petition For Intervention was filed by Anheuser-Busch, Inc., (AB) the Company's largest customer. They seek to intervene with respect to the issues of revenue allocation and rate structure issues; intervention is not sought regarding revenue requirements issues. AB agrees to abide by the above-cited procedural schedule. Given

that the Company has no objection and given AB's stated willingness to abide by the procedural schedule, we will grant its petition to intervene.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Petition For Temporary Rates of Pennichuck Water Company, Inc. be, and hereby is, denied; and it is

FURTHER ORDERED, that the Petition For Intervention of AnheuserBusch, Inc. in this docket be, and hereby is, granted.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

FOOTNOTES

¹It should be noted that the Company's pro formed rate base contained in its filing contains several items currently under construction, otherwise known as "construction work in progress" (CWIP) for ratemaking. Inclusion of these items in rate base is specifically prohibited by RSA 378-30:a. The Company revised its calculation (Exhibit 1) to omit these CWIP items at the hearing for the purpose of determining temporary rates.

²In its original filing, the Company calculated its allowed rate of return to be 11.77%. In response to Staff cross-examination at the April 2, 1985 hearing, the Company revised its calculation and so notified the Commission by letter dated April 8, 1985. This reduction was due to the use of a higher deferred tax figure and is discussed in greater detail below.

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NH.PUC*05/28/85*[61083]*70 NH PUC 411*Mt. Crescent Water Company

[Go to End of 61083]

70 NH PUC 411

Re Mt. Crescent Water Company

DR 85-94, Order No. 17,626

New Hampshire Public Utilities Commission

May 28, 1985

ORDER suspending a water utility's tariff filing pending investigation into the utility's operations and revenues.

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By the COMMISSION:

ORDER

WHEREAS, Mt. Crescent Water Company has filed with this Commission certain revisions to its tariff requesting an annual increase in revenues of \$3,000 (75%); and

WHEREAS, the Commission finds that this filing requires investigation before rendering a decision, it is

ORDERED, that 4th Revised Page 5 and Original Page 6, Mt. Crescent Water Company tariff NHPUC No. 3 Water, be, and hereby are, suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

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NH.PUC*05/28/85*[61084]*70 NH PUC 412*Lloyd D. Barrington d/b/a EMCA

[Go to End of 61084]

70 NH PUC 412

Re Lloyd D. Barrington d/b/a EMCA

DE 85-138, Order No. 17,627

New Hampshire Public Utilities Commission

May 28, 1985

ORDER certifying a customer-owned, coin-operated telephone service on an interim basis.

Page 412

Service, § 456 — Telephone — Customerowned coin stations — Interim authority.

An individual was granted authority to install a customer-owned, coin-operated telephone (COCOT), but only on an interim basis, where the instrument to be installed was already registered with the Federal Communications Commission and where the individual pledged to comply with all future commission rules on COCOTs, since complete COCOT rules had not yet been finalized.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets

DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Lloyd D. Barrington, dba EMCA, 24 Old Bolton Road, Hudson, Massachusetts 01749, filed with the Commission on May 2, 1985 a petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at Rod's Automotive, 95 East Hollis Street, Nashua, New Hampshire 03060; and

WHEREAS, Mr. Barrington assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin 54956 and bears FCC registration number EEQ-14382-CX-E; and

WHEREAS, Mr. Barrington also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Lloyd D. Barrington, dba EMCA, for the operation of one COCOT to be located at the Nashua address cited above; and it is

FURTHER ORDERED, that EMCA comply with appropriate New Hampshire Revised Statutes Annotated regarding foreign corporations; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules regarding the operation of COCOTs in the State of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

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NH.PUC*05/28/85*[61085]*70 NH PUC 414*New England Telephone and Telegraph Company

[Go to End of 61085]

70 NH PUC 414

Re New England Telephone and Telegraph Company

DR 85-127, Order No. 17,628

New Hampshire Public Utilities Commission

May 28, 1985

APPLICATION by a local exchange telephone carrier for approval of a discount on service provided to the disabled; granted.

Discrimination, § 45 — Concessions to particular classes — Disabled persons — Telephone.

A local exchange telephone carrier was authorized to institute a discount on message telecommunications service provided to disabled persons where the discount was found to be in the public interest and of no economic burden to other ratepayers.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone and Telegraph Company (NET) on May 1, 1985 filed with the Commission Part A, Section 9, 2nd Revised Page 9 of its tariff NHPUC No. 75 proposing an increase in the discount provided to disabled persons for their Message Telecommunications Service; and

WHEREAS, such benefit was coordinated with the Granite State Independent Living Foundation and with the Commerce, Housing and Consumer Affairs Committee of the New Hampshire House of Representatives, meeting the approval of both; and

WHEREAS, the burden on the general ratepayer through such offering is determined to be minuscule; and

WHEREAS, such discount is found in the public good; it is

ORDERED, that the above cited page is approved for effect May 31, 1985; and it is

FURTHER ORDERED, that NET advise current subscribers of such services of the changes approved herein.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

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NH.PUC*05/28/85*[61086]*70 NH PUC 415*New England Telephone and Telegraph Company

[Go to End of 61086]

70 NH PUC 415

Re New England Telephone and Telegraph Company

DR 85-128, Order No. 17,629

New Hampshire Public Utilities Commission

May 28, 1985

ORDER approving a local exchange telephone carrier's tariff filing made in compliance with a commission directive requiring customer-owned, coin-operated telephones to be billed at a

measured business rate.

By the COMMISSION:

ORDER

WHEREAS, the Commission, in its Order No. 17,486 (70 NH PUC 89), indicated it would allow customer-owned coin-operated telephones connected to the network; and

WHEREAS, that authorization stated that service to such telephones must be at the measured business rate; and

WHEREAS, New England Telephone and Telegraph Company has filed revisions to its tariff NHPUC No. 75 implementing the above-cited order; and

WHEREAS, review of said filing indicates it is in compliance with the requirement that such subscribers be billed at a measured business rate; it is

ORDERED, that the following revisions to New England Telephone and Telegraph Company tariff No. 75 be, and hereby are, approved for effect on May 31, 1985:

- Supplement No. 21 (Title page and Original Page 1)
- Part A, Section 1, 3rd Revised Page 3
- Part A, Section 8, Original Pages 6 and 7

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of May, 1985.

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NH.PUC*05/29/85*[61088]*70 NH PUC 418*Fuel Adjustment Clause

[Go to End of 61088]

70 NH PUC 418

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-130, Order No. 17,635

New Hampshire Public Utilities Commission

May 29, 1985

APPLICATION by an electric utility for reduced fuel adjustment clause surcharges; temporarily denied.

Automatic Adjustment Clauses, § 53 — Overcollections — Reconciliation — Scheduled true-up proceedings.

Although an electric utility had filed for a reduced fuel adjustment clause surcharge because of a substantial overcollection of fuel expenses, the commission, without formal hearings, ruled that all existing fuel adjustment tariffs should remain unchanged until it was time for the regularly scheduled quarterly fuel adjustment clause proceeding, which was only a month away.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, Granite State Electric Company has filed a revised FAC tariff page reducing the FAC surcharge to reflect a substantial overcollection of fuel expense; and

WHEREAS, the Commission has reviewed the filing by Granite State Electric Company and determined that an average monthly billing decrease of \$6.42 for Granite State Electric Company customers is in the public good; and

WHEREAS, no utility maintaining a

Page 418

monthly or quarterly FAC requested a hearing; and

WHEREAS, this is one of the two off months for quarterly FAC utilities; it is

ORDERED, that, because the Commission in DR 85-52, Order No. 17,516, dated March 28, 1985 (70 NH PUC 130) pertaining to the New Hampshire Electric Cooperative, Inc. established the rolled in rate of \$2.706/ 100KWH in effect until changed by the Commission, no new rate will be stated for the New Hampshire Electric Cooperative, Inc. in this month's FAC order; and it is

FURTHER ORDERED, that 24th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of (\$0.295) per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to remain in effect for the month of June, 1985; and it is

FURTHER ORDERED, that 24th Revised Page 19A of Exeter and Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of (\$0.299) per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to

remain in effect for the month of June, 1985; and it is

FURTHER ORDERED, that 13th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil conservation adjustment of \$0.278 per 100 KWH for the months of April, May, and June, 1985, be, and hereby is, permitted to remain in effect for June, 1985; and it is

FURTHER ORDERED, that 16th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge credit for the month of June, 1985 of \$(1.079) per 100 KWH, be, and hereby is, permitted to become effective June 1, 1985; and it is

FURTHER ORDERED, that 54th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 - Electricity, providing for a fuel surcharge of \$2.54 per 100 KWH for the month of June, 1985, be, and hereby is, permitted to become effective June 1, 1985; and it is

FURTHER ORDERED, that 105th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 - Electricity, providing for a fuel surcharge credit of (\$1.11) per 100 KWH for the month of June, 1985, be, and hereby is, permitted to become effective June 1, 1985; and it is

FURTHER ORDERED, that 102nd Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 - Electricity, providing for an energy surcharge credit of (\$0.36) per 100 KWH for the month of June, 1985; be, and hereby is, permitted to become effective June 1, 1985.

The above noted rates may be 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 twenty-ninth day of May, 1985.

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NH.PUC*05/29/85*[61089]*70 NH PUC 420*Northern Utilities, Inc.

[Go to End of 61089]

70 NH PUC 420

Re Northern Utilities, Inc.

DE 85-136, Order No. 17,636

New Hampshire Public Utilities Commission

May 29, 1985

DIRECTIVE requiring a natural gas distributor to institute a leak detection and protection program following a major leakage incident.

Gas, § 5.1 — Safety rules — Reduced pressure — Leak detection program.

A natural gas distributor was ordered to reduce the pressure in its primary distribution main and to initiate a weekly leak survey program in response to a significant gas leak that had occurred in a municipality due to inadequate welds.

By the COMMISSION:

ORDER

WHEREAS, on May 6, 1985 an incident occurred on High Street in Exeter, New Hampshire involving the escaping of natural gas from the distribution system of Northern Utilities, Inc.; and

WHEREAS, preliminary investigations indicate probable cause to be a failed weld in a section of the six-inch steel gas distribution main; and

WHEREAS, subsequent X-ray testing of eight adjacent welds has disclosed that all eight welds had inadequate penetration and require modification and repair; and

WHEREAS, the Commission finds that immediate corrective action is necessary pending further investigation; it is

ORDERED, that Northern Utilities, Inc. shall reduce the pressure in its two and one-half (2 1/2) mile distribution main (the Hampton main) to the lowest pressure which will continue to maintain safe and adequate service to customers but which shall not exceed 60 psig without Commission approval; and it is

FURTHER ORDERED, that an X-ray testing program shall be implemented immediately throughout the length of the Hampton main in such a manner that at least four welded joints will be tested in each mile of main; and it is

FURTHER ORDERED, that the Company shall initiate a leak survey program which shall assure that the Hampton line is surveyed at intervals not to exceed one week;

FURTHER ORDERED, that the Company shall take whatever additional actions it deems necessary to assure itself that the public safety is maintained; and it is

Page 420

FURTHER ORDERED, that the Company shall keep the Commission informed as to the additional safety precautions which it is taking to assure that public safety is maintained.

By order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1985

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NH.PUC*05/29/85*[61090]*70 NH PUC 421*Pennichuck Water Company, Inc.

[Go to End of 61090]

70 NH PUC 421

Re Pennichuck Water Company, Inc.

DR 85-2, Supplemental Order No. 17,637

New Hampshire Public Utilities Commission

May 29, 1985

ORDER extending the deadlines for the submission of testimony and data in a water utility's rate case.

Rates, § 234 — Schedules and procedures — Extension of time — Factors.

Because of late filed utility data responses and a legal holiday, the commission staff was granted an extension of time in which to file its testimony in a water utility rate case.

By the COMMISSION:

SUPPLEMENTAL ORDER

The Commission Staff, having filed on May 29, 1985, a request for an extension of time to file testimony in this docket; and

WHEREAS, Commission Order No. 17,619 provided a due date of May 30, 1985 for Staff testimony; and

WHEREAS, Staff cites as reason for the request:

- 1) Pennichuck Water Company's late filing of Staff Data Responses;
- 2) A holiday which falls within the requested extended period; and
- 3) Other pressing matters which demand Staff's immediate attention; it is hereby

ORDERED, that the procedural schedule set forth in Order No. 17,619 (70 NH PUC 405) be hereby amended as follows:

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

June 13, 1985 Deadline for Staff to
submit testimony
June 27, 1985 Deadline for Company to
file data requests
July 11, 1985 Deadline for Staff responses
to data requests
July 12, 1985 Prehearing conference to
narrow issues
July 22, 23, Hearings
and 24

By Order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1985.

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NH.PUC*05/31/85*[61091]*70 NH PUC 422*New Hampshire Electric Cooperative, Inc.

[Go to End of 61091]

70 NH PUC 422

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate, Seacoast Anti-Pollution League, and Conservation Law Foundation of New England, Inc. et al.

DF 83-360, 17th Supplemental Order No. 17,638

New Hampshire Public Utilities Commission

May 31, 1985

APPLICATION by an electric cooperative for additional financing in support of its continued participation in the Seabrook 1 nuclear power plant construction project; granted, with discussion of the need for power, alternatives to Seabrook 1 as power sources, the consequences of plant cancellation, and the financial feasibility of the undertaking. For a parallel decision involving Public Service Company of New Hampshire, see 70 NH PUC 164 (1985), *supra*.

Security Issues, § 132 — Procedure — Scope of financing proceeding — Prudency investigation.

The prudency of a utility's decision to construct plant is outside the scope of a finance proceeding on that plant. [1] p.424.

Orders, § 5 — Validity — Effect of filing an appeal.

When appeals of commission orders are pending before a court, those orders remain in full force and effect; a commission order is considered final and in effect until it is formally and officially modified, suspended, reversed, or remanded, and the mere filing of an appeal does not negate an order's force. [2] p.426.

Security Issues, § 58 — Purposes — Construction — Completion, cancellation, and prudency issues.

In a financing proceeding brought by an electric cooperative seeking emergency relief to continue construction at a nuclear plant project, the commission found that the scope of the proceeding was limited to review of the purposes and terms of the proposed financing to see if it was feasible and in the public good, while the purposes, terms, and prudency of the plant construction itself were not proper subjects for such a proceeding; however, reviewing the financing proposal necessitated a look at certain sub-issues, namely whether completion or cancellation of the plant would be best for the public, and whether default, bankruptcy, or acceptance of additional financial risks on the part of the utility would best serve the public, and where adverse consequences of default outweigh the consequences of assuming additional financial risks, emergency financing relief will be granted. [3] p.432.

Security Issues, § 115 — Financing methods — Reasonableness — Line of credit to complete construction.

An electric cooperative was authorized to proceed with additional financing for its share of a nuclear plant construction project where the purposes and terms of the financing were deemed reasonable because (1) the cooperative's continued ownership share in the plant was in the public interest; (2) the additional financing was in the form of a long term line of credit rather than a one time issuance of long term securities; (3) the cooperative could draw upon that line of credit only as work on the plant was actually performed and only to the extent of actual costs incurred, thus

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assuring that the cooperative could borrow no more than what was actually needed to complete the plant; and (4) the financing would be accomplished through federal loans available to cooperatives and with low and/or flexible interest rates, when no other financing sources would be as advantageous. [4] p.445.

Security Issues, § 44 — Factors affecting authorization — Completion of plant — Need for power.

An electric cooperative was authorized to obtain additional financing to cover its participation in a nuclear plant construction project where (1) the cooperative had no generating plants of its own and it would not be cost effective for it to build its own generating units because of its overall low load factor; (2) the nuclear plant was already under construction and continued financing would be the most economical means of assuring a reliable source of power for needed capacity; (3) alternative suppliers and power from qualifying facilities would not be viable substitutes for the nuclear plant's generation abilities because they are too undependable and involve expensive wheeling charges, thus making them acceptable as a supplemental power source but not a firm power source; (4) conservation would not be a viable substitute for the plant due to the cooperative's already low load factor; and (5) the cooperative's existing demand and forecasts of future demand demonstrated a need to assure the most reliable capacity additions possible. [5] p.448.

Security Issues, § 54 — Factors affecting authorization — Completion of plant — Cost and rates — Least-cost alternative.

An electric cooperative was authorized to engage in additional financing transactions in order to allow continued participation in a troubled nuclear plant construction project where continuation of the project was found to be the least cost alternative for assuring reliable capacity in the future; the decision was made based upon comparisons of the incremental costs of completing the unit, cancelling the unit, and obtaining power from other generational sources, with the commission finding that, considering the funds already sunk in the plant and the inability of any other source of generation to act as an adequate replacement for the plant if it were cancelled, further financing to complete the plant would be the cheapest means for obtaining additional capacity, despite the plant's already significant delays and cost overruns. [6] p.468.

Security Issues, § 49 — Factors affecting authorization — Completion of plant — Financial feasibility.

It was found to be financially feasible for an electric cooperative to arrange for additional borrowings to support its continued participation in a nuclear plant construction project because (1) as a cooperative, it was eligible for certain federal low interest loans; (2) ownership in the plant was substantially cheaper than the purchase of power from the plant without an ownership allocation agreement; (3) the cooperative had a sell back option to the lead participant in the project; (4) default on any loans by the cooperative was considered an unlikelihood; and (5) the cooperative's rates would not have to rise unreasonably fast in order to cover the borrowings. [7] p.474.

Rates, § 47 — Jurisdiction — State versus federal commission powers — Wholesale rates — Prudency.

Although the state commission must accept any wholesale rate approved by the Federal Energy Regulatory Commission as a given cost of service for a retail electric utility, the state commission is empowered to conduct a prudency investigation to see if it was reasonable for a retail electric utility to purchase power at such wholesale rates. [8] p.482.

Security Issues, § 54 — Factors affecting authorization — Completion of plant — Resulting rates and rate base.

Statement, in a dissenting opinion, that additional financing authority should not be granted an electric cooperative for its participation in a nuclear plant construction project because completion of the plant with full cost rate support would not be in the public interest, as completion cost and schedule estimates were unreliable, alternative generational sources were available, and rates for the wholesale power ultimately produced by the plant would be set by federal authorities who may not adhere to state

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pricing law considerations, such as the anticonstruction work in progress (antiCWIP) statute. p.488.

(AESCHLIMAN, commissioner, dissents in part, p. 488.)

APPEARANCES: Hall, Morse, Gallagher & Anderson by Mayland H. Morse, Jr., Esquire, and Jeffrey Zellers, Esquire for the New Hampshire Electric Cooperative, Inc.; Michael W. Holmes, Esquire for the Consumer Advocate; Gary McCool, pro se; Representative Roger Easton, pro se; Backus, Meyer & Solomon by Robert A. Backus, Esquire for the Seacoast Anti-Pollution League; Douglas Foy, Esquire for the Conservation Law Foundation of New England, Inc.; Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 18, 1983, the New Hampshire Electric Cooperative, Inc. (Company, Cooperative or NHEC) filed a Petition with the Public Utilities Commission of New Hampshire (Commission) requesting inter alia authority to borrow up to \$111,000,000 from the United States Government acting through the Rural Electrification Administration (REA) in conjunction with the Federal Financing Bank (FFB). The petition indicated that the amount of the financing represents the interim estimated additional needs for the NHEC's share of construction of Seabrook Units I and II.

The Commission issued an Order of Notice on November 21, 1983 scheduling a hearing on the Petition for January 12, 1984. Timely written motions to intervene were filed by Roger Easton, pro se; Gary McCool, pro se; and Lynn Chong, pro se pursuant to RSA 541A:14. At the January 12, 1984 hearing, appearances were entered by the NHEC, the Consumer Advocate, Roger Easton, Gary McCool and the Staff of the Commission (Staff). The Consumer Advocate moved to postpone the proceedings and the other parties presented their arguments to the Commission on the pending motions to intervene and on the scope of the proceedings. The Commission ruled on these issues on January 12, 1984 in Order No. 16,855 (69 NH PUC 24) which, inter alia, granted the Consumer Advocate's motion to postpone, granted the motions to intervene of Roger Easton and Gary McCool, denied the motion to intervene of Lynn Chong and established a procedural schedule for the proceedings.

In accordance with the procedural schedule established in Order No. 16,855, the Commission held a hearing on February 8, 1984, at which the parties presented argument on the scope of the proceedings and on a late filed Motion to Intervene by the Conservation Law Foundation of New England, Inc. (CLF). The Commission granted CLF's motion to intervene as a full party.¹⁽¹³⁴⁾

The Commission then suspended the hearings and directed the parties to file written memoranda on the scope of the proceedings.

[1] The hearing resumed on February 16, 1984 at which time the Commission defined the scope of the proceedings as being:

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1. Whether the cost of the proposed financing is in the public good;
2. Whether the amount of the proposed financing is in the public good; and
3. Whether the terms and conditions of the proposed financing are in the public good.²⁽¹³⁵⁾

In its Order defining scope, the Commission stated that pursuant to RSA Chapter 369, the prudence of the NHEC's investment in Seabrook is outside the scope of a finance proceeding, such as the instant docket. In support of this determination the Commission cited *Re Public Service Co. of New Hampshire*, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982).

Testimony was resumed on February 16 and 17, 1984. Staff filed a motion during those hearings to strike evidence which was outside the scope of the proceedings as defined by the Commission. The Commission granted Staff's motion in Order No. 16,915 (69 NH PUC 137).

In the same order, the Commission approved the NHEC's request for authority to borrow \$111,000,000.³⁽¹³⁶⁾

Timely motions for rehearing were filed by the Consumer Advocate, Roger Easton and Gary McCool. The Commission denied the motions for rehearing in Report and Order No. 16,965 (69 NH PUC 201) and all three Movants appealed to the New Hampshire Supreme Court.⁴⁽¹³⁷⁾

The Commission received a letter dated May 25, 1984 from the NHEC's counsel advising the Commission inter alia of "rapidly changing circumstances" surrounding NHEC's participation in the Seabrook construction project. The alleged "rapidly changing circumstances" included, among other things, an allocation of \$57 million of the proposed financing for the purpose of obtaining a 38 MW ownership interest in Yankee projects to be exchanged for an equal interest in Millstone Unit III or Seabrook Unit I when either Unit is completed. On June 4, 1984, the Commission issued Order No. 17,060 indicating that the proposal presented in the May 25th letter was materially different than the one presented to the Commission in the NHEC petition and further indicated a need to develop further record information to determine whether the proposed financing continued to be consistent with the public good in conformity with RSA Chapter 369. The Commission accordingly ordered the NHEC to file by June 22, 1984, an amended petition.⁵⁽¹³⁸⁾ The Order also established a procedural schedule for further hearings and for the filing of testimony and exhibits.⁶⁽¹³⁹⁾

On June 4, 1984, the NHEC filed a motion for remand, pursuant to RSA 541:14, in light of Commission Order No. 17,060. By Order dated June 15, 1984, the Court granted the motion to remand the case to the Commission "with respect to the fifty seven-milliondollar portion of the financing at

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issue, which the Cooperative now wishes to devote to the acquisition of a `38 megawatt ownership interest in Yankee projects' and certain other obligations in place of those previously approved by the Commission." The Motion for Remand was denied with respect to the remaining portion of the financing.⁷⁽¹⁴⁰⁾

A. First Emergency Financing

The Company, as directed, filed its amended petition on June 22, 1984. The petition indicated that the REA, the Company's lender, would not allow it to draw on its \$111 million line of credit until it was given assurance that necessary regulatory approvals had been issued. The Commission accordingly issued an Order of Notice setting a hearing on the petition for June 25, 1984. The Company testified at the hearing that to avoid default it required \$9 million through the end of the calendar year 1984 and that the REA required emergency approval to borrow \$9 million out of the previously approved \$111 million before any such borrowing could occur.

[2] The Staff recommended approval and the Intervenors and Consumer Advocate objected to the petition. The Commission accepted the Staff recommendation and approved the \$9 million borrowing in Fifth Supplemental Order No. 17,096 dated June 27, 1984 (69 NH PUC 339). In granting the petition, the Commission cited RSA 365:26, which provides, in pertinent part, that orders of the Commission shall be in effect until altered, amended, suspended, annulled, set aside or otherwise modified by the Commission or the Court. Since neither the Commission nor the

Court had taken any of the aforementioned actions regarding the two orders authorizing the original \$111 million borrowing,⁸⁽¹⁴¹⁾ those orders remained in full force and effect pending the appeal to the Supreme Court. The Commission also stated that it is not in the public interest for the Company to be put in default of its lawful obligations.

On Motion of the NHEC, the hearings scheduled on the remainder of the remanded \$57 million portion of the financing scheduled for July 9 & 10, 1984 were continued to July 30, 1984. On July 13, 1984, the Court issued its decision in the consolidated cases of Easton, Holmes and McCool.⁹⁽¹⁴²⁾ The Court held that the Commission erred in restricting the scope of the proceedings to the terms and conditions of the financing. The Court indicated that its earlier decisions defining Commission authority attempted

... to strike a balance between the Commission's authority and management's prerogatives. It is clear that although the scales tip in favor of one or the other depending upon the specific facts and issues of each case, the PUC has a role in determining whether a proposed financing is in the public good, and that role encompasses considerations

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beyond merely the terms of the proposed financing.¹⁰⁽¹⁴³⁾

The Court further stated that much had happened since the Commission originally authorized the NHEC to participate in Seabrook to qualify the case for remand under RSA 541:14. The March 1984 cost estimates were substantially larger than prior estimates; Public Service Company of New Hampshire (PSNH), the lead participant, was in continuing financial difficulty; work at Seabrook had been terminated for approximately 10 weeks; the completion of Unit II was in doubt; and new cost and completion date estimates have "... exceeded greatly the past figures and dates. In such circumstances, it seems futile to decide an appeal based on premises not borne out by current reality."¹¹⁽¹⁴⁴⁾ Accordingly, the Court remanded the case to the Commission for further deliberations.

On July 9, 1984, the NHEC filed a motion requesting that the case be continued indefinitely until the Company concluded its negotiation with PSNH on the use of the \$57 million.

The NHEC Motion to Continue alleged certain difficulties in finalizing an agreement with PSNH regarding the purchase of at least a 38 megawatt interest in certain Yankee Atomic projects¹²⁽¹⁴⁵⁾ now owned by PSNH. The NHEC specifically alleged that:

- 1) The NHEC has requested, invited and endeavored to pursue negotiations with PSNH for a duly executed written contract, on the basis of which the general terms and conditions of the proposed arrangements could be formalized;
- 2) although there had been meetings of counsel for all parties to prepare and finalize a draft of the contract with PSNH, terms for a satisfactory contract had not been adopted;
- 3) the NHEC was unprepared to proceed further in this proceeding unless and until a good, valid and subsisting contract between the NHEC and PSNH had been signed and delivered by PSNH in form satisfactory to the NHEC; and
- 4) at the present time no valid enforceable contract exists.

On July 17, 1984, the Commission granted the Company's motion and continued the proceedings at the call of the Commission. In granting the motion, the Commission accepted the reasons cited by the NHEC in its motion and noted that there were no objections to the motion and that the Supreme Court remand of the \$54 million portion of the case several days earlier was not yet final.¹³⁽¹⁴⁶⁾

Intervenors Roger Easton and Gary McCool filed timely motions for rehearing on Report and Order No. 17,096 (June 27, 1984) which approved the request of the NHEC for emergency authority to borrow \$9 million from the previously approved \$111 million financing.¹⁴⁽¹⁴⁷⁾ Intervenor Gary McCool also filed a Motion to Suspend on July 17, 1984. The Commission denied these motions indicating that the Intervenors' concerns could be adequately addressed in the remaining

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proceedings on remand.¹⁵⁽¹⁴⁸⁾

On August 13, 1984, Mr. McCool filed a Motion for Reconsideration of the Denial of Motions to Suspend. The Commission issued an order on August 16, 1984,¹⁶⁽¹⁴⁹⁾ clarifying the status of the case and denying McCool's motion explaining that the Supreme Court remand nullified the Commission's prior authorization of the \$111 million financing thereby making Mr. McCool's motion unnecessary to the extent that it pertained to the \$102 million not covered by the emergency \$9 million financing. To the extent that Mr. McCool's motion pertained to the approved \$9 million emergency financing, it was previously denied in Sixth Supplemental Order No. 17,143 (69 NH PUC 426) which denied the Intervenors' motions for rehearing on the emergency financing.

B. Second Emergency Financing

The Commission's approval of the first NHEC emergency petition to borrow \$9 million was based on the rationale that said emergency borrowing would allow the NHEC to meet its contractual responsibilities until December 31, 1984; a date by which it was reasonably believed that adjudication of this case could be completed. Thereafter, the Court issued *Re Easton, supra*, remanding the case to the Commission for additional proceedings under a broader scope. The Commission's subsequent suspension of the proceedings at NHEC's request, because of difficulties in resolving the Yankee purchase agreement with PSNH, further delayed the proceedings. These events, among others, prevented the Commission from completing its adjudication of this case by December 31, 1984.

On November 30, 1984, NHEC filed a petition for emergency authority to engage in \$8,700,000 of further financing. A duly noticed hearing was held on January 3, 1985. The NHEC's position was that it needed authority to engage in \$8,700,000 of additional financing to meet its obligations to the Seabrook joint owners and the FFB through June 30, 1985. The NHEC alleged that without this additional financing authority, it would be forced to default on these obligations. The requested funds would be borrowed on a line of credit as needed from the FFB acting through the REA.

The Consumer Advocate supported the financing in part and Intervenors McCool, the

Seacoast Anti-Pollution League (SAPL)¹⁷⁽¹⁵⁰⁾ and Representative Easton opposed the petition alleging that the NHEC did not prove the existence of an unavoidable emergency and did not meet its burden of proving that the emergency authority would be in the public good in light of the Court's Easton decision.

The Commission found the Consumer Advocate's argument to be persuasive and granted the NHEC's petition in part and established a procedural schedule to ensure that the Easton issues could be adjudicated in a timely fashion.¹⁸⁽¹⁵¹⁾ In its Order, the Commission restated its decision that the NHEC should be granted sufficient emergency financing authority to avoid

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default on its contractual obligations.¹⁹⁽¹⁵²⁾ The Commission also stated that additional emergency financings would be proper only if the Commission provided a realistic and timely opportunity for all parties to address the Easton issues.²⁰⁽¹⁵³⁾ The Commission indicated that its authorization of emergency financing here is similar to the situation faced in *Re PSNH*, Docket No. DF 84-167. In that case the Commission granted financing authority on the basis of a narrow scope of review while concurrently opening *Re PSNH*, Docket No. 84-200 to address the broader Seabrook related issues.²¹⁽¹⁵⁴⁾

The Commission found that the requested financing would be sufficient to carry the NHEC through June 30, 1985, a period estimated to include complete Commission adjudication and appeal. The Commission found this period to be excessive and held that the financing authority should be approved for only the time period necessary to carry the NHEC through the Commission adjudicative process at which time the Commission will presumably have an adequate record to decide how much, if any, additional financing authority to grant.²²⁽¹⁵⁵⁾ Accordingly, the Commission held that financing should only be allowed to carry NHEC through May 14, 1985, the date that the Commission projected that it would issue its Order on the merits. The Commission approval therefore was limited to an authorization the NHEC to borrow an additional \$5,290,484 rather than the requested amount of \$8,700,000.²³⁽¹⁵⁶⁾

C. Remand Proceeding

In the same order, the Commission scheduled a prehearing conference for January 30, 1985 to establish a schedule targeting May 14, 1985 as the date for issuance of a final Commission order and for the purpose of resolving, to the extent possible, the remaining procedural issues in the docket.²⁴⁽¹⁵⁷⁾

At the pre-hearing conference, the parties indicated to the Commission that they were unable to agree on a schedule. Accordingly, the various parties presented their individual recommendations to the Commission. The Intervenors proffered a schedule extending through August, 1985. The Commission rejected this proposal since it went well beyond the pre-established target date of May 14, 1985. The NHEC proposed a schedule which provided for adjudication by the May 14, 1985 date, but the intervals included in that schedule made it unlikely that the Commission would be able to meet that date. For example, the proposed schedule required Intervenors and Staff to file responsive prefiled testimony and exhibits prior to the date by which the NHEC was required to file responses to data requests. Since it could be

anticipated that Intervenor and Staff would need to review the NHEC discovery material in order to develop fully their testimony, the Commission foresaw reasonable requests being made for schedule extensions beyond May 14, 1985. Accordingly, the Commission established a schedule which took into account its own calendar and commitments as well as the fact that the

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NHEC, as the moving party in the docket, should bear certain procedural burdens.

The Commission established May 14, 1985 as the target date for final adjudication and set the interim procedural dates to allow the Staff and Intervenor additional time and the NHEC less time to prepare various filings than was allowed in the NHEC proposal. The Commission put the NHEC on notice that if it wished to have those burdens relaxed, the Commission would be willing to consider fully any such request on the understanding that any extension of a particular deadline could have the effect of extending the entire procedural schedule.²⁵⁽¹⁵⁸⁾

The procedural order also addressed a motion filed on January 2, 1985 by Intervenor McCool for the recusal of Chairman McQuade from further proceedings in this docket. Mr. McCool alleged in his motion that Chairman McQuade should recuse himself "in accord with the spirit of the Order of the New Hampshire Supreme Court in *Re Seacoast Anti-Pollution League*, 125 N.H. 482, A.2d 509 (1984)." In that case, the Court indicated that Chairman McQuade should have recused himself from a PSNH Seabrook financing proceeding because remarks made by him in a speech regarding the Seabrook project gave the appearance of bias. Chairman McQuade denied the motion for recusal²⁶⁽¹⁵⁹⁾ asserting that a "... reading of that speech can only lead a reasonable person to conclude that it was directed at the problems of Public Service Company of New Hampshire. It cannot reasonably be construed as being applicable to the proposed Coop financing."²⁷⁽¹⁶⁰⁾

Intervenor CLF, SAPL, Easton and McCool filed timely motions for rehearing.²⁸⁽¹⁶¹⁾ The Commission denied the motions in Tenth Supplemental Order No. 17,479 dated March 6, 1985, (70 NH PUC 83), and the Movants appealed for the second time in this docket to the New Hampshire Supreme Court.

After an expedited briefing and oral argument schedule, the Supreme Court issued its Order on the appeal of Gary McCool and Roger Easton on April 12, 1985, holding that enforcement of the emergency financing order "... would cause only minimal harm to the petitioners. We also conclude that the petitioners have failed to demonstrate that any harm to them would outweigh the broader public interest in enforcement of the order."²⁹⁽¹⁶²⁾ The Court accordingly upheld Eighth Supplemental Order No. 17,411 which authorized the second emergency financing in this docket in the amount of \$5,290,484.³⁰⁽¹⁶³⁾ The Supreme Court also noted that its "conclusions are not to be taken as any indication that further emergency expenditure authorizations may be permissible, pending completion of the

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hearings presently scheduled to comply with *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984)."³¹⁽¹⁶⁴⁾

In accordance with the established procedural schedule, the NHEC filed revised testimony and exhibits on March 1, 1985. At that time, the Commission was addressing the Easton issues applicable to PSNH in Docket No. DF 84-200, a proceeding which involved generic Seabrook issues applicable to this NHEC financing. The procedural schedule provided time for the Commission to address those generic Seabrook issues prior to addressing the issues in this financing which are specific to the NHEC.³²⁽¹⁶⁵⁾

On March 15, 1985, the NHEC filed a motion to take administrative notice of certain portions of the testimony and exhibits which were entered into evidence in Re PSNH, Docket No. DF 84-200. The Commission directed the parties to file responses to the NHEC motion by April 5, 1985,³³⁽¹⁶⁶⁾ and on said date responses were filed by Gary McCool and the Consumer Advocate. Mr. McCool objected to certain portions of the NHEC request and the Consumer Advocate, joined by the NHEC, requested that the Commission take administrative notice of the entire record in DF-84-200. On April 23, 1985, Mr. McCool filed a motion to take administrative notice of certain portions of the record in DF 84-200. Mr. McCool represented that he preferred that the Commission take administrative notice of the entire record rather than excluding from such notice portions of the record that he identified in his motion.³⁴⁽¹⁶⁷⁾ The Commission accepted the position of the Consumer Advocate and the NHEC and took administrative notice of the entire record of DF 84-200.³⁵⁽¹⁶⁸⁾ The Commission noted in its Order that it may take administrative notice if, in its discretion, such notice would facilitate a complete and orderly review of the issues in the instant proceeding and if the material is relevant pursuant to RSA 541-A:18V (Supp. 1983).³⁶⁽¹⁶⁹⁾ The Commission determined that much of the material in DF 84-200 meets those requirements and that administrative notice would eliminate the need to hear certain evidence that had already been adequately developed in another docket. The Commission cautioned the parties, however, that the decision to take administrative notice of the entire record in DF 84-200 should not be construed as a decision on the weight to be accorded to any evidence contained in that record or to allow the use of that record as a collateral attack on the findings which the Commission decided should be common to both proceedings.³⁷⁽¹⁷⁰⁾ The parties were also notified that they were privileged to present argument about which portions of the record should or should not be relied upon

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for the Commission decision in the instant proceeding.³⁸⁽¹⁷¹⁾

[3] On April 23, 1985, the NHEC filed a Motion for Adoption of Certain Findings from Report and Ninth Supplemental Order No. 17,558 in Docket DF 84-200. The Commission held that the scope of the instant proceeding will be as directed by the Legislature in RSA Chapter 369 as construed by the Court in Easton and defined the ultimate issue in this proceeding as "... whether, under all the circumstances, the financing is in the public good---a determination which includes considerations beyond the terms of the proposed borrowing." Easton, 125 N.H. at p. 213.³⁹⁽¹⁷²⁾

In applying this standard, the Commission adopted the same definition of scope it used in DF 84-200:⁴⁰⁽¹⁷³⁾

- 1) Whether the terms, conditions and amount of the proposed ... financing are in the public good;
- 2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders; and
- 3) Whether it is financially feasible for the Company to engage in its proposed construction program, including an evaluation of the level of revenues necessary to support the capital structure which would result from the successful completion of Seabrook Unit I ... DF 84-200, Order of Notice of August 9, 1984; 70 NH PUC at p. 170, 66 PUR4th at pp. 354, 355. See also, Re Seacoast Anti-Pollution League, 125 N.H. 465, 482 A.2d 509 (1984).

The Commission responded to the motion in Fourteenth Supplemental Order No. 17,568 and accepted for the instant proceeding findings from DF 84-200 which were generic, in that they are equally applicable to both proceedings, and excluded those findings which were particular to PSNH as distinguished from the NHEC financing.⁴¹⁽¹⁷⁴⁾ Applying this general approach to the specific request for findings, the Commission found that:

- 1) The issue of terms, conditions and amount of the proposed NHEC financing must be addressed in the instant proceeding because of significant differences between the proposed financing from the FFB and REA and the PSNH pre-financing through deferred interest bonds and pollution control revenue bonds considered in DF 84-200;
- 2) The Commission could not allow in this proceeding a collateral attack on findings in DF 84-200 to the extent that those findings were applicable to PSNH.

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However, to the extent that factors particularly applicable to the NHEC were distinguishable from PSNH, the parties were allowed to present evidence and argument.⁴²⁽¹⁷⁵⁾

- 3) Evidence and argument were allowed on the issue of financial feasibility.

Other Commission findings on specific NHEC requests are discussed at length in the Report accompanying Fourteenth Supplemental Order No. 17,568. In brief, these findings were:

- 1) The financing approved in DF 84-200 will enable PSNH to complete its own share of Seabrook I construction. The parties were privileged to present argument on the effect of our findings in DF 84-200 relating to the financial viability of PSNH to the instant proceeding.
- 2) PSNH's 1984 load forecast, which was accepted by the Commission, is conclusive regarding future PSNH demand and energy growth for the purpose of estimating PSNH rates except to the limited extent that NHEC's future demand and energy growth through probative evidence in this proceeding may significantly alter the PSNH forecast and resulting rates. Additionally, our finding that PSNH reasonably relied on its own load forecast is conclusive. However, PSNH's load forecast is not conclusive in determining NHEC's future demand and energy growth and the parties were privileged to present evidence and argument on that issue.

3) Seabrook I is a necessary capacity addition to serve the public interest and to serve New England through the New England Power Pool (NEPOOL). The interest of NHEC consumers, however, was not specifically addressed in DF 84-200. The question of whether NHEC's share of Seabrook Unit I is a needed capacity addition to serve the capacity requirements of the NHEC's consumers and, accordingly, whether the NHEC's continued participation in Seabrook I is in the public interest must be determined in this docket.

4) The cost of completing Seabrook is an issue that is common to both proceedings. To the extent that common elements are involved, our prior finding of a \$1 billion incremental cost is conclusive. The parties were allowed to present evidence and argument on this issue to the extent that there are elements which are particularly applicable to the NHEC, such as financing costs.

5) A Seabrook Unit I commercial operation date of December, 1986, with some possibility of schedule slippage, is attainable.

6) Seabrook Unit I capital additions will cost \$15 million in 1984 dollars escalating at a nominal rate of 7.5% per year, a finding that is common to both proceedings, and is conclusive.

7) The Seabrook Unit I assumed capacity factor of 60%, with a likely range of 52.5% to 72%, is common to both proceedings.

8) The assumed nuclear fuel cost of 1.41 cents/kwh in 1986, increasing to 2.4 cents/kwh in 2005, is common to both proceedings.

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9) The Seabrook I assumed operation and maintenance expenses of \$69 million per year with a real escalation rate of 1.5-2% is common to both proceedings.

10) The assumed decommissioning cost within a range of \$170 million to \$311 million (in 1984 dollars) and, for analytical purposes, a decommissioning cost of \$170 million (1984 dollars) is common to both proceedings. 11) The assumed plant life of 35 years, within a likely range of 30-40 years, is common to both proceedings.

12) The finding that PSNH's cost of capital is 15.4% is conclusive. The parties were privileged to present evidence or argument on the cost of capital of the NHEC.

13) The PSNH consumer discount rate of 15%, within a range of between 10% and 15.4%, is common to both proceedings to the extent that PSNH's and the NHEC's customers are similar.

14) The finding that Seabrook Unit I is preferred to the alternatives of conventional thermogeneration, cogeneration or conservation is not conclusive in this proceeding. There were several costs, distinguishing factors cited including service territory, load characteristics, the manner of supplying load and customer mix. The parties were therefore allowed to present evidence and argument on this issue.

15) The finding that the bankruptcy of PSNH is not in the public interest is conclusive to the extent that such a finding, directed at PSNH, is applicable to the instant proceeding. However, issues relating to the consequences to the NHEC of Commission denial of the proposed financing were held to be material in the instant docket.

The Commission made the above findings to avoid needless relitigation.⁴³⁽¹⁷⁶⁾ The Commission noted that its findings in DF 84-200 were directed at whether the financing of Seabrook I construction by PSNH is in the public good and was not directed at the question of the NHEC participation in the Seabrook project. The Commission did not foreclose evidence on the NHEC issues and held that they are material to the instant proceeding.⁴⁴⁽¹⁷⁷⁾ The Commission offered to make appropriate ruling on any related proffered evidence or argument.

Accordingly, the Commission made the following findings regarding issues set forth in a Memorandum filed by Gary McCool on April 26, 1985:

1) The NHEC's continued participation in Seabrook Unit II, is beyond the scope of this proceeding. However, to the extent that the treatment of the sunk cost of Seabrook Unit II has a bearing on the financial feasibility of the proposed financing, the parties were allowed to present evidence and argument. 2) The Seabrook alternatives available to the NHEC has not been foreclosed. 3) Prudency cannot be an issue in the instant proceeding because it has not been noticed as a prudency hearing. *Re Public Service Co. of New Hampshire*, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982). The

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Commission noted, however, that a forward looking evaluation of whether to approve the proposed financing necessarily involved a determination of whether the NHEC's continued participation in Seabrook is consistent with the public good. RSA 369:1; *Re Easton*, supra.⁴⁵⁽¹⁷⁸⁾ 4) The potential effect of the NHEC's continued participation in Seabrook on rates was not foreclosed by the Commission's prior findings and is within the scope of this proceeding. 5) An analysis of the effect of Seabrook-based rates on demand for electricity by NHEC customers was not foreclosed by the Commission's prior findings and is within the scope of these proceedings. 6) Analysis and evaluation of NHEC load forecasts were not foreclosed by the Commission's prior findings and are within the scope of the instant proceeding. 7) An analysis of the specific alternatives of (a) a Commission-ordered cost cap; (b) Commission-ordered partial selldown; and (c) a Commission-ordered complete disengagement "... involve the available remedies which may be considered in the instant proceeding; a matter which must be distinguished from the evidence material to the Commission's evaluation of which available actions it should take."⁴⁶⁽¹⁷⁹⁾ The Commission noted that it was limited in how the specific remedies could be applied in the instant proceeding. The Commission summarily disposed of these issues stating: "In DF 84-200, we held as a matter of law that we could not impose a cost cap in that particular financing docket. (70 NH PUC 164, 66 PUR4th 349.) The material circumstances in the instant docket are the same as in DF 84-200. A subsequent prudency evaluation may or may not establish a de facto cost cap; the Commission cannot as a matter of law impose such a cap in the instant proceedings. Nor can we order a complete or partial disengagement. As noted previously, the Commission is evaluating whether or not a request for financing authority should be approved. Although the nature of the NHEC's involvement in Seabrook is germane to such an inquiry, the inquiry itself continues to be an evaluation of whether the NHEC's requested financing authority is consistent with the public good pursuant to RSA Chapter 369."⁴⁷⁽¹⁸⁰⁾ 8) The consequences of Commission denial of the requested financing authority is within the scope

of this proceeding and was not foreclosed by prior Commission findings in DF 84-200. 9) The condition imposed on PSNH in Order No. 17,558 that "all Seabrook I Joint Owners have received regulatory authorization to finance their respective ownership shares of Seabrook I and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook I construction cost ...,"⁴⁸⁽¹⁸¹⁾ does not foreclose evaluation of the NHEC's participation in Seabrook I. The above cited condition was imposed based on the Commission record evaluation of the circumstances surrounding PSNH in Docket DF 84200 and were not intended to

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extend to any other joint owner including the NHEC. The evaluation of the NHEC's participation in Seabrook I will be based on the evidence in the instant proceeding applicable to the NHEC under the legal standards of RSA Chapter 369 and *Re Easton*.

On March 19, 1985, Intervenors McCool and Easton filed a Motion for Suspension of Procedural Schedule which correctly asserted that the NHEC's November 1983 petition was stale.⁴⁹⁽¹⁸²⁾ Prefiled testimony and exhibits filed with the Commission on March 1, 1985, as well as subsequently filed data, reflected changes in estimates of the total cost of Seabrook, the commercial operation date of Seabrook I, the changed status of Seabrook Unit II and other relevant estimates and data that were not reflected in the original petition. Accordingly, the Commission directed the NHEC to file an amended petition that conforms to its proof in accordance with N.H. Admin. Rules, PUC 204.04.⁵⁰⁽¹⁸³⁾ Since those changes were adequately represented in revised testimony and exhibits filed on or after March 1, 1985, the Commission found that the inadequacy of the original petition was not prejudicial to the parties and therefore declined to grant a motion by Mr. McCool to suspend the proceedings.⁵¹⁽¹⁸⁴⁾

The hearings on Remand commenced on April 23, 1985 and extended for nine days through May 3, 1985. A Schedule of Witnesses is attached hereto as Attachment A. There were 1,827 pages of testimony and 83 exhibits. At the close of the hearings, the Commission directed the parties to submit briefs on or before May 17, 1985. The Commission also directed that reply briefs be filed simultaneously on May 23, 1985.⁵²⁽¹⁸⁵⁾

On May 3, 1985, on the last day of hearings, the NHEC filed a motion to enlarge Order No. 17,411 in which the Commission authorized the NHEC's second emergency financing in this docket in the amount of \$5,290,484. The petition requested further emergency financing in the amount of \$2,682,017 which would allow the NHEC to meet its obligation under the joint ownership agreement and to the FFB through the period ending June 30, 1985. The NHEC explained that:⁵³⁽¹⁸⁶⁾ 1) the Commission authorized emergency financing to meet the NHEC's needs as set forth in the Petition of November 30, 1984, through May 14, 1985 only; 2) the New Hampshire Supreme Court had ruled in *Re Seacoast Anti-Pollution League*, 125 N.H. —, 490 A.2d 1329 (1985) that a Commission financing order could be considered valid only after the period allowed for Commission rulings on motions for rehearing, provided that the New Hampshire Supreme Court does not previously suspend the Commission's Order; 3) because of the Commission's Report in Eighth Supplemental Order No. 17,411 (70 NH PUC 26), the Cooperative did not have sufficient authority to borrow sufficient funds to meet its obligations

and would therefore be in default of its obligations.

Timely objections to the Motion were filed on May 7, 1985 by Intervenors McCool and Easton. On May 10, 1985 the Commission issued Sixteenth

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Supplemental Order No. 17,599 (70 NH PUC 363), which denied the NHEC's request for authority to borrow an additional \$3,260,581 out of the previously approved and remanded \$111 million, but granted emergency authority to borrow an additional \$2,682,017.⁵⁴⁽¹⁸⁷⁾ The Commission said that such relief is not inconsistent with Easton, the Commission's past orders or the status quo.⁵⁵⁽¹⁸⁸⁾ The decision noted that the record amply supports the Commission's concerns about the risks associated with default and with the goal of maintaining the status quo of construction at Seabrook at a reduced level pending the resolution of the regulatory uncertainties surrounding the financing requests of several joint owners. The Commission balanced the risks and benefits of denying emergency relief with those of granting emergency relief and found that the potential adverse consequences of default far outweigh the consequences of the incremental additional exposure associated with the granting of emergency relief.⁵⁶⁽¹⁸⁹⁾ The Commission noted that the Court, in *Re McCool*, supra, cautioned:

We wish to note that our conclusions are not to be taken as any indication that further emergency expenditure authorizations may be permissible, pending completion of the hearings presently scheduled to comply with *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984). (Slip opinion at 3.)

Accordingly, the Commission did not rely solely on *Re McCool* as support for this emergency financing, but rather based its determination on the evaluation of the current circumstances surrounding the NHEC.⁵⁷⁽¹⁹⁰⁾ As indicated above, this evaluation included the risks associated with default, the goal of maintaining the status quo of construction at Seabrook at a reduced level pending the resolution of Seabrook regulatory uncertainties, and a balancing of risks and benefits of denying or granting emergency relief.

D. Background of NHEC Participation in Seabrook

On May 4, 1979, PSNH filed a petition with the Commission asserting that it was financially unable to retain its entire interest in the Seabrook Nuclear Power Plant as a result of passage of HB155 (RSA 378:30-a) which prohibited the inclusion of Construction Work In Progress (CWIP) in the rate base and also prohibited utility rates and charges from being based in any manner on CWIP.⁵⁸⁽¹⁹¹⁾ PSNH requested in its petition that the Commission approve transfers of its ownership share in Seabrook in order to bring the Company's Seabrook participation down to the 28% level.⁵⁹⁽¹⁹²⁾ At that time, PSNH owned fifty percent of the Seabrook project and had asked to divest itself of 22% ownership thereby reducing its participation to the 28% level. In Order No. 13,759 (64 NH PUC 262), the Commission granted approval to transfer 14.03% of PSNH interest in Seabrook

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station to:⁶⁰⁽¹⁹³⁾

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

Central Vermont Public Service - 1%

61(194) Green Mountain Power Company - 1%
 Central Maine Power Company - 1%
 Taunton Municipal Lighting
 & Hudson Light Power Dept.
 (respectively) - & 0.13065%
 & 0.01957%
 MMWEC - & 10.87466%

The Commission deferred consideration of the transfer of the remaining 7.97% for future hearings.⁶²⁽¹⁹⁵⁾

On August 10, 1979, in Supplemental Order No. 13,780, the Commission authorized the transfer of an additional 7.97% of PSNH's interest in Seabrook to:⁶³⁽¹⁹⁶⁾

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

MMWEC - 3%
 Montaup Electric Company - 1%
 Bangor Hydro-electric Company - 1.8%
 New Bedford Gas & Edison Light
 Company - 2.1739%

PSNH was unable to effect the approved transfers and, on November 27, 1979, filed a Motion for Further Orders.⁶⁴⁽¹⁹⁷⁾

PSNH cited certain changes in circumstances to support its request, including the reduction in Seabrook participation of MMWEC and the withdrawal from participation of Central Vermont Public Service Corporation and Green Mountain Power Corporation.⁶⁵⁽¹⁹⁸⁾ The Commission approved the requested transfer of PSNH Seabrook ownership to:

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

Bangor Hydro-electric Company - 1.80142%
 Central Maine Power Company - 1%
 Town of Hudson, Massachusetts Light
 & Power Dept. - 0.01957%
 Massachusetts Municipal Wholesale
 Electric Co. 6.00091%
 Montaup Electric Company - 1.0%
 New Bedford Gas & Edison Light
 Company 2.1739%
 Taunton, Massachusetts Municipal
 Lighting Dept. 0.34445
 Fitchburg Gas & Electric Light
 Company - 0.2608%
 New Hampshire Electric
 Cooperative, Inc. - 2.17391%
 14.76496%

The NHEC thereby acquired its current ownership share of Seabrook. The NHEC's continued participation in the Seabrook project was reaffirmed by the Commission in subsequent Commission orders relating to Seabrook. For example, in a Commission order authorizing a NHEC financing of Seabrook construction costs, the Commission found that ownership by the

cooperative was superior to ownership by PSNH due to the cooperative's ability to avail itself of lower cost financing from the REA and that NHEC ownership of Seabrook is in the public good.⁶⁶⁽¹⁹⁹⁾

In the instant proceeding, the Commission will determine whether the proposed financing to complete the NHEC's share of Seabrook I's cost of construction is consistent with the public good. RSA 369:1.

II. POSITIONS OF THE PARTIES

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A. Introduction

Throughout the nine days of evidentiary hearings, testimony was presented by the NHEC, the Consumer Advocate and pro se Intervenor Gary McCool and Roger Easton. Briefs were submitted by the NHEC, the Consumer Advocate, Gary McCool and Roger Easton. SAPL and CLF who were accorded full party intervenor status in this docket did not participate in the evidentiary hearings nor did they submit argument in brief. Accordingly, we will here address the positions of the parties who participated in the evidentiary and argument phases of this proceeding. Since we cannot ascertain the positions of the non-participating parties, they will not be included in the following description.

B. Position of the NHEC

The NHEC as the Petitioner in the instant proceeding took the position that the proposed financing of \$49,580, 000 is consistent with the public good in accordance with the provisions of RSA Chapter 369 as construed by the court in *Re Easton*, supra.

Specifically, the NHEC noted that it is already faced with a debt obligation to the United States Government in excess of \$90 million which must be repaid no matter what supply alternative is selected.

The NHEC further argued that it must secure a reliable source of power at a cost which may reasonably be recovered through rates in order to serve its members. The availability of financing to meet supply needs is limited, generally, to loans from the United States Government. However, the sole source of NHEC financing is willing to provide financing at very favorable rates and on flexible terms. Moreover, the United States Government has committed its support to the completion of Seabrook Unit I, subject to the approval of this Commission.

With respect to the examination of alternatives, the NHEC contended that only two reasonable options exist: 1) continued participation in Seabrook Unit I; or 2) termination of participation in Seabrook Unit I by sale to another entity and reliance on wholesale power from PSNH for the NHEC's supply needs. The NHEC argued that the alternative of completing the construction of Seabrook Unit I is clearly the preferable alternative.

The NHEC also argued that the proposed financing is financially feasible. Completion of Seabrook I is a prerequisite to the NHEC's ability to meet its obligations to its lender. Further, the completion alternative results in the most reasonable rates to the NHEC's ratepayers.

In support of its position, the NHEC presented the testimony of Mr. Frederick C. Anderson (See e.g., Exh. R-1), Mr. Steven E. Kaminski, Professor J. Peter Williamson. (See e.g., Exh. R-23), Ms. Lee Smith (See e.g., Exh. R-24) and Mr. John Pillsbury.

Mr. Anderson is the NHEC's Assistant Director of Budgets and Finance, a position he has held since October, 1981. The purpose of his testimony was to present information as to the amount of financing authority necessary to meet the NHEC's obligations for the completion of Seabrook Unit I. Mr. Anderson initially calculated the amount of NHEC capital which had been invested in Seabrook as of December 31, 1984. The total amount was \$85,600,450 (which included \$12,319,524 for Unit II); a figure which translates to a sunk cost of \$2,750 per

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installed kilowatt (KW).^{66A} Mr. Anderson then calculated the cost of completion to the NHEC under two scenarios: 1) Scenario 1 assumed that the direct cost of completing Seabrook Unit I will be \$1 billion as of January 1, 1985 and that the commercial operation date of the plant will be October 1, 1987 (the assumptions of the joint owners' May 14, 1984 resolution as updated⁶⁷⁽²⁰⁰⁾); and 2) Scenario 2 assumed that the direct cost of completing Seabrook Unit I will be \$882 million as of August 1984 and that the commercial operation date of the plant will be October 31, 1986 (the PSNH base case estimate). Mr. Anderson's calculation concluded that under the Scenario 1 assumptions, the NHEC's financing needs are \$49,580,000 (Exh. R-3) and under the Scenario 2 assumptions, the NHEC's financing needs are \$32,235,645. Since the NHEC will be borrowing as costs are incurred and since the conservative assumptions in Scenario 1 show that \$49,580,000 will be sufficient to complete the plant, Mr. Anderson concluded that the amount of the financing authority sought is reasonable.

Mr. Kaminski is an NHEC Engineer whose function is, among other things, to administer the NHEC's Seabrook financings. The purpose of Mr. Kaminski's testimony was to provide information on the NHEC's need for power. In addition, Mr. Kaminski was the NHEC's liaison with Witness Lee Smith of LaCapra Associates, and Dalton Associates, the organization which prepared the NHEC's Power Requirement Study, 1985 - 1994 (Exh. R-16B). Mr. Kaminski testified that the Dalton study projects that energy growth will be approximately 1.5% per year from 1985 to 1989 and 4% per year from 1989 to 1994. The overall average energy growth for the ten year period would be 2.7%. 3 Tr. 419. Mr. Kaminski believed that the Dalton results may be conservative because the NHEC's 7.4% energy growth in the last year was higher than expected. 3 Tr. 422. Mr. Kaminski also studied the projected growth in the NHEC's demand and the means of supplying that projected demand. Exh. R-19. That demand would have to be supplied in a manner consistent with the NHEC's particular system requirements. The NHEC system is non-contiguous and is supplied mostly by PSNH at 27 delivery points. The NHEC has no transmission system and no indigenous generation. It is therefore dependent on PSNH as its wholesale supplier to meet its generation and transmission needs. Mr. Kaminski testified that, given the need for power and the structure of the NHEC system, the NHEC needs and can use the 25 MW of power that it expects to obtain from Seabrook Unit I.

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Professor J. Peter Williamson is a Professor of Business Administration at the Amos Tuck School of Business Administration at Dartmouth College. The purpose of Professor Williamson's testimony was to provide the Commission with expert information about the terms and conditions of the proposed financing, several benefits of direct NHEC Seabrook ownership, and the consequences of default. Professor Williamson testified that the terms and conditions of the proposed financing are very attractive. This is because the rate of interest is low (1/8 of 1% above the United States Treasury cost of borrowing), the flexibility in choosing short term and long term notes and the ability to draw on a line of credit rather than prefinance a total obligation. With respect to the benefits of direct Seabrook ownership, Professor Williamson listed three important considerations: 1) the low financing cost means that Seabrook power is cheaper for the NHEC than it is for PSNH, thus the NHEC realizes a savings from owning Seabrook power, rather than purchasing it from PSNH; 2) the savings of ownership are increased because the NHEC was able to take over PSNH's ownership of Seabrook without compensating PSNH for the capitalized Allowance For Funds Used During Construction (AFUDC) already incurred; and 3) the risk of ownership is substantially reduced by the sell-back agreement (Exh. R-8) which allows the NHEC to select the cheaper of two options — using Seabrook power or selling it to PSNH at the NHEC's total cost — for the first 10 years of Seabrook generation. Professor Williamson also discussed the consequences of the two defaults which would occur if the Commission denied the NHEC Petition. The first default which would be to the Seabrook joint owners, would subject the NHEC to the substantial risk that the default and penalty provisions of the joint ownership agreement would be invoked. Those provisions could result in further increased costs to the NHEC's ratepayers and the possible loss of the NHEC's share of Seabrook power. The second default, which would be to the NHEC's lender, would subject the NHEC to the substantial risk that the federal government would decline to provide additional financing and, further, that the federal government would foreclose on its mortgages, effectively taking the NHEC away from its members. Professor Williamson believed that the consequences of default should be avoided, given his assessment of the benefits of NHEC Seabrook ownership.

Lee Smith is the Chief Economist of LaCapra Associates, an economic consulting firm retained by the NHEC. The purpose of Ms. Smith's testimony was to present an evaluation of the factors affecting the NHEC's power supply costs through the year 2004. Specifically, Ms. Smith addressed the alternatives of NHEC's continued participation or the termination of participation in Seabrook Unit I. Ms. Smith's scenarios compared the participation and termination alternatives under three different Seabrook costs (\$882 million, \$1.3 billion and the PSNH Request 10 case). The termination alternative was compared to each Seabrook cost case under both a low and a high estimate of the market value of the NHEC's sunk investment in Seabrook I. The termination alternative also assumed that the NHEC would continue to meet its power requirements through wholesale purchases from PSNH. Ms.

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Smith concluded that under realistic assumptions, the NHEC's ratepayers will pay less under the continued participation scenarios than they would under the termination scenarios. Ms. Smith also reviewed the Dalton Power Requirements Study and, in particular, the demand elasticity assumptions inherent in that study. Ms. Smith testified that the Dalton Study was a reasonable

forecast of load growth based on reasonable elasticity assumptions.

Mr. Pillsbury is the General Manager of the NHEC. The purpose of Mr. Pillsbury's testimony was to provide information on the decisions of the NHEC's management with respect to its continued participation in the Seabrook project. Specifically, Mr. Pillsbury provided information of the nature of the NHEC's relationship with PSNH, its decisions in joint owner meetings, the nature of the sell-back agreement (Exh. R-8), the NHEC's relationship with the REA, and NHEC thinking with respect to future power supply options. It was Mr. Pillsbury's opinion that the completion of Seabrook Unit I would benefit the NHEC's ratepayers and, accordingly, the financing Petition should be granted.

On the basis of the above evidence and argument, the NHEC contended that the proposed financing is consistent with the public good and should be granted.

C. Position of the Consumer Advocate

The Consumer Advocate opposed the granting of the NHEC Petition. The Consumer Advocate's position was based on his analysis of the NHEC evidence; an analysis that led to a contention that the NHEC failed to meet its burden of proof. The Consumer Advocate cited two major areas of weakness in the NHEC presentation. The first was the NHEC's failure to use long-term elasticities in its estimates. The Consumer Advocate argued that this resulted in an underestimate of the effect of Seabrook I completion on long term rates. The second weakness was the NHEC's failure to consider seriously alternatives to its continued participation in the Seabrook project.

In support of his position on the failure to consider the long term elasticity of demand, the Consumer Advocate presented the testimony of Roger Easton.^{68(201) 8 Tr. 1493}. Representative Easton is an electrical engineer who performed a study of the effect of Seabrook prices on the NHEC. Specifically, Representative Easton testified that if the full cost of Seabrook is reflected in rates a so-called "death spiral" will occur due to the effect of elasticity. Representative Easton's study started with NEPOOL elasticity assumptions. Those assumptions were then applied to the NHEC in an iterative process: i.e., the model continually solved for the effect of price on demand which, in turn, affected price which, in turn, affected demand. On the basis of this iterative analysis, Representative Easton concluded that prices will rise and demand will fall to a level where the NHEC will be unable to recover its costs through rates. This is the so-called "death spiral".

The Consumer Advocate supported his assertion that the NHEC did not consider alternatives through the testimony of other witnesses. Specifically, the Consumer Advocate argued that the NHEC did not adequately consider

the cost of constructing its own transmission system, building a small wood burning plant, purchasing Canadian power, pursuing conservation and small power development, or exploring NEPOOL participation.

On the basis of his argument that Seabrook participation will be unreasonably expensive per se to ratepayers and that the NHEC failed adequately to consider alternatives, the Consumer

Advocate contended that the NHEC Petition should be denied.

D. Position of Roger Easton

Roger Easton, a pro se Intervenor, did not explicitly in brief take a position opposing the grant of the NHEC Petition. Rather, Representative Easton requested: 1) that the Commission place the same conditions on the NHEC as it placed on PSNH in Re PSNH, DF 84-200, Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164); that the NHEC be asked to prepare a plan considering the demise of Seabrook; and 3) that the NHEC be ordered to pay out-of-pocket expenses to Intervenor. Despite the lack of explicit opposition in brief, we believe that Representative Easton's evidence and argument lead to a proper inference that he is opposed to the NHEC's continued participation in the Seabrook project and we will, accordingly, consider that position.

Representative Easton's position is based on two major contentions: 1) that there exists no need for the Seabrook project; and 2) that the NHEC directors engaged in ultra vires decisionmaking. With respect to the need for Seabrook, Representative Easton relied on his own testimony and exhibits, which have been summarized supra at II. C. With respect to the ultra vires decisionmaking, Representative Easton contended that, although there had been no specific violation of any NHEC by-law, the directors should not have decided to participate in Seabrook without first asking for a vote of the membership. Because Seabrook is not needed and because the NHEC members never voted on the specific issue of Seabrook participation, Representative Easton contended that the NHEC Petition should be denied.

E. Position of Gary McCool

Gary McCool, a pro se Intervenor, opposed the granting of the NHEC's Petition. Mr. McCool based his position on the following arguments: 1) the NHEC's presentation on alternatives to continued participation in Seabrook was inadequate; 2) the NHEC's assumptions about the cost of participation are inaccurate; 3) the financing is not financially feasible; and 4) the record is incomplete on the consequences of denial.

With respect to the issue of NHEC alternatives to continued Seabrook participation, Mr. McCool argued that: 1) the NHEC failed to complete a comparative economic analysis of all feasible options; 2) the NHEC affirmatively agreed to forego active pursuit of the small power producer alternative; 3) the NHEC did not undertake a detailed study of the feasibility of the reasonable options of energy conservation, efficiency improvements, load management and alternate energy sources; and 4) the analysis of the two options selected by the NHEC is incomplete in that there was no sensitivity analysis, an inaccurate assumption of a 1.0 TIER, a failure to determine whether

the NHEC would "break even" on its Seabrook investment a failure to account for the effects of own-price elasticity and a failure to analyze the effect of Seabrook cancellation.

Mr. McCool's arguments on the cost of Seabrook are based on his analysis of the findings in Re PSNH, DF 84-200, supra. Specifically, Mr. McCool believes that the NHEC assumes a total cost of \$5.5 billion and a Commercial Operation Date of October, 1987; a cost inconsistent with

the Commission's finding of \$4.6 to \$4.7 billion with a Commercial Operation Date of December, 1986.

With respect to the issue of financial feasibility, Mr. McCool argued that the cancellation of Seabrook Unit II in combination with the so-called "AntiCWIP" law, RSA 378:30-a, means that the NHEC will be unable to meet its obligations to its lender to the extent that it invested in Unit II. This is because there is no equity in the NHEC's capital structure and because the NHEC may not be able to recover the costs of abandoned plant from ratepayers. See, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). Since the NHEC will be in a position of defaulting in any event, the granting of the instant Petition may not prevent an ultimate default. Thus, according to Mr. McCool, the proposed financing is not financially feasible.

With respect to the issue of default, Mr. McCool believes that the record cannot support a conclusion that the consequences of default would be unduly adverse to the interest of the NHEC's ratepayers. Mr. McCool argued that the failure to provide REA testimony coupled with Professor Williamson's admitted lack of expertise in bankruptcy should undermine NHEC assertions on the consequences of default. Further, Mr. McCool argued that the testimony of Dean Viles in *Re PSNH*, DF 84-200 and the testimony of Mr. Pillsbury in the instant proceeding support a conclusion that adverse consequences will be avoided by practical accommodations.

In support of his position, Mr. McCool presented the testimony of Martha Drake (See e.g., Exh. R-42) David DeSousa (See e.g., Exh. R-44) and Christopher Flavin (See e.g., Exh. R-55).

Martha Drake, is a Director of Top O'Michigan Rural Electric Company. The purpose of her testimony was to make three points. First, investing in coal or nuclear facilities owned by investor owned utilities has proved disastrous to many rural cooperatives. Second, the cost of retrofitting Seabrook will probably be higher than that generally expected. Third, the NHEC can satisfy power needs less expensively by engaging in conservation initiatives rather than completing Seabrook or purchasing wholesale from PSNH.

David DeSousa is a wind energy consultant and the Chairman of the Board of Energy Farms, Inc. The purpose of his testimony was to provide information on the energy needs that potentially may be met by Wind Energy Conversion Systems (WECS). Mr. DeSousa described a WECS "farm" under development in the NHEC's Canaan, New Hampshire service territory. He estimated that the wind resource could provide 200 MW to New Hampshire in the next 10 years. He further estimated that a 25 MW wind farm could be developed for \$25 million of today's dollars.

Christopher Flavin is a Senior Researcher at Worldwatch Institute, a

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private non-profit research organization. The purpose of his testimony was to present information on alternatives to continued NHEC participation in Seabrook. Mr. Flavin believed that there exists a substantial downside risk of adverse consequences from continued Seabrook participation. He recommended that the NHEC perform a detailed assessment of the cost effectiveness of nuclear power compared to conservation, cogeneration and small power production. Mr. Flavin further provided testimony on his analysis which indicated that the

conservation, cogeneration and small power production options would be a less expensive and less risky means of meeting the NHEC's power supply requirements.

On the basis of the above evidence and argument, Mr. McCool recommended that the Commission deny the NHEC Petition because the NHEC failed to meet its burden of proving that continued Seabrook participation is preferable to the alternatives. Mr. McCool also recommended that the Commission consider: 1) placing a cost cap on the NHEC's Seabrook investment at the amount currently invested; 2) ordering a partial sell-down of the NHEC's 2.17% Seabrook ownership share; and 3) ordering a complete NHEC disengagement from the Seabrook project. In the alternative, if some level of financing is to be approved, Mr. McCool recommended that the Commission apply the same conditions to the NHEC as were applied to PSNH in *Re PSNH*, DF 84-200, *supra*.

III. DISPOSITION OF PRELIMINARY MATTERS

In his brief, Representative Easton asserted that the NHEC's continuing participation in Seabrook I should be terminated because the decision of the Cooperative's directors to participate was *ultra vires*. See, *supra* at Section II.D. The *ultra vires* argument is without merit and is barred by the equitable doctrine of *Laches* since the NHEC's participation in Seabrook was allowed by Order of this Commission. *Re Public Service Co. of New Hampshire*, 64 NH PUC 485.

Representative Easton also requested Intervenor compensation. Such compensation may only be allowed when authorized by Statute and in accordance with Commission rules. See e.g., N.H. Administration Rules, Puc 205.01 et seq. In *Re PSNH*, DF 84-200, we were presented with the same request. We will deny Representative Easton's request for Intervenor funding here for the same reasons set forth in *Re Public Service Co. of New Hampshire*, 70 NH PUC 42 (1985).

IV. THE TERMS AND CONDITIONS OF THE PROPOSED FINANCING

[4] The circumstances governing whether the terms and conditions of the proposed finding are reasonable and in the public good have materially changed since the original petition was filed in November 18, 1983 and since the remand of the Commission's decision of February 24, 1984. Report and Supplemental Order No. 16,915 (69 NH PUC 137). *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984). In *Easton*, the Supreme Court remanded the case to the Commission with the instruction that it proceed in accordance with the opinion of the Court. We have so proceeded.

The legitimate concerns of the Court controlling its judgment to withhold

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affirmance of the Commission's original decision to approve the financing as consistent with the public good have been specifically addressed herein through probative evidence in this proceeding and the recently concluded proceeding granting to PSNH authority for the issuance of debt securities in the sum of \$525 million in Docket DF 84-200. The Court's express concerns in *Re Easton* in summary were the uncertainty of adherence to the estimated commercial operating date for Seabrook I of December, 1984 based on June 1, 1983 estimates; the release of March, 1984 estimates of cost and commercial operating date since the Commission's decision of

February 24, 1984; the question of whether PSNH was on the brink of and could avoid bankruptcy; the questionable inclusion in the NHEC's financing petition of borrowing authority to construct Seabrook II; the termination of approximately ten weeks of the work at Seabrook; the increased cost variance between old and new cost estimates; and completion estimates for Seabrook I and II. In this state of affairs, the Court concluded: "In such circumstances, it seems futile to decide an appeal based upon premises not borne out by current reality". Easton, 125 N.H. at p. 214. The Court emphasized the invalidity of the June, 1983 cost and completion estimates upon which the NHEC's financing petition was based and in support of its remand order stated: "Hence it is not clear that the terms and conditions of the Co-op's November, 1983 petition are reasonable and in the public good." Easton, 125 N.H. at p. 215.

The Commission's Opinion in Re PSNH, DF 84-200, supra, and our opinion herein establishes a reasonable construction cost estimate for the completion of Seabrook I of \$4.6 — \$4.7 billion and for financial planning purposes a "cost to go" estimate of \$1 billion by the joint owners in proportion to their respective interests. We also established an estimated commercial operating date of December, 1986. Further, Seabrook II construction financing has been suspended and the present petition does not request borrowing authority for construction of Seabrook II. In Re Public Service Co. of New Hampshire, 69 NH PUC 522 (1984), we authorized PSNH to issue debt and equity securities for \$425 million and the securities were issued in the fall of 1984. The Commission's opinion and Order were affirmed by this Court in SAPL II (125 N.H. 708, 482 A.2d 1196). PSNH has taken important action to avert its liquidity crisis, which in conjunction with the financing authorized in DF 84-167 and DF 84-200 approximating \$1 billion, have averted the likelihood of bankruptcy of PSNH. The financial basis for PSNH's participation in and construction of Seabrook I has been established by Commission regulatory action and policy in New Hampshire, albeit the financial commitment to complete the construction of Seabrook I in other jurisdictions awaits final regulatory approval or other action by the joint owners. Clearly, the reasons stated in Easton for the Court's reversal of an Order authorizing the NHEC's Petition for Financing no longer exist. Affirmatively upon review of all terms and conditions and the premises upon which the petition is based, we find that the terms and conditions of the NHEC petition for borrowing authority are reasonable under current circumstances and are consistent with the public good.

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In this opinion, based on further probative evidence, we have also determined that the capitalization of NHEC will not be jeopardized by granting the petition and that to the contrary the capitalization will be supported by reasonable rates to be definitively determined in a later rate proceeding to assure that ratepayers will benefit from reliable electric service, while enabling the NHEC to earn operating costs, depreciation and other charges. We have further found that a cap on expenses is not warranted in this finance proceeding and that the NHEC in a later proceeding will be entitled to receive through rates no more than a just and reasonable return on its prudent investment. We have also found that expenditures for construction shall be in accord with the NHEC's proportionate share of the financial commitment to PSNH for construction, as lead owner, as approved and authorized by this Commission. We have also determined that the uses, to which the proceeds of the loan are put, are economically justified

compared to other options available to the NHEC. See Easton, 125 N.H. at pp. 212, 213. We have concluded that the Coop's 2.17% ownership interest in Seabrook at present estimated cost determined by substantial probative evidence in this proceeding is in the public interest. These and related findings were consistent with the Court's mandate that "These are all legitimate matters for consideration under RSA Chapter No. 369". Easton, 125 N.H. at p. 213.

Unlike other long term financings which have been brought before the Commission, the instant financing is in the nature of a long term line of credit rather than a one-time issuance of long term securities. The NHEC may draw on its line of credit only to the extent necessary, to meet its obligations associated with the completion of Seabrook Unit I as those obligations are incurred. Thus, although the NHEC is requesting in this docket the authority to borrow \$46,898,000,⁶⁹⁽²⁰²⁾ the terms of the financing ensure that it will not be able to borrow more than the actual cost of completion.

Specifically, the NHEC is proposing to issue from time to time promissory notes to the FFB. Those promissory notes will be secured by mortgages to the United States Government acting through the REA on all NHEC property, including its interest in Seabrook I. The cost of the proposed financing is 1/8% over the cost of money to the United States Government. The term of the borrowing varies at the election of the NHEC. The NHEC may choose to borrow on either a short term basis (2 to 7 years) or a long term basis (34 years) and it may use this flexibility to lock in interest rates on a long term basis at a time when those interest rates are attractive.

There has been no dispute about the reasonableness of the terms and conditions of the proposed financing and our independent investigation revealed no cause for concern. That investigation included a review of the loan documents (e.g., Exh. 6-15) and the testimony of Professor Williamson, Mr. Pillsbury and Mr. Anderson. Professor Williamson and Mr. Anderson testified that there exists no other source of financing at rates and terms as advantageous as those offered to the NHEC through the FFB (See e.g., 4 Tr. 577).

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Unlike several of the other joint owners, the NHEC is not required to prefinance the total completion cost, but rather can draw on a line of credit as costs are incurred. Thus, the effective cost of the financing is lowered because interest payments do not commence until Seabrook costs are actually incurred. Further, the interest rate is attractive, only 1/8% above the cost of money to the United States Government. This translates to an April 24, 1985 cost to the NHEC of 9.883% for 2 year notes and 11.412% for 34 year notes. The NHEC's ability to select either short term or long term rates gives it the flexibility to limit higher interest rates to short term notes and lock in lower interest rates for the long term.

Based on our review of the record, we find that the terms and conditions of the proposed financing are favorable, fair and in the best interest of the members and ratepayers of the NHEC. Accordingly, we conclude that the terms and conditions of the proposed financing are consistent with the public good.

IV. NEED FOR POWER

A. Introduction

[5] The evaluation of the Cooperative's energy and capacity requirements requires a totally different analysis from that required for a utility which supplies its own generating sources. A generating utility, such as PSNH, has certain responsibilities as a member of NEPOOL which a non-generating utility such as the Cooperative, does not. As a member of NEPOOL, the generating utility must identify its capacity needs and commit itself to meet not only that capacity requirement, but also a reserve requirement over and above that capacity level to satisfy the NEPOOL agreement. If a generating utility fails to meet that capacity plus reserve — its capability responsibility — then certain financial penalties are imposed. It is important to note that a generating company must satisfy itself that it has the ability to meet its customers needs, and it must also meet the NEPOOL requirements to ensure its ability to do so.

The Cooperative, on the other hand, faces an entirely different situation. Although it, like the generating utility, must identify its customers' energy requirements and plan into the future to support those requirements, it does not presently have the commitment to NEPOOL to establish a capability responsibility with its accompanying reserve requirement. The REA requires the Cooperative to prepare a Power Requirements Study at least once every three years, (NHEC Brief at 19) which is essential to the Company's planning so that the Cooperative may determine the capacity to which its system must be built both from a power supply and a distribution design standpoint. That study is subject to the review and approval of the REA and is also used for purposes of estimating costs and revenue requirements.

Although there are distinct differences in the responsibilities of the generating versus the non-generating companies there is also a distinct dependency of one on the other to provide their respective generating needs. The non-generating utility cannot operate without the resources of the generating utility. In support of those nongenerating requirements the generating utility must satisfy NEPOOL that it can provide not only the power needs of

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the non-generator but also the reserve capacity necessary to meet its capability responsibility. Although the nongenerating utility, in this case the Cooperative, need not concern itself with the capability requirements of NEPOOL, it is nevertheless dependent on NEPOOL resources to meet its system requirements. If the NEPOOL resources are not available, then the Cooperative may not be able to ensure that it can supply adequate power to its customers. To that extent, NEPOOL facilities become an integral part of the evaluation of the Cooperative's power needs.

B. Load Requirements

The Cooperative has provided testimony and exhibits (Exhs. R-19, R-16B and R-32) to estimate its anticipated load growth to the year 2004. It relies upon a "Power Requirement Study — 1985-1994" (Exh. R-16) prepared by its consultant Dalton Associates PC for, among other things, the specific load projections into 1994. Those projections are as follows:

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

YEAR MWH/YEAR

1985	444455
1986	452810
1987	425225

1988 437632
 1989 455951
 1990 474838
 1991 494676
 1992 515153
 1993 535290
 1994 554529

Additionally, the Company provided an exhibit (R-19) portraying Demand Versus Resources in 1985 — 2004 with and without the 25 MW of Seabrook power:

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

YEAR ESTIMATED LOAD (MW)

1985 120.8
 1986 123.1
 1987 126.0
 1988 128.1
 1989 131.8
 1990 135.5
 1991 139.4
 1992 143.4
 1993 147.2
 1994 150.7
 1995 155.2
 1996 159.8
 1997 164.4
 1998 169.6
 1999 174.5
 2000 179.9
 2001 185.1
 2002 190.8
 2003 196.5
 2004 202.4

The Cooperative's resources to meet those estimated loads are summarized in its Exhibit R-19. The Company testified that its distribution system receives electricity generated by five suppliers — PSNH, Central Vermont Public Service Corporation (CVPS), New England Electric System (NEES), Green Mountain Power (GMP), and Maine Yankee, at its various delivery points to meet its customer needs. The chart (Exh. R-19) shows Seabrook purchases of 25 megawatts beginning in the year 1987 and carrying into the future. During the period 1987 through 1996 the Cooperative proposes to sell back its entire Seabrook ownership, because during those years its system wholesale power costs will be less than its Seabrook entitlement cost. (Smith, 5 Tr. 796). Its requirements will continue to be met

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primarily by PSNH as will be noted from the Exh. R-19. The purchases of CVPS, NEES, and GMP remain reasonably consistent throughout the period. In 1985 the total purchases from the minor suppliers and of Maine Yankee equal 8.4 megawatts which is approximately 6.9% of the Cooperative's total load. In the year 2000 the total minor suppliers provide 11.1 megawatts of the Company's total requirements of 202.4 megawatts, or approximately 5.5% of its requirements. There is no evidence in the record to show that additional capacity will be available from any of the minor suppliers or from Maine Yankee during the period.

As noted supra, the NHEC projects that energy growth will be approximately 1.5% per year

from 1985 to 1989 and 4% per year from 1989 to 1994. The overall average energy growth for the ten-year period will be 2.7% (3 Tr. 419). The actual 1984 electrical growth over 1983 was 7.4% and the actual growth for the first quarter of 1985 was 10.5%. 3 Tr. 422, 424-25.

As a result of the actual experience that took place in 1984 and 1985, Mr. Kaminski, NHEC's Electrical Engineer, believes that the load forecast prepared by Dalton Associates is conservative. Dalton Associates prepared a load forecast for NHEC pursuant to an REA requirement that each cooperative prepare a power requirement study at least once every three years.

A public utility has an obligation to evaluate and anticipate the need of present and potential customers to meet reasonable demands for utility service. For a comprehensive discussion on load forecast, see *Re PSNH*, DF 84-200, *supra* at Section IV at 63-71.

Intervenors question whether the proper elasticity of demand factors were considered in the Dalton Study. Witness Lee Smith stated that it was her opinion that the Dalton Report reflected a reasonable elasticity factor overall. 7 Tr. 1224.

A more detailed discussion of elasticity of demand is treated *infra* at Section V.C.

The Dalton Study was the only forecast submitted in this record. It was supplemented by the testimony of Mr. Kaminski and Ms. Smith. We, therefore, will determine whether it should be accepted as the basis for determining the power needs of the NHEC. The Dalton Study estimates that for the year 1989 the NHEC capacity requirement will be 131.8 MWs and for 1994 its capacity requirement will be 150.7 MWs. In 1984, the NHEC's megawatt requirements were 107.7. Seabrook power (25 MW's) will be available to supply the megawatt demand of the NHEC (4 Tr. 432) starting in 1986-87. Mr. Kaminski prepared Exhibit R-19, a summary of the resources for supply and the NHEC's demands for the years 1985 through 2004 with and without Seabrook. He concluded that the NHEC needs and can use the 25MW from Seabrook.

The NHEC does not have any generation and finds it not practical to develop any. The NHEC is a disaggregated electrical system. It does not have a transmission system that integrates its 27 delivery points. To develop any generation capacity to meet its needs would necessitate developing an integrated transmission system to allow for movement of power. To develop such a system to replace the 25 MW capacity during the Seabrook time frame would be difficult, if not impossible. 4 Tr. 436437. A redundant NHEC transmission system duplicating PSNH's "in-place"

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transmission system would be unnecessary under current circumstances.

After review, we find that the Dalton Study provides a reasonable basis for projecting NHEC demand for future years. Although the load forecasts prepared by Dalton Associates are not as sophisticated as some prepared by other utilities, it is acceptable for a cooperative utility of the size of NHEC and meets the requirements of RSA Chapter 162-F. The record also leads us to find that the Dalton Forecast meets the requirements of the REA.

C. Demand Forecasts

1. The Forecast

There are a variety of approaches to forecasting electrical demand used by utilities, commissions and others. All methodologies have increased in sophistication since the late 1960's when demand was forecast on a straight line extrapolation of historical trends. Such a methodology, appropriate for a period of steady economic growth and stable electrical rates, was clearly inadequate for the period of the 1970's and 1980's with its volatile economic growth rates and fluctuating electric rates. Current approaches incorporate relationships between demand and prices of both electricity and competing fuels, economic growth, population growth and appliance use. Conservation as a factor is incorporated both as part of the demand response to price and as a separate instrument of public policy. Similarly, the factor of Small Power Production/cogeneration is incorporated both as part of the demand response to price and as a separate supply option.

In the instant docket, two forecasting methodologies were employed. The Company presented the Dalton Report which based its load forecast on an econometric model. Company witness Ms. Lee Smith discussed in testimony the elasticity implications of the Dalton Formulation. Representative Roger Easton used an elasticity formulation to explore the relationships between demand and price.

The Dalton Report has devised an econometric formula for residential use that incorporates weather/temperature, cost of power, household income and appliance saturation. The equation which Dalton found had the greatest explanatory power (Exhibit R-16 at 24) was:

[Equation below may extend beyond size of screen or contain distortions.]

$$\begin{aligned} \text{KWH} = & 399.8 + 0.00019(\text{HDDF}) + 0.165 \\ & (\text{CDDF}) - 1.575(\text{Cost}) + 0.0000137 \\ & (\text{EBIF}) + 1.455 (\text{APSAT}) \end{aligned}$$

KWH is measured in monthly usage per household. The first term is a constant. The next two (HDDF and CDDF) relate to heating degree days and cooling degree days. While these terms are helpful in explaining usage in any given year, they are not particularly important in a multi-year forecast in which average temperatures over the period are assumed. The squaring of the heating degree day factor (HDDF) suggests that colder temperatures have a geometric effect on usage in contrast to the linear effect of hotter temperatures. (7 Tr. 1182-83). The cost factor is the year's average electric rate in mills. Effective Buying Income (EBI) is not defined in the study, but "Sales and Marketing Management" is given as a source. (Exh. R-16A at 5). The measure has been created by this journal and represents income net of taxes and payroll deductions. The figures used in the

formulas are monthly calculations of the state median income. Again, the squaring of the income factor represents a geometrical relationship between use and income. The EBI factor would capture not only the growth in real income, but also offset the effect of general inflation

incorporated in the price term. The final term is an appliance saturation factor and measures the relationship between the growth in the prevalence of five specific appliances (color television, frost free refrigerators, microwave ovens, electric dryers and electric space heating) and demand for electricity.

The data used to derive the study are monthly data for the period January 1974 through December 1984. The coefficient of determination of the model (R), the measure of the model's accuracy, was 0.96 on a scale from zero to 1.00.

For the projections, the 30 year average temperatures were adopted for the temperature factors. Cost was based on a preliminary estimate by the Company assuming an in-service date of 1986 for Seabrook I, cancellation of Seabrook II and a growth in the distribution costs of 5% per year. Effective Buying Income was projected to grow 0.4% per month (5% per year). The rates of increase in appliance saturation were drawn from a study performed by PSNH in 1983.

The results of the study indicate that in the period 1985 — 1994, per customer KWH monthly usage begins the period at 519.5, drops to 442.5 in 1987 following the Seabrook-related rate increase's, and gradually increases to 507.2 by 1994. The number of residential accounts are assumed to grow at 1150 in 1985 and 1000 per year for the remainder of the period. This compares with an average historical growth of 1060 per year for the past 10 year period and 1140 in 1984. Multiplying the number of accounts by the monthly KWH usage times 12 results in the annual MWH usage for the residential class. Starting from 265,176 MWH in 1985, usage drops to 236,491 MWH in 1987 and recovers to 313,675 MWH by 1994 (Exh. R 16A at 34). As it is only a 10 year projection, Ms. Smith projected the next 10 years at 3% per year (compared to the growth rate of 4% for the latter years of the Dalton study). 5 Tr. 826.

Dalton Associates were unable to develop a similar econometric formula for the commercial/industrial sector. Such a study would necessitate dividing the sector into subcategories of customers with similar characteristics. Given the small size of the commercial sector, statistical problems could develop with the few numbers of observations in each subcategory (7 Tr. at 1290-91).

The small commercial class (below 50 KVA) is therefore assumed to remain level in usage per customer, but to experience the historical increase in the number of accounts of 3.5%. (Exh. R-16A at 47) The large commercial class is divided into two groups. The 50 -350 KVA group is assumed to add 5 accounts per year, in contrast to an historical growth of 7 accounts per year, with monthly usage held level. The greater than 350 KVA group is assumed to remain constant in the number of customers (17), but experience growth in the usage of each account based on consultation with the individual customer. The total compounded increase for the commercial class as a whole is approximately 3.25%, growing steadily from 79,701 MWH in 1985 to 109,582 MWH in 1994.

The Easton calculations are based on an elasticity approach rather than a linear econometric formulation. The elasticities were drawn from The NEPOOL Load Forecasting Model (Exh.

R-34) which found for New England short term elasticities of -0.36 for residential customers and -0.29 for commercial customer. Weighting these factors 2/3 - 1/3 to represent the pattern of the NHEC customer base, Mr. Easton calculated an average short term elasticity of -0.33. Similarly the NEPOOL study found long term elasticities of -0.73 and -0.84 for residential and commercial customers, which produces a weighted average of -0.77 for the NHEC System (Exh. R-33 at 2-3). Representative Easton then used these elasticity figures to calculate the effect on demand of increased prices. His study did not incorporate income or temperature effects or adjust for differences between real prices (the basis of the NEPOOL elasticities) and nominal prices (used in his calculations of price increases).

2. Linear equations vs. elasticity

While it is possible to derive the measure of elasticity implicit in a linear equation, (5 Tr. 837-47, 7 Tr. 1175-81), it is clear that the two approaches are based on different assumptions and could lead to varying results over different ranges of price changes.

The linear equation approach assumes that there is a fixed relationship between the absolute changes in price (in mills) and the electricity demanded (in KWH). Thus, *ceteris paribus*, in the Dalton equation if price increases by 10 mills, demand will decrease by 15.75 KWH per month. This relationship remains constant regardless of where the change takes place on the demand curve, i.e. whether the price change is from 100 mills to 110 mills or from 160 mills to 170 mills. The implication of the linear approach is that at some very high levels of price, the consumer's demand will drop to zero and turn negative, where presumably he supplies his own electricity and possibly begins to supply other consumers as well. Using the assumptions in the Dalton equation of a price coefficient of -1.575 and a starting point of price equal to 100 mills per KWH and quantity equal to 500 KWH per month, zero usage occurs at an increase of 320 mills or at a total price of 420 mills (42) per KWH.

The constant arc price elasticity implicit in the Dalton equation is -.46. In a constant elasticity, however, what remains fixed as the analysis moves along the demand curve is the percentage relationships between price and demand changes, not the absolute relationships between price in mills and usage in KWH. Thus, assuming a constant elasticity, it is no longer irrelevant in terms of the KWH demand effect, whether the 10 mill price increase occurs between 100 mills and 110 mills or 160 mills and 170 mills. A 10 mill increase at the higher price levels (160 to 170) is a smaller percentage increase than at a lower price level; therefore, the demand percent decrease will similarly be a smaller decrease. The constant elasticity assumptions in fact reflect the reality that as prices continue to rise, reductions in monthly demand become more difficult to achieve.

In choosing an approach to forecasting, it is important to consider not only the theoretical implications of each of the methodologies at the extremes, but their ability to explain reality over the ranges which are likely to occur. (7 Tr. 1296-97). It appears that in the era

1974 — 1984 when prices rose from 3.47 to 8.88 per KWH, reality in the residential sector was best described by the linear econometric model. Looking ahead to 1985 — 1994 with forecasted prices of 10 to 20 per KWH (Exh. 16A at 30), it appears that the Dalton linear equation approach would project a higher demand than the constant elasticity approach during the very near term period of lower prices and a lower demand over the longer term. The cross-over point occurs at approximately 16 which is reached in the first price increase following the operation of Seabrook in 1987. Thus, to the degree that the assumptions of a constant elasticity model may describe reality better at the higher price levels, the results of the Dalton Report are conservative in that they over-estimate the price effects on demand.

The following chart compares the projected demand effects of the price changes in the 100-200 mill (10 — 20) range:

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

Change in Quantity Demanded with Increasing Prices

Time (mills)	Constant Elasticity		Linear Equation		
	Price	E = -.46	Q	Q	Q
t 100	500		500.0		
	-40.13		-31.5		
t 120	459.87		468.5		
	-31.45		-31.5		
t 140	428.42		437.0		
	-25.48		-31.5		
t 160	402.94		405.5		
	-21.21		-31.5		
t 180	381.73		473.0		
	-18.05		-31.5		
t 200	363.68		342.5		

Linear: $Q = -1.575(20) = -31.50$

Constant arc E: $Q = E \cdot P \cdot (Q1 \vee Q2)/2$
 $(P1 + P2)/2$

In addition to the impact of price on demand, the Dalton econometric equation incorporates important income effects which both offset the price effects and implicitly discount for inflation. Further, by focusing on per customer usage rather than class usage, the Dalton study estimates the growth in the number of customer accounts separately from the changes in customer usage. The responsibility of the various elements of the forecast (price, income, number of customers) is therefore considerably clearer in the Dalton study compared to single elasticity numbers which relate demand by class to a single factor (price). It is noteworthy that no income elasticities were proffered by those witnesses who relied on the elasticity approach. In addition, the

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NEPOOL price elasticities used by Representative Easton were based on real prices while his calculations were performed using nominal prices (8 Tr. 1508-09). Therefore his elasticity study is flawed both because it mixes real and nominal prices in the analysis and because it does not

incorporate the effects of inflation on price or income on demand.

3. Commercial/Industrial Sector

As noted previously, Dalton Associates was unable to devise a satisfactory econometric equation for the Commercial sector. Rather, estimations were made based on historical trends modified by judgment. The Dalton report states that, "the small commercial average usage (sic) appears to reflect the economic conditions of the area rather than being responsive to temperature and cost of power changes." Exh. 16B at 44. Included in the report is Graph III-A (Exh. 16B at 45) which demonstrates that there is no significant relationship between weather and demand. However, no data are presented on the lack of correlation between price and small commercial demand. The assertion in fact is undermined by the admission that annual usage increased from 946 KWH/month in 1974 to 1033 KWH/month in 1983, but was higher in the years prior to 1974. Nor was there an effort to substantiate a correlation between historical usage and economic activity, nor assuming the existence of such a relationship, to project commercial demand by projecting economic conditions in the Company's service territory. The same observations are true for the large Commercial class (over 50KVA). The Report states that "average usage (sic) for this class has increased from 33326 KWH/month in 1974 to 38182 KWH/month in 1983 after declining to 31907 KWH/month in 1975." Exh. 16B at 48. The reasons for the decline in per customer sales are not linked to either price or economic conditions. Not discussed in the Report is a drop in the number of large commercial accounts in 1982 (and therefore in total usage by the class) which could well be related to economic conditions. Graphs III D & E, Exh. 16B at 49. However, there was no attempt in the Report to analyze these relationships between average customer usage and number of accounts, and price and economic conditions.

Ms. Smith testified that the Cooperative Commercial/Industrial class is skewed towards recreation-based industries. 7 Tr. 1225-27; 6 Tr. 1024-27. She argued that the price elasticity for the recreation industry is likely to be quite low. Electricity is only a minor part of the industry's costs, and the significance of a slight increase in the overall prices charged by the ski industries, was likely to be small. Responsiveness to price was particularly likely to be small as long as the prices in the ski areas of New Hampshire remain below those of Vermont. She therefore supported the approach of the Dalton study of analyzing recent trends and modifying any straight line extrapolations by judgments based on the plans of larger customers to expand their businesses. She believed that the latter step could adequately incorporate trends in the commercial class as a whole, given the dependence of small commercial customers (stores and restaurants) on the development of the large customers in their area.

The Easton elasticity estimates for the

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commercial class (short term: -.29, long term, -.84) were based on the New England commercial/industrial sector. They were not tailored to reflect the specific characteristics of the commercial sector in the Cooperative's service territory. Therefore, to the degree that the commercial mix in the Company's territory is abnormal in relation to the characteristics of the New England commercial sector (i.e. skewed towards recreation industries), the NEPOOL

elasticity measure will not explain demand in the Cooperative's territory. Unfortunately the NEPOOL study (Exh. 34 at 13) does not contain individual elasticities for specific types of commercial enterprises from which better estimates could be derived.

Clearly, both the Company and the Easton analyses of load growth in the commercial sector are flawed. The Easton elasticity estimates are not specific to the Cooperative characteristics and there could be major differences between the average demand responses in New England and those of the commercial customers of the Company. Ms. Smith's observations concerning the low response to price of luxury businesses such as ski areas are certainly plausible, which implies that the Easton-NEPOOL estimate overstates the reaction.

However, there are also problems with the Smith-Dalton analysis. While it may be true that the recreation industry would not respond to price increases in any significant manner, not all of the Cooperative's commercial class is linked to recreation. Of the 17 large Commercial customers (over 350KVA) listed in the Dalton Report (Exh. 16B at 80, Appendix F), seven are related to the recreation industry, six are industrial and four are commercial. Of the six industrial establishments, three (Tillotson Rubber, International Packing and John King, Jr. Sawmill) have obvious cogeneration potential. Tillotson is already an operating cogenerator which as of December 1984 ceased to sell its power to PSNH in order to use the power itself. As a result, Tillotson's demand as a Cooperative customer is expected to drop in 1985 from 1000 KVA to 400-500 KVA. However, no cogeneration potential has been factored into the study of commercial load. (Testimony of Steven Kaminski, 3 Tr. 502-04). To the extent that manufacturers with adequate steam loads exercise their cogeneration option as retail electricity prices rise, future patterns of commercial demand will not replicate the historical growth trends.

The estimates in the Dalton Report are conservative in that the analysts have held constant either the number of accounts or the monthly usage. This conservative assumption may suffice to offset the omission of consideration of the cogeneration potential among the NHEC's commercial customers but as that cogeneration potential has not been quantified, it is not possible to make a definitive judgment based on the instant record. In general, the Dalton approach (historical trends modified by specific information regarding the largest customers) is reasonable given the small size and peculiar characteristics of the Cooperative's commercial sector. However, that specific information should include analysis of the cogeneration potential and plans of those customers. In the meantime, *faute de mieux*, the study's projections of commercial demand are acceptable forecasts of load in that there appears to be a strong probability that the flaws in the methodology have not resulted in a

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serious bias to the overall results. The Dalton Forecast is a reasonable analysis to determine the need for power in terms of projected demand.

4. Long Run Analysis vs. Short Run

The Company was criticized in brief by Representative Easton (at 2-3) and the Consumer Advocate (at 1) for not incorporating long term (price) elasticities into its analysis. The only long term elasticity per se was offered by Representative Easton and was drawn from the NEPOOL Load Forecasting Model. Having reviewed the NEPOOL model, the Commission finds that the

NEPOOL methodology is logically consistent in its translation between short and long run measures. It is not clear from the study, however, how the elasticities themselves were calculated. The NEPOOL elasticities do depend on a weighting of the industrial and commercial mix in New England, so that the findings above in regard to the disparate nature of the NHEC customer mix in relation to New England averages hold for the long run elasticities as well as the elasticities in general.

Ms. Smith responded that elasticities for any period of time could be calculated from a combination of the 1974-1984 data and the equation derived from it. More fundamentally, the price coefficient of the linear equation embodies in it levels of demand given levels of, among other things, price and income. Since the raw data are KWHs, there are no distinctions in the results between the effects on usage of a price change which occurred in the immediately preceding month and price changes which occurred two or three years previously. Merely because the Dalton study is not in the mathematical form of elasticities and percentage changes does not lead to the conclusion that it does not adequately explain the short and long term relations between price and usage. Given the coefficient of determination of .96, the Commission finds that the Company's estimate of per customer usage in the residential sector is reasonable. The assumption of the steady growth in the number of accounts, both residential and commercial, is less supportable, as levels of electricity prices must at some point influence decisions of business and residential customers to move into the Cooperative's service territory. Ms. Smith appears to have recognized this effect when she reduced the growth rate of sales from the 4% per annum projected by the Dalton analysis to 3% for the second ten years of her study.

5. Iteration of Customer Responses to Price and Demand

Representative Easton provided the Commission with analysis of the effect of lowered demand on the ability of the Cooperative to cover its fixed costs. His methodology employed an iterative process which calculates new price levels associated with a given revenue requirement, the NEPOOL long and short run elasticities and the demand change implied by the price change of the preceding periods. Representative Easton modified his analysis during the hearings to reflect some of the points raised by Staff during cross examination. In the analysis submitted as a late exhibit (Exh. R-68), he concludes that prices will rise rapidly in the early years and stabilize at approximately 27¢/KWH. Sales continue to decrease due to long run price elasticity effects beyond the point where prices stabilize.

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Representative Easton's analysis has raised some interesting points in regard to the problem of covering fixed costs, given declining sales. Fortunately for the Cooperative these points are more relevant for PSNH, whose fixed costs must be covered by KWH sales, than for the Cooperative which can cover its fixed costs through the sell-back arrangement with PSNH for the first ten years of Seabrook operation. Even in its most recent form, Representative Easton's analysis fails to recognize this fundamental difference between the Cooperative and PSNH. He includes the \$15 million interest payment on the FFB loans as part of the revenue requirement which must be covered by sales. At the same time, he derives and includes in the revenue requirement, a cost of purchased power by multiplying total KWH usage by the PSNH energy cost of 13¢/KWH. Under the sellback agreements, if the Cooperative continues to receive its

energy requirements from PSNH, PSNH pays the \$15 million fixed cost for the Cooperative.⁷⁰⁽²⁰³⁾ Thus Mr. Easton has double-counted the power cost of the Seabrook or Seabrook-equivalent energy. The effect of removing the \$15 million from the revenue requirement to be covered by KWH sales is substantial. It reduces the 1988 revenue requirement from \$78 million to \$61.6 million and the new price implied by the 1987 fall in demand from 23.2/KWH to 18.8H. Analysis of the subsequent years would increase the differential as the effect on demand would be diminished as the price increases slowed.

As noted above, even in the Exh. R-68 version, the analysis is still weakened by the use of elasticities which may not be appropriate for the Cooperative's service territory, by the mixing of real and nominal prices in the analysis and by the inability to include in this calculation the offsetting effects of inflation, income elasticities and the growth in the number of customers served.

Before proceeding further with the alternatives it is important to note the uniqueness of the Company's service territory. Witness Smith (Exh. 24) testified that that territory is not contiguous and it lacks an internal transmission system. It receives power at 27 different delivery points across the state. The Cooperative's power supply is largely dependent on purchases from or through the PSNH system and this continuing restriction is a necessary constraint for two reasons. First, constructing an internal generating system including appropriate reserves and maintaining an adequate work force of trained operating personnel is financially and logistically burdensome for the Cooperative. Secondly, Witness Smith notes (Exh. 24 at 3) that the Cooperative's load is not electrically integrated for any internal generation to be feasible. From a power system point of view a significant transmission network of a number of segregated electric load centers would be required. These two constraints must be carefully considered in analyzing the feasibility of various alternatives.

This Commission is aware that this diversified Cooperative system finds its roots in the history of the REA, whose federal mandate was to provide an opportunity for electricity to reach out into the rural areas where residents' service could not be financially supported by investor owned utilities. Access to low cost federal loans provided a

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vehicle for cooperatives to extend into various contiguous and noncontiguous portions of New Hampshire. Access to power was gained through relatively small substations installed on investor owned utility transmission lines, and distribution facilities were sized only to serve the immediate customer needs. Since the Cooperative depends on those transmission facilities and since the Cooperative has no generation capability of its own, there exists no company owned transmission network to distribute power from one distribution point to another.

Many factors contributed to the nature of this network. First, the geographical terrain throughout which the Cooperative service area does not lend itself easily to an integrated network. The mountainous areas dividing the various small pockets of customers prevent the installation of contiguous distribution facilities. Secondly, the sheer magnitude of distance between various small customer loads makes it economically impossible to develop an integrated system. In view of these factors, Witness Smith, (5 Tr. 801) noted that there were only two

options considered. The first option is to continue to receive power from PSNH and to receive 25 additional megawatts when Seabrook comes on line. The second option is to terminate its participation in Seabrook in which case all of its future needs excepting the small quantity coming from minor suppliers would be met by partial requirement service from PSNH.

LaCapra Associates analyzed and discounted various alternatives (Exh. 27). NEPOOL purchases in lieu of PSNH purchases were discounted because of the wheeling charges necessary to distribute to the various delivery points. Canadian power was discounted because of the same delivery point wheeling charges and the attendant participation in transmission construction costs. Moreover, PSNH, as a wholesale supplier to the NHEC, will presumably be allocated the NHEC's "share" of Canadian power which will, in turn, be passed through to the NHEC. Independent generating facilities such as coal units were discounted because the Cooperative's low annual load factor would either cause it to under build and have to purchase additional power during peak times or over build and have excess capacity during the off peak. Ms. Smith essentially used a qualitative logical analysis to arrive at a decision that the Cooperative simply was not equipped, with either personnel or financial resources, to consider these alternatives. We agree with Ms. Smith's rationale.

Although the Intervenor argue strongly (McCool Brief at 7-9) that more attention should have been given to these alternatives the record does not reflect any studies which would confirm their convictions. The record is clear, however, that the 27 variously positioned distribution points throughout the state cannot be integrated into a single network without imposing onerous financial burdens upon the Cooperatives' customers. We find that the elimination of the various alternatives offered by Witness Smith was reasonable. Except as hereinafter noted, we will turn our attention to the remaining available alternatives.

D. Alternatives

1. Introduction

Intervenor argued in this

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proceeding that alternative energy sources had been inadequately considered. They criticized the Cooperative for having done no formal studies. An analysis of important available alternatives is in order.

2. Hydro-Quebec

The first alternative which we will address is hydroelectric power from the LeGrande Project in Quebec. The Hydro-Quebec project has been explored in a number of New Hampshire forums, and was most recently addressed in Re PSNH, DF 84-200, supra. The petition which resulted in authorization for the New England Electric Transmission Corporation to extend a 450KV high voltage direct current transmission line into Comerford, New Hampshire was considered and ultimately approved by the Bulk Power Site Evaluation Committee and this Commission. Re New England Electric Transmission Corp., 67 NH PUC 910 (1982). That authorization will enable 690 MW of hydroelectric power to be transported into the United States, of which approximately 52 MW will be available for New Hampshire customers' use.

Under the terms of the Phase I contract, there is no guarantee that that power will be available to meet peak loads; therefore in terms of planning and peak demand, Hydro-Quebec's Phase I power is not a reliable source and cannot be used as a substitute for the 25 MW of Seabrook capacity.

A Hydro-Quebec Phase II project has been proposed to expand the Phase I project from 690 MW to 2000 MW and to extend a 450KV high voltage direct current transmission line from Comerford, New Hampshire south to a point of interconnection with the existing 345KV system in Massachusetts.⁷¹⁽²⁰⁴⁾ At this point there is no substantial evidence to find that Phase II power will be a dependable substitute for the 25 MW of Seabrook power. Based on such a lack of evidence we cannot find Phase II to be a desirable alternative for the Cooperative.

In summary, we cannot find that Phase I or Phase II are alternatives to the NHEC's Seabrook capacity. Phase I power is clearly not a substitute for the firm power provided by Seabrook as demonstrated in prior proceedings, Phase II power is as yet undefined. While either or both may be considered supplemental sources in the future, neither can be found to be an acceptable alternative here.

3. Cogeneration and Small Power Production

The second alternative which was offered by the parties is that of cogeneration and small power production (jointly referred to as Qualifying Facilities or QFs). Cogenerating facilities are those which produce electric energy and other forms of energy such as steam or heat which are used for industrial, commercial heating or cooling purposes. Small power producers are those who produce electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources or any combination thereof.

The availability of small power production was discussed at length in Re PSNH, DF 84-200, supra. Exhibits were offered in that docket which projected potential contributions into the New Hampshire grid as follows:

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

MWs	MWs	MWs	MWs	MWs	MWs
1984	17.178	1988	61.863	1992	97.259
1985	22.463	1989	69.327	1993	106.686
1986	37.397	1990	79.948	1994	116.112
1987	48.433	1991	85.844	1995	125.544
				1996	134.961

In that docket, we found that QF power does not offer a reliable base as a substitute for Seabrook's firm capacity to serve future power needs of New Hampshire ratepayers. QF power was found to be undependable for PSNH's system planning purposes for the following reasons:

1. Expenses may escalate beyond rate support for projects. 2. Operating characteristics may not be as favorable as the design of the small power project may predict. 3. Operating and maintenance costs may exceed estimates. 4. Design lives may not endure as planned.

Our rationale in Re PSNH, DF 84-200 is applicable here insofar as QF power may be

proffered as a substitute for the NHEC's 25 MW of Seabrook capacity. QFs may provide a source of generation for electric service only so long as they may be economically justified to do so. When economical forces prevent compensation for errors of investment, QFs may cease production subject only to whatever contractual, economic or regulatory restraints imposed by the paying utility may be enforceable. While we continue to encourage QF development, we also find that the amount and reliability of future capacity from these sources are not adequate to compensate for loss of Seabrook I or any other alternative. In essence, our finding is that QF power and Seabrook generation are complementary sources of energy and capacity. We find that QF power is not a substitute for the NHEC's 25 MW of Seabrook capacity.

We have noted above that there are additional technical difficulties which impede the ability of the Company to contract for energy from QFs. These difficulties stem primarily from the multiple delivery points of the Cooperative's transmission system and the complexity of matching the capacity of the QF with the load in the particular district where the QF intends to locate.

The Commission recognizes that the Cooperative and Mr. Pillsbury have a long history of support for the concept of energy production from qualifying facilities. In the period following the passage of the state and federal legislation that promotes independent power,⁷²⁽²⁰⁵⁾ the marginal costs of the Cooperative's primary supplier, and therefore its avoided cost rates, have been above its average costs, and therefore its wholesale rates. Thus, it has been to the advantage of both the Cooperative and the QF for the Cooperative to wheel power produced in its service territory directly to PSNH.⁷³⁽²⁰⁶⁾ Looking

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ahead to the period following the commercial operation date of Seabrook, the pricing relationship between PSNH's wholesale and avoided cost rates, will reverse. At that point, it will benefit both the Cooperative and the QF to negotiate a rate between the then lower avoided cost rate which the QF could obtain from PSNH and the higher wholesale rate which the Cooperative would have to pay PSNH for its purchased power.

Mr. Pillsbury has testified, correctly, that if the QF wished to sell to the Cooperative, under state and federal law it has the legal ability to do so (8 Tr 1357). Intervenors have cited the

March 8, 1985 letter between PSNH

NHEC will not actively pursue QF power⁷⁴⁽²⁰⁷⁾ as being sufficient grounds to deny the NHEC petition. Mr. Pillsbury does not interpret that letter as prohibiting the Cooperative from executing long term agreements with QFs who approach the Cooperative. (8 Tr. 1365-68) However, he admits to some sense of obligation to continue to rely on PSNH for that capacity which PSNH has developed with the intention of supplying NHEC's needs. In that context, he notes that there are technical financial problems of backup power as well as the technical transmission problems of the NHEC's fragmented service territory, which must be resolved before any arrangement with QFs can be consummated. The Commission finds that there is no effective agreement between PSNH and the NHEC to restrict sales of power from QFs to the Cooperative; such a term could not exist because it would be inconsistent with public policy.

The Commission finds that to the extent that the technical problems can be overcome, it is to the long term benefit to the customers of the Cooperative (and the QFs) that the NHEC purchase power from independent producers at some rate between the PSNH avoided cost and the NHEC's wholesale rate. This becomes particularly true in preparation for the years after the expiration of the sell-back when the Cooperative's retail rates may exceed those of PSNH. In those later years neither PSNH or the NEPOOL will be in a capacity rich situation and moral obligations to use capacity developed for the benefit of the Cooperative will be less forceful.

For the QF, however, a viable sale arrangement must include some kind of long-term contractual arrangement on which the developer can base his own project financing. The Cooperative should therefore develop a long term offering based on its projections of purchased power costs⁷⁵⁽²⁰⁸⁾ and on an exploration with NEPOOL or PSNH of the costs and arrangements of whatever backup power is required. Further, the Cooperative should begin to analyze its load by district to determine what sizes and types of QFs could be feasibly developed at the different points within its system.

There was also testimony on the

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particular applicability of wind energy to the NHEC's power needs. Such testimony relating to performance of wind energy leaves us convinced that dependency on this type of energy for the Cooperative at this time is premature. Witness DeSousa testified (Exh. R-44) that ten 65 KW WECS have been installed at Mt. Tug in the CanaanDorchester section of New Hampshire at a cost of approximately \$1500 per KW. The Company intends to wheel that power to PSNH on the basis that PSNH's avoided cost is higher than the Cooperative's. No power yet flows through the lines. Mr. DeSousa projects that approximately 200 MW of capacity can be installed within the next ten years in northern New Hampshire (9 Tr. 1622).

Over 3000 65 KW WECS will be required to meet Mr. DeSousa's 200 MW projection. The witness testified that WECS capacity factors are about 35%; i.e., the capacity of the wind facilities would be available approximately 35% of the time due to the varying nature of New Hampshire's winds.

We find no support in the evidence that this wind energy project should be considered as a satisfactory alternative to displace NHEC's Seabrook capacity. It is an unproven technology in New Hampshire. The Commission is mindful that a similar venture at the Crochet Mountain site in recent years failed; although we note that what was learned from the Crochet Mountain experience will hopefully prevent similar future failures. 9 Tr. 1666-67. However, we cannot find that the wind energy project offered in this docket is a substitute for the NHEC's 25 MW of Seabrook power.

4. Conservation

The Company has been criticized in brief by the Consumer Advocate at 4 and by Mr. McCool at 14-19 for not actively pursuing conservation as an alternative to generation. Both quote the testimony of Mr. Flavin, whose studies indicate that conservation can be "purchased" at less than 5 per KWH and Martha Drake who cites the experience of Florida Light and Power

in successfully reducing demand through conservation. Representative Easton cites his own testimony in regard to heat pumps as a method of reducing demand. In his reply brief, Representative Easton asserts that the NHEC's peak load of 18 MW for residential hot water heating could be reduced by perhaps 15 MW by the use of heat pumps. His assertion is not supported by the evidence. 6 Tr. 1069-70. Ms. Smith testified that under reasonable assumptions heat pumps could reduce water heating load by 1/6 of that load. Id.; See also, Kaminski at 3 Tr. 475.

Ms. Smith responded on crossexamination to questions regarding the benefits to the Cooperative of investing in overt conservation programs. 7 Tr. 1219-23; 1249-60. She testified that most utilities which invested in conservation were generating utilities who were attempting to avoid the expense of constructing additional capacity. All the customers of distribution companies like the Cooperative benefit from conservation investments only to the extent that the measures reduce peak demand (improve the Company's load factor) and therefore reduce the demand charge from the supplier. Otherwise while total energy costs are reduced, the measures benefit only those customers who take advantage of the programs and whose reduction in use more than offsets the rates which must

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increase to cover the cost of the conservation measures. Customers who do not participate face the higher rates, but receive no benefit from lower usage.

The Company argues that "to the extent that conservation is desirable, it should be supported by the Cooperative whether its participation in Seabrook Unit I is continued or terminated." NHEC Brief at 30. The Commission agrees. As retail rates increase, due to the higher costs of both purchased power and own [sic] Seabrook generation, it is incumbent upon the Cooperative to explore measures of energy efficiency and load management. Such measures can include, but are not limited to, rate structures which reward efficient use, information to customers on conservation and support for specific programs. The Company can then pursue, both with its own members and with the Commission, those measures which result in long term benefits to consumers that outweigh costs.

5. Other Alternatives

Mr. Flavin testified (9 Tr. 1728) that it should be well within the capacity of the Cooperative to reduce its load by 25% over a period of five to 10 years if an ambitious conservation program is undertaken. He offers that such a program should cost less than \$.05 per KWH saved or perhaps one-third the cost of Seabrook power. He offers no program to support that offer and leaves it to the utility to develop a detailed end-use analysis to determine its conservation potential. He finds the Cooperative's load management program meager and ineffective.

Mr. Flavin's testimony is of limited benefit in this proceeding since he offers no specific program and deals only in generalities. His further recommendation that a detailed study of the potential for cogeneration and small power production in the NHEC's service territory suggests his lack of awareness of the number of studies (e.g., Exh. R-55 at 3) that have been developed by various governmental and privately funded agencies in recent years.

Witness Martha Drake testified that investing in nuclear plants has been disastrous to many

cooperatives, that costs for retrofitting Seabrook can be expected to increase and that the NHEC can satisfy its power more cheaply by giving incentives to conserve rather than by finishing the plant or buying wholesale from generating utilities. While her first two points are noted, it is her third point which alone provides any specific reference to possible alternatives which could be explored in this docket. She testifies that the East River Cooperative has reduced its load significantly by conservation by simply issuing radio alerts notifying customers to reduce usage. We note that such a program is in effect in New Hampshire (Clockwatch 6) and its effectiveness is under Commission study. However, even if such a program met or exceeded its goals, it could not be considered as a substitute for the NHEC's 25 MW of Seabrook power.

6. System Impact

The Consumer Advocate asserts in his brief at 4 that the Company has made no comparative analysis revealing the cost of building its own transmission system and purchasing Canadian Power, building a 25 or 50 megawatt wood burning generator, pursuing the benefits of conservation,

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participating in NEPOOL, wheeling from some other utility or from adding capacity through small power production. We find to the contrary. Witness Smith testified (Exh. R-24 at 3) that constructing an internal generating system including appropriate reserves as well as screening and hiring sufficient trained operating personnel is financially and logistically unrealistic for the NHEC and that a significant transmission network would be necessary in order for a single internal generation unit to be feasible. She testified further (5 Tr. 887) that it is illogical for a company to build a coal unit when its own peak requirement is less than the size of the average coal unit. She further testified (5 Tr. 876) that conservation and load management should be considered by the Cooperative whether it needs additional capacity at this point in time or not and that the matter is irrelevant as to the comparison of whether or not to continue Seabrook.

Seabrook I will provide the Cooperative with additional capacity power. The various alternatives offered in this docket are not a substitute for that capacity power. The various alternative energy sources which have been offered in this docket provide additional marginal energy but cannot substitute for the 25 MW of baseload capacity offered by Seabrook. We noted earlier that NEPOOL facilities become an integral part of the evaluation as to the Cooperative's power needs. Having now had an opportunity to analyze the alternatives available to the Cooperative, we can now look to the opportunities that remain to assure that the Cooperative's needs will be filled. We cannot do this in a vacuum. We must consider the entire range of NEPOOL facilities in making that appropriate determination.

We find that the Company has in fact made adequate analyses of the possible alternatives that have been raised in this docket and that it used sound judgment in not expending time and effort to pursue alternatives which were clearly beyond the capability of the Cooperative itself.

D. Conclusion

All three factors of demand growth, small power production and overt conservation are considerations in the calculation of the power needed by the Cooperative in the coming years. They are not, however, determinative of the question of whether the Cooperative should

continue its participation in the Seabrook project. The Seabrook capacity is 25MW; the Cooperative load is over 100MW. In a real sense, there is approximately a 75 MW margin of error in computing demand growth, the contribution of energy from QFs and savings from conservation programs. The margin is approximate because it does not include the NHEC's share of Maine Yankee nor does it account for load growth throughout the Seabrook operational period. Any reductions in energy use and peak load can be subtracted from the purchased power component of the Cooperative supply. Unlike a generating utility for whom a plant under construction is the marginal unit to its existing operating capacity, the Cooperative itself has no fixed capacity. The benefits of continuing to construct Seabrook do not depend on a need for power in excess of existing capacity. Rather, the Cooperative must only prove that no reasonable error of forecasting demand or

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

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. Report: demand/sources
 Sheet: 1
 Demand vs. Resources - 1985-2004: Version: Sellback all
 (Megawatts) Dates: 04/23/85:
 Contact: Kaminski

Resource	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
1998	1999	2000	2001	2002	2003	2004							
Seabrook Unit I	0.0	0.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
Seabrook	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
Sellback(I)	0.0	0.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0	-25.0
Net Seabrook I	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	25.0	25.0
Minor Suppliers	25.0	25.0	25.0	25.0	25.0	25.0							
CVPSC	2.4	2.5	2.6	2.6	2.7	2.7	2.8	2.9	3.0	3.1	3.1	3.2	3.3
NEES	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.5
GMP	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.6
Maine Yankee(2)	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Subtotal	8.4	8.5	8.6	8.7	8.8	8.9	9.0	9.2	9.3	9.4	9.5	9.7	34.8
Estimated Load	120.8	123.1	126.0	128.1	131.8	135.5	139.4	143.4	147.2	150.7			
PSNH Partial Requirements	112.4	114.6	117.4	119.4	123.0	126.6	130.4	134.2	137.9	141.3			

- (1) Assuming full sellback for first ten years commercial operation
 (2) Estimated net using 1985 capability rating and reserve discount

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

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. Report: demand/sources
 Sheet: 1
 Demand vs. Resources - 1985-2004 Version: no sellback
 (Megawatts) Dates: 04/23/85:

Contact: Kaminski

Resource	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
1998	1999	2000	2001	2002	2003	2004							
Seabrook Unit 1	0.0	0.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0						
Seabrook													
Sellback	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0										
Net Seabrook 1	0.0	0.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
25.0	25.0	25.0	25.0	25.0	25.0	25.0							
Minor Suppliers													
CVSPC	2.4	2.5	2.6	2.6	2.7	2.7	2.8	2.9	3.0	3.1	3.1	3.2	3.3
3.7	3.9	4.0	4.1										
NEES	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.5
1.6	1.7	1.7	1.8										
GMP	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.6
0.6	0.7	0.7											
Maine Yankee(1)	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5	4.5
4.5	4.5	4.5	4.5	4.5									
Subtotal	8.4	8.5	33.6	33.7	33.8	33.9	34.0	34.2	34.3	34.4	34.5	34.7	34.8
35.2	35.3	35.5	35.7	35.9	36.1								
Estimated Load	120.8	123.1	126.0	128.1	131.8	135.5	139.4	143.4	147.2	150.7			
155.2	159.8	164.4	169.6	174.5	179.9	185.1	190.8	196.5	202.4				
PSNH Partial													
Requirements	112.4	114.6	92.4	94.4	98.0	101.6	105.4	109.2	112.9	116.3	120.7		
125.1	129.6	134.6	139.3	144.6	149.6	155.1	160.6	166.3					

(1) Estimated net using 1985 capability rating and reserve discount

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added sources of supply would miscalculate the need for power by more than 75MW of capacity, the entire purchased power contribution. The record supports this minimum finding.

VI. ON AN INCREMENTAL COST BASIS CONTINUED NHEC PARTICIPATION IN SEABROOK UNIT I IS THE LEAST COST OPTION TO SERVE THE PUBLIC GOOD

A. Introduction

[6] We have briefly addressed the issue of alternatives to Seabrook Unit I as they relate to the need for power. In this part of the Report, we will present our analysis of the alternatives from a cost perspective. Initially we will address the standard of analysis. We will then examine the economics of Seabrook I in comparison to those alternatives which involve a termination of the NHEC's participation in Seabrook I.

B. Standard of Analysis

In Re PSNH, DF 84-200, *supra*, the Commission analyzed alternatives to the completion of Seabrook Unit I under an incremental cost standard. Intervenors have argued in brief that a total cost standard should be applied to the analysis of alternatives for the NHEC, rather than an incremental cost standard. See e.g., Reply Brief of Gary McCool at 5. After review, we continue to find that the incremental cost standard of analysis is correct for the purpose of evaluating alternatives.

It is important initially to define the terms. As noted in Re PSNH, DF 84-200, *supra* (70 NH PUC at p. 214, 66 PUR4th at p. 394):

...An incremental cost analysis ignores those costs which have already been spent on the project (sunk costs) and looks only at the costs which will be required to be spent from this day until completion. When an incremental cost analysis is applied to Seabrook Unit I for the purposes of the proposed financing, the Commission is evaluating the \$1 billion "to go" cost which the proceeds of the proposed financing will fund. This cost translates into a cost of approximately \$870 per installed kw of Seabrook capacity. A total cost analysis is an evaluation of the sum of the sunk costs and the incremental costs. In the context of the instant proceeding, PSNH's base case total cost figure is \$4.7 billion. This translates into a cost of approximately \$4,087 per installed kw of Seabrook capacity. Obviously, when evaluating issues such as alternatives to Seabrook or ratepayer and investor exposure, it is important to be clear about whether a \$870/kw or a \$4,087/kw figure is being assigned to the Seabrook alternative.

In the instant proceeding, our notice provided that alternatives would be considered on an incremental cost basis. In Report and Fourteenth Supplemental Order No. 17,568 (70 NH PUC at p. 321), we quoted the definition of the "alternatives" issue as employed in Re PSNH, DF 84-200.⁷⁶⁽²⁰⁹⁾ We then went on to state (70 NH PUC at p. 322):

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Issue No. 2 is an examination of the purpose of the proposed financing including incremental cost and alternatives as previously set forth. In evaluating incremental costs (including the utilization of the incremental cost standard of analysis, Order 17,558) or alternatives in relation to the purpose of the proposed financing, many of the findings in Order 17,558 may be applicable to the instant proceeding. Thus, we will not allow in this proceeding a collateral attack on findings in the previous proceeding to the extent that those findings are applicable to PSNH. However, to the extent that factors particularly applicable to the NHEC are distinguishable from PSNH (e.g., differences in the need for and sources of power and the financing costs reflected in different levels of capitalized AFUDC), the parties are privileged to present evidence and argument. This is particularly true in the area of alternatives to Seabrook Unit I which may be evaluated on the basis of costs and other factors applicable to the NHEC. (Emphasis supplied).

Our decision to continue to employ an incremental cost standard is based on the same rationale supporting that decision in Re PSNH, DF 84-200, supra. There we found that the costs already sunk in or committed to Seabrook must be borne whether Seabrook is completed or cancelled. The only relevant issue is the allocation of those costs between ratepayers and investors. We declined to speculate on what the appropriate allocation should be because that decision could only be made after an appropriately noticed prudency proceeding. We stated (70 NH PUC at p. 217, 66 PUR4th at p. 397):

...It is inappropriate, however, for us to prejudge here where that prudency record will ultimately lead us. Rather than making judgments about what had occurred in the past, it is necessary to engage here in a forward looking evaluation of "the relative economic desirability of allowing or disallowing the company's continuing participation in construction of the first Seabrook reactor..." in determining whether the proposed financing is in the public good. SAPL II, supra; RSA 369:1. Such a forward looking evaluation may only be conducted on the basis of an incremental cost analysis of Seabrook Unit I and the alternatives.

In the instant proceeding, as in *Re PSNH*, DF 84-200, *supra*, Intervenor argued that RSA 378:30-a (the so-called Anti-CWIP law) undermines the applicability of the incremental cost standard. According to the Intervenor, since RSA 378:30-a prohibits the inclusion of cancelled plant in rates, *Re PSNH*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984), the ratepayers either face a total cost exposure or a zero cost exposure.⁷⁷⁽²¹⁰⁾ We disagree with the Intervenor's argument because we believe that our responsibility to

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determine the public good mandates a broader perspective than the effect on ratepayers alone. See e.g., RSA 363:17-a. In this instance costs have been incurred. They will either be borne by the ratepayers or the mortgage and other investors. The fair allocation of those costs cannot be determined in this financing proceeding; it will be determined when the NHEC seeks to have those costs reflected in rates. Since the existence and quantification of sunk costs in either the participation or termination of participation scenarios are identical, incremental cost is the most accurate standard to evaluate the economics of Seabrook Unit I.

C. The Economics of Seabrook

The financing authority sought by the NHEC assumes that the to go cost for completion will be \$1 billion from January 1, 1985. See e.g., Exh. R-3. In *Re PSNH*, DF 84-200, *supra*, we made findings about the reasonableness of certain assumptions pertinent to Seabrook I costs and operating characteristics as they apply to PSNH.⁷⁸⁽²¹¹⁾ The instant record supports the continuing applicability of those findings, as they pertain to PSNH, to this docket. See e.g., Report and Fourteenth Supplemental Order No. 17,568 in this docket. Accordingly, we will base our analysis of the cost of continuing NHEC participation in Seabrook Unit I on the assumptions found reasonable in *Re PSNH*, DF 84-200, *supra*.⁷⁹⁽²¹²⁾ We note that the completion cost of \$1 billion was the average cost to all joint owners. Since the cost of financing to the NHEC is approximately 11%, the same as the after tax average cost of financing of the joint owners (4 Tr. 702-05, Exh. R-50), we find that the \$1 billion incremental cost estimate is applicable to the NHEC.

In this context, we have examined Mr. Anderson's Exhibit R-3 which calculates the incremental cost of completing Seabrook Unit I. While we find that the exhibit is reasonable for the purpose of evaluating the proposed financing, we also find that it overstates the incremental cost of completion. In Exh. R-3, Mr. Anderson computed that the incremental cost per installed KW

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is \$2,029. The deficiency in the calculation is that it includes the financing cost of sunk investment (which will be capitalized as AFUDC) 2 Tr. 259-60.⁸⁰⁽²¹³⁾ Since those financing costs will continue to be NHEC obligations regardless of whether the NHEC continues to participate in Seabrook I, we cannot view those costs as incremental. They must be assumed to be part of the costs already sunk in the facility. Accordingly, for the purposes of incremental cost analysis, the to go cost per installed KW will be assumed to be \$870 per installed KWH

(excluding \$1159 of cost to support sunk investment).⁸¹⁽²¹⁴⁾

D. Continued NHEC Participation in Seabrook is Consistent with the Public Good.

We have addressed supra the particular engineering factors affecting the NHEC's ability to meet its supply requirements. Briefly restated, those constraints are that the NHEC has a noncontiguous service territory in which power is purchased from wholesale suppliers at 27 delivery points. There is no interconnecting NHEC transmission system; thus, the particular load characteristics of each of the several non-contiguous service territories must be analyzed separately. According to current data, the NHEC's system minimum load is in excess of 25 MW and its system peak is in excess of 100 MW. See e.g., Exhs. 19 and 32; 3 Tr. 419-22. According to the Dalton Study, Exh. R-16B, which we have accepted supra, peak loads will grow to approximately 202 MW by the year 2004.

The above restatement of the engineering constraints is necessary because it forms the analytic framework for the evaluation of alternatives. The NHEC's analysis was that it has only two practical alternatives: 1) continued participation in Seabrook I; or 2) termination of participation and purchase of power from PSNH. The Intervenor argued that the NHEC's analysis was deficient in that it did not elect to study other alternatives (such as construction of a transmission system, conservation or development of cogeneration or small power production) as alternatives to (i.e., replacement for) Seabrook power. After review of the record, we find that the NHEC properly identified and analyzed the realistic alternatives. The Intervenor presented information on additional sources of supply which should be encouraged and developed, but which must be viewed as complements to rather than replacements for Seabrook power. See Section IV. of this Report (Need for Power) supra.

The NHEC analysis was presented, for the most part, through the testimony of Ms. Lee Smith. Ms. Smith identified the two alternatives of continued participation or terminated participation. Ms. Smith provided 15 scenarios which are identified in the table form below:

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

Participation	Cancellation	Cancellation
Low	High	

\$882 M
KD-U-NR

82(215) X X X

\$882 M
KD-NU-R

83(216) X X X

\$1.3 B
KD-U-NR

84(217) X X X

\$1.3 B
KD-NU-R

85(218) X X X

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86(219) X X X

As is apparent from the Table, Ms. Smith varied certain assumptions as they affected both the cost of Seabrook I and PSNH wholesale power and for each variation calculated the cost of continued participation, the cost of termination of participation under an assumption that the NHEC could sell its Seabrook I share for \$2000 per KW (Cancellation Low) and the cost of termination under an assumption that the NHEC could sell its Seabrook I share for \$500 per KW (Cancellation High). See generally, 5 Tr. 803-06, Exhs. R21A-C and R 24. In addition, the participation case assumed that the NHEC would sell back power to PSNH for the first 10 years of operation when it was to the economic advantage of the NHEC to do so. See, Exh. R-8. All cases assumed that PSNH would meet the NHEC's marginal power requirements through wholesale power sales. Thus, the NHEC presented a series of scenarios ranging from PSNH's base case assumptions (Exh. R-21A) through the more pessimistic assumptions on which the proposed financing is based (Exh. R-21B, 6 Tr. 1110-11) to the most pessimistic assumptions proffered by Intervenor in Re PSNH, DF 84-200 (Exh. R-21C). Although we believe that the more optimistic assumptions in Exh R-21 are attainable, we will confine our analysis to the more pessimistic assumptions which form the basis of the proposed financing request (Exhs. R-21B and R-21C).

In each instance, the cost of the continued participation and the

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cancellation cases were compared. In all cases net present value (NPV) analysis favored continued participation over the cancellation scenarios. Those NPVs range from \$66,056,000 using certain Exh. R-21B assumptions at a 10% discount rate to \$22,898,000 using certain Exh. R-21C assumptions at a 15% discount rate. See, Exh. R-49. See also, *infra* at Section VII.D. Since not even the most pessimistic of assumptions yielded a NPV favoring any cancellation scenario, we find that, within the NHEC defined alternatives, continued participation in Seabrook Unit I provides the lowest cost power to NHEC ratepayers.

We now turn to the alternatives proffered by the Intervenor. The Intervenor arguments suffer two deficiencies: 1) The alternatives should be considered as complements to Seabrook I power rather than replacements; and 2) the evidence does not support a finding that the alternatives cost less than Seabrook I on an incremental cost basis.

With respect to the first deficiency, it is important to start with the NHEC's power supply

situation. Unlike PSNH, the NHEC has a secure source of capacity for the full length of the study period. That source of capacity is PSNH's commitment to meet the NHEC's capacity needs through wholesale power sales. See, Exh. R-6. Thus, our analysis is not directed at the issue of reliability because the NHEC already has a reliable source of power; rather, our analysis is directed at cost to ratepayers.

In this context, the NHEC's 25 MW of Seabrook capacity represents a low cost means of meeting the NHEC's baseload requirements. The incremental capital cost is \$870 per KW and the operating cost of a nuclear fueled unit is undisputably low. There are no additional capital costs of constructing a transmission system or the transactions costs of securing wheeling (transmission) services. The 25 MW of power will contribute to meeting the NHEC's minimum load requirements. The alternatives identified by Intervenor will all reduce the need of the NHEC to purchase power from PSNH. For every KW and KWH conserved or purchased from a QF, the NHEC will not be required to purchase that KW in the demand component of PSNH's wholesale tariff and that KWH in the energy component of PSNH's wholesale tariff. Thus, it is proper to treat the Intervenor alternatives as meeting the NHEC's marginal load requirements. To the extent that those alternatives cost the NHEC less than the costs imposed in PSNH's wholesale tariff, the NHEC's customers will be better off. Since the configuration of the NHEC's loads enables marginal power to be accommodated,
87(220) the Intervenor alternatives should be viewed as power sources to be pursued in addition to Seabrook I rather than instead of Seabrook I.

An additional element of this analysis is that several alternatives proposed by the Intervenor will be available in both the termination and participation cases. Thus, from an incremental cost perspective, we should view such alternatives neutrally in that their incremental cost is identical under both continued participation and cancellation scenarios. One example of those neutral alternatives is Hydro Quebec, which will

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be developed independent of Seabrook I. Another example are QF's who will develop and sell the power from their resource to the NHEC based on the NHEC's avoided cost represented by the rates in PSNH's wholesale tariff. *Re Purchases for Nongenerating Utilities*, 67 NH PUC 825 (1982). The evidence supports the finding that the NHEC's marginal cost (i.e., the PSNH wholesale rate) will not change as a result of the NHEC's participation or termination of participation in Seabrook I. See e.g., Exhs. R-21A to R-21C.

The above analysis is reinforced by the second deficiency in the Intervenor arguments; i.e., that alternatives do not cost less than Seabrook I on an incremental cost basis. Coal burning plants cost approximately \$1,792 per KW to construct in 1984 dollars (*Re PSNH*, DF 84-200, Exh. 4 at IV-4) and the cost of coal is higher than the cost of nuclear fuel. Compare e.g., *Re PSNH*, DF 84-200, Exh 4 at IV-14 (Coal prices) with *Id.* at IV-15 (nuclear fuel prices). Wind power costs approximately \$1500 per KW to construct (9 Tr. 1610) and offers a capacity factor of 35% (9 Tr. 1622). Even if the cost fell to \$1000 per KWH, such power costs more on an incremental basis than the \$870 per KW for Seabrook I. Likewise a wood fired plant (50 MW), even if it could be brought on line for \$1250 per KW (Exh R-55 at 3) is more expensive on an incremental basis than Seabrook. See also, 9 Tr. 1808-15. The other alternative offered by

Intervenors, conservation, should be pursued. However, there is insufficient evidence that the conservation resource could be developed at a cost below the incremental cost of Seabrook I. See e.g., 6 Tr. 1006. Additionally, the record indicates that on a cost of service basis, conservation will only benefit certain ratepayers while raising the cost to those who do not conserve 7 Tr. 1249-52; an issue that will present serious rate design challenges to the Commission when a conservation program is pursued.

Since the alternatives proffered by Intervenors should be considered as complements to rather than replacements for Seabrook I and since the evidence shows that such alternatives are more expensive than Seabrook I on an incremental cost basis, we find that the NHEC properly limited its analysis to the participation and termination of participation alternatives. Since in all scenarios the NPV to the NHEC's ratepayers favors continued participation over termination of participation, we find that the NHEC's continued participation in Seabrook I is the least cost alternative. Accordingly, we conclude that the purpose of the proposed financing is consistent with the public good.

VII. FINANCIAL FEASIBILITY

A. Standard of Analysis

[7] The analysis of financial feasibility will be based on total cost as distinguished from the incremental cost analysis approach to determine whether Seabrook I is the most reasonable source of generating capacity in relation to alternatives. We will consider NHEC's revenue requirements, its ability to fulfill these requirements through rates and the reasonableness of such rates for the purposes of determining whether the proposed financing is consistent with the public good.

B. Availability of Financing

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1. NHEC's Capital Structure

NHEC as a cooperative has no stockholders; its members own the corporation. Its capital structure consists of debt. As of December 31, 1984, long term debt consisted of the following:

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

LONG TERM DEBTS (Note F)

Rural Electrification Administration	\$49,999,040
Federal Financing Bank	82,129,000
National Rural Utilities Cooperative Finance Corporation	1,914,709
Bank Mortgage Note Payable	153,313
	\$134,197,062

Exh. R-9 at 2.

The \$49,999,040 of long term debt to the REA breaks down as follows:

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

2% notes	\$13,797,356
5% notes	37,339,574
Accumulated interest	56,980

51,193,910
 Less current maturities 1,194,870
 \$49,999,040

Exh. R-9 at 9.

Mortgage notes payable to the FFB total \$82,129,000. As of February 15, 1985, the current rates for FFB loans were 9.8% for two year maturity, 11.189% for a seven year maturity and 11.330% for a 34 year maturity. Exh. R-23 at 4. The average rate for FFB borrowings as of February 20, 1985 was 11.13% on debt totalling \$84,579,000. Exh. R-23 at Schedule 1. The NHEC's petition for authority to borrow \$49,580,000 from the FFB will basically be financed at an interest rate consistent with the foregoing rates in effect as of February 15, 1985 subject to the U.S. Treasury cost of borrowing. Loans by the FFB to the Cooperative are at 1/8 of 1% above such treasury cost. The borrowing rates are attractive, indeed the only practical source of funds for NHEC's capital needs.

The assets of NHEC are pledged to the REA and the National Rural Utilities Cooperative Finance Corporation (CFC) by a first mortgage jointly securing loans to finance construction of the Corporation's electric utilities. Exhibit 6-15. The financial ability of the Cooperative to serve its consumers with electricity is directly related to its continued authority to borrow at reasonable rates from the REA and associated financing sources. The financial feasibility of the borrowing requested in this petition rests on the Cooperative's ability to repay its debt compatibly with providing reliable electric service at reasonable rates to its consumers.

2. Financing for NHEC's Share of Construction to Complete Seabrook I is Available

On September 30, 1983 the REA approved the required financing by NHEC for its share of the

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construction costs to complete Seabrook. In its financing petition, the NHEC has adjusted the amount approved by the REA for the cancellation of Seabrook Unit II and the revised cost estimate for Unit I based on a \$1 billion estimated "cost to go" adopted by the joint owners for financial planning purposes. The revised amount required to fund NHEC's share of the cost to complete Unit I is available. See Exhs. R-7 and R-7A. We are mindful of reviews being conducted by the current administration in Washington of the REA financing program. Mr. Pillsbury testified that the present administration has indicated its intention to reduce the role of the REA in providing low cost financing to rural electric cooperatives in the future. 7 Tr. 1325-28. We do not anticipate an immediate reduction in REA cooperative financing and we are aware that the CFC may be prepared to provide future financing sources for Cooperatives to displace at least partially a reduction in REA's financing role. The NHEC, through Mr. Pillsbury, has indicated that it will work with the CFC for future access to nongovernmental financing sources as may be required.

3. Rates to Support Future Revenue Requirements to Fund the Capital Investment Resulting from the Proposed Borrowing Authority are Reasonable

The future revenue requirements developed by La Capra, Exh. R-47, reflect recovery for Seabrook incurred debt (both Units I and II) and all other debt related to electric facilities

required for distribution. The revenue requirements also reflect an estimate of PSNH wholesale revenue requirements. PSNH wholesale rates included in NHEC's revenue requirements were derived from the corporate planning model of PSNH using financial scenarios produced by PSNH in Docket DF 84-200. Conservative assumptions regarding Seabrook construction cash flow for financial planning purposes were utilized by the NHEC. Exhs. R-35A through R-36C.

The Cooperative's projected revenue requirements were reflected in projected retail rates in Exh. R-47, prepared by Ms. Smith. The first estimate of retail rates assumed that the Cooperative's Distribution and Administration & General (A&G) cost of \$0.0347 for 1985 will escalate at 5% per year through the study period ending in 2004, adding these costs to the average wholesale costs of Exh. R-21B. The cost of continued participation in Seabrook under the KD-U-NR case scenario ranges from 9.6 in 1986, to 12 in 1987, to 18 in 1990, 19-20 in 1991 — 1995, 25 in the year 2000 and 30.4 in the year 2004. The assumptions for this scenario include an incremental cost to complete Seabrook I of \$1.3 billion as of August 31, 1984 and that Seabrook I's commercial operating date will be October 1987. The basic assumptions for Exh. R-21B are summarized in Exhibit R-21E, as follows:

- 1) That Seabrook I would be completed at an incremental cost of \$1.3 billion.
- 2) That Seabrook I's COD would be October 1987.
- 3) That Seabrook I's capacity factor would be 60%.
- 4) The Cooperative will have to repay all of its borrowings from the FFB under any circumstances.

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5) The Cooperative will be able to borrow for 34 years from the FFB at 11% to pay back its outstanding obligations in the case of its default on Seabrook I.

6) In case of default, the NHEC will pay a 25% penalty to the joint owners, but will be able to sell its share of Seabrook I for between \$500 and \$2000/kw.

7) Such a sale of the NHEC's share of Seabrook I would be to a buyer other than PSNH.

8) PSNH would be able to generate the power that would have come from the 25 MW at a cost only related to additional fuel costs.

9) The NHEC will sell back to PSNH its share in Seabrook I for 10 years whenever its Seabrook per kwh costs are higher than purchased power costs.

10) The NHEC's only feasible sources of power are Maine Yankee, its minor suppliers, its own Seabrook I, and PSNH.

These assumptions correlate with our findings in Re PSNH, DF 84-200, supra in that the incremental cost to complete Seabrook I will be approximately \$1 billion as of January 1, 1985 and that Seabrook's commercial operating date will be approximately in December, 1986. If the findings in DF 84-200 were applied, the result would be with the range of projected rates in Exh. R-48.

A sensitivity analysis of retail rates based on a 7.5% escalation in distribution and A&G

costs (KD-NU-R) results in projected average rates of 9.7 in 1986, 12 in 1987, 19 in 1988, 22 to 23 in 1990-1996, 28 in 2000 and 35 in 2004. The estimated rate level to support capital investment approximating \$138 million upon completion is within a reasonable range for purposes of financing NHEC's share of the cost to complete Seabrook I. Clearly, as mandated by SAPL II, (125 N.H. 708, 482 A.2d 1196), SAPL I (125 N.H. 465, 482 A.2d 509), and Easton, (125 N.H. 205, 480 A.2d 88), the projected investment resulting from this and associated financing may be supported by a level of rates to enable NHEC to earn operating costs, depreciation and other charges to enable consumers to receive electric service at reasonable rates. We find that estimated rates to support total capital involvement by the NHEC in Seabrook I are reasonable in terms of the financial feasibility of completing construction of Seabrook I. We do not find in this proceeding just and reasonable rates for the NHEC since the definitive determination of just and reasonable rates under RSA 378:27, 28 will be made in a subsequent rate proceeding after Seabrook is on line. RSA 378:30-a. We further point out that the debt resulting from our authorization to borrow consistent with NHEC's petition will not exceed the fair cost of the 25 megawatts of Seabrook capacity which, together with other capacity and purchased power from PSNH, will be reasonably requisite for present and future use to supply reliable electric service at reasonable cost to the NHEC's ratepayers and the New Hampshire economy. *Re Easton, supra*; *Re New Hampshire Gas & E. Co.*, 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl. 602 (1936). See also, *Re PSNH, DF 84-200, supra*.

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C. Benefits of Direct Ownership of 25 Megawatts of Seabrook I

The benefits of the NHEC's direct ownership of 25 megawatts of Seabrook I were summarized by Professor Peter Williamson in the following terms:

1. The first benefit arises from the fact that the NHEC's financing costs are substantially lower than PSNH's financing costs and, therefore, to the extent of the difference, the Coop is the beneficiary. In *Re Public Service Co. of New Hampshire*, 69 NH PUC 67, 57 PUR 4th 563 (1984), the weighted average cost of capital to PSNH was 14.16%. In addition, when PSNH becomes a taxable entity, tax expense will increase cost of service to be reflected in wholesale rate charges by PSNH to NHEC. Moreover, the additional borrowing by PSNH through the issuance of the debt and equity authorized in Docket DF 84-167 and DF 84-200 at over 20% when reflected in cost of capital will substantially increase PSNH's cost of capital above the 14% level. The debt issuances under the aforesaid dockets are about double the weighted average cost of 11.13% for FFB borrowing by the NHEC (Exh. R-23 at Schedule 1) and weighted cost of capital from the National Rural Utilities Cooperative Finance Corporation of about 4%. Exh. R-9 at 9, Note F; See also, Exh. R-50.

2. The second benefit of owning a share of Seabrook is the fact that the NHEC acquired PSNH's ownership of 25 Megawatts of Seabrook without compensating for AFUDC is not included in the NHEC's capital investment in Seabrook. The cost of power derived from Seabrook ownership is lower than the cost of purchasing equivalent Seabrook power from PSNH. Exh. 23 at 5. Here again, ratepayers benefit from lower costs.

3. A third significant benefit of Seabrook ownership is the sellback option entitling the

Cooperative for 10 years after the completion of Unit I to sell its share of power and energy to PSNH at the NHEC's cost. For 10 years from the operating date of Seabrook, the NHEC can use the lowest cost power available to it. If the cost of its power from 25 megawatts of Seabrook is lower than the cost of power from PSNH, the NHEC derives the benefit of its Seabrook capacity and energy. However, if the cost of its 25 megawatts exceeds the cost of purchasing power from PSNH, the NHEC may sell the cost of this capacity and energy to PSNH for each of the ten years when its cost exceeds the cost of purchasing power. Exh. R-8, Letter March 30, 1981 from PSNH Executive Vice President Merrill to Pillsbury, Letter March 8, 1985 from Harrison to Pillsbury.

D. Completing Seabrook Avoids Adverse Consequences of Default

Currently the NHEC owes almost

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\$90 million borrowed from the FFB for Seabrook Units I and II. About \$78 million has been encumbered for Unit I and \$12 million for Unit II. Exh. R-1, Scenario, Petition at 6, Summary of Seabrook Costs as of February 28, 1985.

1. Consequences of Default

There are severe penalties which will be incurred by the NHEC and its ratepayers in the event of default by the NHEC of its obligations under the Joint Ownership Agreement and for default by the NHEC of its obligations to repay debt borrowed from the REA, FFB and CFC. First, Section 25.1 of the Joint Ownership Agreement provides that failure by the NHEC to make a Seabrook payment when due enables PSNH (the lead participant) to make the payment for the NHEC. PSNH is then entitled to recover the amount from the NHEC with interest at 2% over the prime rate. If the default continues for five months, the NHEC is liable for the full amount of defaulted payments plus interest of 2% over prime and a penalty equal to 25% of the lesser of the NHEC net investment in Seabrook or the fair market value of its share in Seabrook. The NHEC would be entitled to be reimbursed for the lesser of its net investment or the value of its share reduced by the liability. Professor Williamson established the estimated magnitude of the NHEC's recovery between \$3.375 million and \$31.5 million. At the upper limit of this range, in what Professor Williamson termed as "best possible case", the NHEC's share in Seabrook would be worth \$78 million assuming no further payments are made on FFB borrowings after March 14, 1985, (Exh. 23 at 8) and the penalty would amount to 25% of \$78 million or \$19.5 million. Accrued Seabrook payments and interest of about \$6 million for May 14, 1985 to Mid-October, 5 months later (the grace period) raises total liability to \$25.5 million. Theoretically the NHEC would be entitled to a return of its \$78 million net investment less the \$25.5 million liability, i.e., \$52.5 million. Professor Williamson terms the "worst possible case" a situation where the NHEC's share in Seabrook would be worth nothing, the lead participant would not make the payments missed by the NHEC resulting in a zero penalty and the NHEC would be entitled to no return on its net investment. Regarding the "best possible case", we agree with Professor Williamson that it is unlikely that any fixed market value of the NHEC's share of Seabrook would be as great as the \$78 million investment. It is also unlikely that the remaining joint owners would produce the \$52 million to repay the NHEC and probably protracted litigation

would result. The worst case probably would not occur either because the NHEC's share in Seabrook should be appraised at a fair market value higher than zero. Professor Williamson concluded that an appropriate range of possible fair market value was from \$12.5 million to \$50 million. At a \$12.5 million value, the 25% penalty would be \$3.125 million. Adding the \$6 million accrued missed payments and interest yields \$9.125 million. The NHEC would accordingly be entitled to a net of \$12.5 million minus \$9.125 million or \$3.375 million. The NHEC would still owe \$78 million to the FFB for its investment in Seabrook I. The \$3.375 million could reduce this indebtedness leaving \$75 million. Amortization of the \$75

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million debt over 35 years at 11% (the average cost of FFB borrowing), results in annual payments of \$8.47 million. Spread over 390 million KWH (the approximate KWH sales by the NHEC in 1984), the cost would be about 2.2 per kwh for 35 years.

This case is termed the "high default case" in Exh. R-47. At a value of \$50 million (the "low default case" Exh. R-47) the penalty would be \$12.5 million, the total liability would be \$18.5 million and the NHEC would be entitled to a return of \$31.5 million. Applying this sum to the reduction of the \$78 million FFB debt leaves a net liability of \$46.5 million. Amortizing this amount over 35 years would cost about \$5.25 million per year or about 1.3 per kwh for 35 years on an assumed 390 million kwh per year. The NHEC's recovery range between \$3.375 and \$31.5 million assumes a value to the buyer of the NHEC's Unit I interest of between \$1,300.00 per kilowatt (minus \$870.00 cost of completion) and \$2,800.00 (minus the \$870.00 cost of completion), yielding a recovery to the NHEC of between \$500.00 per kilowatt to \$2,000.00 per kilowatt less the default penalty (reducing the actual net recovery to \$135.00 per kilowatt and \$1,260.00 per kilowatt according to footnote 6, page 29, NHEC initial brief).

Applying Professor Williamson's scenarios, Ms. Smith concluded that retail rates to cooperative members would be less with continued Seabrook participation than under scenarios involving default or the sale of NHEC's Seabrook interest based on a maximum \$31.5 million recovery and a minimum of \$3.375 million. Exh. R-47. Under the lowest cost termination scenario (KD-UNR-Low), average rates increase from 10.8 in 1986, to 12.9 in 1987, to 18 in 1989, to 21 for 1991 and 1992, to 20 from 1993 to 1995, to 25 in 2000, and 31 in 2004. Exh. R-47 "Low Default". Under the highest cost termination scenario (KD-NU-R-High), average rates increase from 11.6 in 1986, to 14 in 1987, to 21 in 1988, to 22 to 24 in 1989 until 1998, and 31.4 in 2004. Exh. R-47 "High Default".

A sensitivity analysis assuming 7.5% escalation of Seabrook costs projects NHEC's retail rates under the least cost termination scenario (KD-U-NR-Low). Average rates rise from 10.8 in 1986, to 13 in 1987, to 21 in 1991, to 23 in 1996, and 36 in 2004. "Low Default", Exhibit R-47. Under the higher cost scenario (KD-NU-R-High) average rates increase from 11.6 in 1986 to 14.18 in 1987, to 23 — 25 from 1989 until 1996, increasing to 36 in 2004 "High Default" Exh. R-47. The rate projections in Exhibit R-47 are in nominal terms; that is the rates include inflation. If the rates were adjusted for deflation (assuming a 5% deflator), the worst case rates under the "high default" scenario (KD-NU-R-High) in 1985 real dollars would be 11.1 in 1986, 12.94 in 1987 (rather than 14.2), 18.3 in 1988 (rather than 21.2), reducing to 14.5 or lower for the years 1995 until 2004. Footnote 5, page 37, NHEC brief.

The aggregate benefits of Seabrook participation versus cancellation are summarized in Exhibit R-48. The net benefit of participation in the "low" cancellation cost case 84-KD-U-NR is \$76,772,000, Column A, Table 3 Revised, Exh. R-48. The net benefit of participation versus high cancellation cost is \$144,952,000, Column B, Table 3 Revised, Exhibit R-48. In the 84-KDNU-R case, the low cancellation cost

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scenario yields a \$67,642,000 participation benefit, Column C, Table 3, Exh. R-48. In the "high" cancellation cost case, Column D. participation versus cancellation yields \$135,882,000. Even in the so-called "request 10" case, the total nominal value of benefits related to Exh. R-21C in the "low" cancellation case is \$33,799,000 and in the "high" cancellation case the net benefits are \$101,979,000. Table 3, Columns A and B, Exh. R48. This case includes assumptions not accepted by the Commission in DF 84-200 or here, particularly a 55% (rather than a 60%) availability factor and a cost of completion of \$1.3 billion.

The NPV of benefits from participation at a 10% discount rate or a 15% discount rate are summarized in Exh. R-49 as follows:

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

NET PRESENT VALUE OF BENEFITS FROM PARTICIPATION
Thousands of Dollars

At 10% discount rate

Exhibit R-21-B

\$1.3 Billion KD-U-NR,
high cancellation cost \$65,018
\$1.3 Billion, KD-NU-R,
high cancellation cost \$66,056

Exhibit R-21-C

\$1.3 Billion 55% C.F.,
high cancellation cost \$56,999
\$1.3 Billion 55% C.F.,
low cancellation cost \$26,650

At 15% discount Rate

Exhibit R-21-B

\$1.3 Billion KD-U-NR,
high cancellation cost \$49,778
\$1.3 Billion KD-NU-R,
high cancellation cost \$50,681

Exhibit R-21-C

\$1.3 Billion 55% C.F.,
high cancellation cost \$45,539
\$1.3 Billion 55% C.F.,
low cancellation cost \$22,898

VIII. APPLICATION OF PROCEEDS

NHEC has represented to the Commission:

(1) funds are made available to the NHEC only when costs have been demonstrated to be current and valid and that no extension to loan funds against authorized borrowing authority can be made in advance of actual need. NHEC Trial Brief at 41;

(2) any Order conditioning the NHEC finances on the outcome of other regulatory proceedings will place the NHEC in default; and

(3) the NHEC will not increase its expenditure of financing beyond its proportionate share of the \$5 Million per week level until such time as PSNH is authorized to expend its proportionate share of financing at an increased level above \$5 Million per week. NHEC Trial Brief at 42.

Based on these representations and recognizing that NHEC's expenditures for further construction of Seabrook Unit I will be limited to its proportionate share of \$5 Million per week or such greater sum as may be authorized by the Commission, we do not impose any condition in our Order limiting the NHEC's financing since the NHEC expenditures for construction will be limited de facto in the same manner as PSNH's expenditures

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unless the Commission finds it otherwise appropriate.

IX. FERC JURISDICTION TO PRESCRIBE WHOLESALE RATES FOR PSNH'S SALES FOR RESALE

[8] Currently over 90% of NHEC power requirements are purchased from PSNH. After Seabrook goes on line, for the first ten years under the sell back arrangement, the NHEC will sell its share of Seabrook power and energy to PSNH if such power is more costly than purchased power from PSNH. The NHEC is in the privileged position of availing itself of a least cost energy strategy vis a vis its 25 MW of Seabrook capacity for ten years. If, as is likely, the average cost of purchased power from PSNH is less than the cost of power from the 25 MW of Seabrook capacity, the NHEC will exercise its option to sell its Seabrook capacity and energy to PSNH. Wholesale rates to be prescribed by the Federal Energy Regulatory Commission (FERC) will be based upon PSNH's average power costs including Seabrook I.

The FERC determines just and reasonable rates under the Federal Power Act. The FERC may, in its discretion, conduct a prudence investigation of the rate base to be used to determine the rate level to produce a reasonable rate of return. The level of rates determined by the NHPUC to be reasonable and consistent with the public good for purposes of PSNH's proposed financing is a reasonable predicate for forecasting the approximate level of wholesale rates without a current definitive finding of just and reasonable rates which must await a rate proceeding. In such rate proceedings, the FERC has jurisdiction to determine the reasonableness of PSNH's wholesale rates subject to a prudence determination of the investment by PSNH in Seabrook. The NHPUC's review and adjudication of the prudence of PSNH's investment in Seabrook for the purpose of determining just and reasonable retail rates in New Hampshire should be compelling — if not controlling — in a FERC determination of prudent investment upon which just and reasonable wholesale rates will be predicated.

To the extent that the NHPUC finds that PSNH's prudent investment in Seabrook is less than its actual capital investment, retail rates to NHEC's ratepayers to yield a reasonable return on prudent investment in rate base will be less. Similarly, the FERC may in its discretion prescribe a wholesale rate level determined upon the same principles of prudent investment in Seabrook I as may be determined by this Commission. Dispositive facts governing the NHPUC's finding of

prudent investment should be applied by the FERC as a matter of comity and consistent public policy.

After the FERC prescribes wholesale rates, the Narragansett doctrine does not necessarily preclude a subsequent prudency investigation by a state commission. *Narragansett Electric Co. v. Burke*, 119 R.I. 559, 23 PUR4th 509, 381 A.2d 1358 (1977), cert. denied, 435 U.S. 972, 56 L.Ed.2d 63, 98 S.Ct. 1614 (1978). From the standpoint of the purchase of power by the NHEC, this State Commission is not constrained from conducting its own review of the prudency of such purchases. See, *Re Pennsylvania Power & Light Co.*, 23 FERC ¶ 61,005 (1983) and *Re Philadelphia Electric Co.*, 15 FERC ¶ 61,264 (1981). There are constitutional issues

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involved in the bifurcated jurisdiction over wholesale rates by the FERC (the so-called "bright line") and retail rate jurisdiction by State commissions, e.g. the commerce clause, the supremacy clause and full faith credit. See, *Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co.*, 273 U.S. 83, PUR1927 B 348, 71 L.Ed. 549, 47 S.Ct. 294 (1927); cf., *Arkansas Electric Co-op. Corp. v. Arkansas Public Service Commission*, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905 (1983). In this proceeding, we cannot prejudge the FERC's action or predict the precise wholesale level of rates. There is inadequate evidence of ultimate wholesale rate levels and retail rate levels to forecast with any precision the extent of the potential rate disparity between wholesale and retail rates.

The very issue of a material rate disparity between projected wholesale and retail rates charged by PSNH is central to the FERC's prescription in a rate proceeding of non-discriminatory, competitive wholesale rates in relation to retail rates. *Federal Power Commission v. Conway Corp.*, 426 U.S. 271, 14 PUR4th 331, 48 L.Ed.2d 626, 96 S.Ct. 1999 (1976) In that case the Federal Power Commission (FPC) ruled that claims of various Arkansas municipalities and cooperatives of anti-competitive and discriminatory rates at the wholesale level vis a vis retail rates were beyond its wholesale rate jurisdiction. The Court of Appeals for the District of Columbia Circuit differed with the FPC's view as to the reach of its powers and held that the FPC's jurisdiction over wholesale rates for electricity sold in interstate commerce included authority to consider alleged discriminatory and anti-competitive effects of the requested increase and to determine whether wholesale rates are reasonable in relation to retail rates in the same market. *Conway Corp. v. Federal Power Commission*, 167 U.S.App.D.C. 43, 52, 510 F.2d, 1264, 1273 (1976). The United States Supreme Court granted the FPC's petition for writ of certiorari and affirmed the D.C. Circuit Court of Appeals. The Supreme Court held that the FPC had power under Section 206(a) of the Federal Power Act to determine whether the wholesale rates were just and reasonable even though the FPC had no power to prescribe the rates for retail sales to electric utilities. The Supreme Court emphasized that ratemaking is not an exact science and that jurisdictional wholesale rates may be lowered within a zone of reasonableness. *Montana-Dakota Utilities Co. v. Northwestern Pub. Service Co.*, 341 U.S. 246, 251, 88 PUR NS 129, 95 L.Ed. 912, 71 S.Ct. 692 (1951). The Court said:

The commission itself explained that matter in *Re Otter Tail Power Co.*, (1940) 2 FPC 134, 149, 33 PUR NS 257, 271, 272, Opinion No. 45 (1940): "It occurs to us that one rate in its relation to another rate may be discriminatory, although each rate per se, if considered

independently, might fall within the zone of reasonableness. There is considerable latitude within the zone of reasonableness insofar as the level of a particular rate is concerned. The relationship of rates within such a zone, however, may result in an undue advantage in favor of one rate and be discriminatory insofar as another rate is concerned. When such a situation exists, the discrimination found to exist must be removed."

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The allocation of cost between wholesale and retail rates is commonplace. *Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 324 U.S. 635, 58 PUR NS 100, 89 L.Ed. 1241, 65 S.Ct. 821 (1945); *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 58 PUR NS 65, 89 L.Ed. 1206, 65 S.Ct. 829 (1945).

Within the ambit of statutory authority extreme nicety is not required and agencies may make pragmatic adjustments of cost allocations of common facilities and other ratemaking issues to arrive at a rationally supported end result. The dominant standard of New Hampshire regulatory statutes as in the case of the Federal Power Act is that rates shall be just and reasonable. See, *New England Teleph. and Teleg. Co. v. New Hampshire*, 98 N.H. 211, 99 PUR NS 111, 97 A.2d 213 (1953).

To assure that wholesale rates will be just and reasonable, this Commission and/or the State of New Hampshire may intervene in any FERC wholesale rate proceeding by PSNH to establish on an evidentiary record its factual, legal and policy concerns to assure that wholesale rates will be prescribed under the controlling reasonable principles governing the level of retail rates.

If the issue of the recovery of the cost of construction and AFDUC for an abandoned plant arises in the FERC rate hearing, the applicability of the New Hampshire Anti-CWIP Statute RSA 378:30-a to preclude recovery may be fully argued. The question of whether RSA 378:30-a is binding on the FERC in prescribing just and reasonable wholesale rates for a New Hampshire utility to charge its New Hampshire customers is a matter of first impression, which we are not empowered to adjudicate. Recovery through rates of the investment by PSNH in the abandoned Pilgrim II plant in Massachusetts is prohibited under New Hampshire law. RSA 378:30-a, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). Our Order will issue accordingly.

ORDER

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

ORDERED, that pursuant to RSA Chapter 369, the Commission finds that the proposed financing is consistent with the public good: and it is

FURTHER ORDERED, that the Petition of the New Hampshire Electric Cooperative, Inc. for authority to borrow \$46,898,000 on the terms and conditions specified therein be, and hereby is, granted.

By order of the Public Utilities Commission of New Hampshire this thirtyfirst day of May, 1985.

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

ATTACHMENT A
DF 83-360
NEW HAMPSHIRE ELECTRIC COOPERATIVE

SCHEDULE OF WITNESSES

Day No.	Date	Day	Witnesses
Week 1 1	4/23/85	Tuesday	Anderson
2	4/24/85	Wednesday	Anderson
3	4/25/85	Thursday	Anderson Pillsbury Kaminski
4	4/26/85	Friday	Williamson Kaminski
Week 2 5	4/29/85	Monday	Lee Smith
6	4/30/85	Tuesday	Smith
7	5/1/85	Wednesday	Smith Pillsbury
8	5/2/85	Thursday	Pillsbury Drake Easton
9	5/3/85	Friday	Flavin DeSousa
Unsworn Testimony			
9	5/3/85	Friday	Williams Whitman Hollingworth Metcalf

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

ATTACHMENT B

DF 83-360 NHEC - ORDERS

Date	Order No.	Description
1/12/84	Order No. 16,855	Issued denying Motion to Intervene by Lynn Chong, granting the Motions to Intervene by McCool & Easton, ordering the hearing to reconvene on 2/8/84. (69 NH PUC 24.)
2/24/84	Supp. No. 16,915	Ordering Staff's motion to strike certain testimony of Prof. Williamson granted and approving the request of NHEC to borrow \$111 million. (69 NH PUC 137.)
3/30/84	2nd Supp. No. 16,965	Issued denying Motions for Rehearing of the Consumer Advocate, Gary McCool and Roger Easton. Dissenting opinion of Commissioner Aeschliman attached. (69 NH PUC 201.)
6/4/84	3rd Supp. No. 17,060	Issued ordering NHEC to file amended petition no later than 6/22/84 as well as prefiled testimony & exhibits on amended pet. Hearings to be held on July 9 & 10, 1984. Dissenting opinion of Commissioner Aeschliman also issued. (69 NH PUC 283.)
6/15/84	4th Supp. No. 17,074	Issued granting the NHEC's Motion to reopen the docket. (69 NH PUC 318.)
6/27/85	5th Supp. No. 17,096	Issued authorizing the request of NHEC to borrow \$9 million out of previously approved

- \$111 million. (69 NH PUC 339)
- 7/17/84 4th Supp. No. 17,132 Issued continuing hearing of 7/30/84 indefinitely. (69 NH PUC 384).
- 8/3/84 6th Supp. No. 17,143 Issued denying Motions for Rehearing of Roger Easton and Gary McCool, denying Motion to Suspend of Gary McCool. (69 NH PUC 426).
- 8/16/84 7th Supp. No. 17,165 Issued denying Motion for Reconsideration of Denial of Motions to Suspend filed by Gary McCool. (69 NH PUC 453).
- 1/24/85 8th Supp. No. 17,411 Issued denying the NHEC's request to borrow \$8,700,000 out of previously approved and remanded \$111 million; granting the NHEC's authority to borrow \$5,290,484 and setting a prehearing conference for 1/30/85. Concurring opinion of Commissioner Aeschliman attached. (70 NH PUC 26.)
- 2/22/85 9th Supp. No. 17,464 Issued setting forth procedural scheduling, also concurring opinion of Chairman McQuade which denies Motion to Recuse filed by Gary McCool. (70 NH PUC 71.)
- 3/6/85 10th Supp. No. 17,479 Issued ordering that the Motions for Rehearing of CLF, SAPL, Roger Easton and Gary McCool are denied. (70 NH PUC 83.)
- 3/18/85 11th Supp. No. 17,501 Issued by Chairman McQuade denying Roger Easton's Motion for Rehearing directed at Denial of Gary McCool's Motion for Recusal. (70 NH PUC 117.)
- 3/25/85 12th Supp. No. 17,513 Issued ordering that Motion for Rehearing of Roger Easton on the assertion set forth at Paragraph 1 of that Motion is denied. (70 NH PUC 126.)
- 3/25/85 13th Supp. No. 17,514 Issued ordering that the parties respond to the Motion to Take Administrative Notice no later than April 5, 1985; also ordered that NHEC file an amended Petition to conform to the proof no later than April 5, 1985. This order also denies Motion to Suspend Procedural Schedule in all other respects. (70 NH PUC 127.)
- 4/5/85 Orders 17,411 & 17,464 Brief filed with Supreme Court re suspending Orders 17,411 & 17,464.
- 4/30/85 14th Supp. No. 17,568 Issued ordering that the Commission will take administrative notice of the entire record of DF 84-200, the motion of NHEC to exclude certain testimony and data responses is denied in part and granted in part according to the Report. Opinion of Commissioner Aeschliman issued along with the above report and order. (70 NH PUC 319.)
- 5/3/85 15th Supp. No. 17,576 Issued ordering that the Request that the Commission direct NHEC to provide testimony from the REA is denied. (70 NH PUC 332)
- 5/10/85 16th Supp. No. 17,599 Issued ordering that the request of NHEC for emergency authority to borrow an additional \$3,260,581 out of the previously approved and remanded \$111 million is denied and that the

NHEC is authorized to borrow an emergency \$2,682,017 out of the previously approved and remanded \$111 million. (70 NH PUC 363.)

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Opinion of Commissioner Aeschliman

Dissenting in Part

I disagree with the majority holdings, as I did in DF 84-200, because I continue to believe that completion of Seabrook Unit I with full cost rate support is not consistent with the public interest. Since the cost of Seabrook power will far exceed its economic value in the early years of the plant's operation,¹⁽²²¹⁾ an attempt to recover full Seabrook costs through rates will result in economic distortions and dislocation because of rate differentials among NEPOOL utilities. An attempt to recover full costs will also create rate discrimination between different New Hampshire utilities and between customer classes because of the different bargaining power and options of various customer groups.²⁽²²²⁾ The resulting rate disparities cannot be considered to be just and reasonable.

In DF 84-200, I determined that the appropriate means of limiting Seabrook rate recovery for PSNH was to apply the used and useful standard relative to excess capacity in conjunction with the prudence test.³⁽²²³⁾ However, the Cooperative is fundamentally different from PSNH both in the fact that it has no equity investors and in that it must rely on PSNH for transmission and for most of its power.

Since the Cooperative has no equity investors, the Commission is limited in future rate base exclusions without causing a default to REA. This does not necessarily mean that REA must be guaranteed full recovery if the Cooperative management makes imprudent decisions resulting in a disallowance by this Commission, or if recovery is precluded by the New Hampshire law.⁴⁽²²⁴⁾

However, the kind of prudency review contemplated for PSNH is not applicable to the Cooperative. As a 2% owner that joined the project in 1981, the Cooperative would not have had the opportunity to influence the conduct of construction or other major decisions of the Joint Owners that the lead owner and construction manager would have had. (7 Tr. 1307). The Commission is also aware of the prior support by this Commission and the State for the Cooperative's Seabrook involvement. (7 Tr. 1306; 64 NH PUC 262, 265 and 66 NH PUC 140.) Where the Cooperative management, and consequently the REA, is primarily at risk in a prudency review is in the agreements the Cooperative enters into with PSNH, as is discussed at length later in this opinion.

A rate base exclusion on the basis of excess capacity would not be applicable to the Cooperative particularly in view of the ten year sell back arrangement with PSNH. It is very unlikely that the Cooperative could be in a position of excess capacity, because its Seabrook investment of 25 MW plus its

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small share of Maine Yankee barely exceeds its present minimum load.⁵⁽²²⁵⁾

The Cooperative must rely on PSNH for transmission (including the transmission of its Seabrook power) and for most of its additional power requirements for some time to come. This dependency on PSNH was the main reason for the Cooperative's Seabrook involvement to begin with; and it is through the Cooperative's relationship with PSNH that this Commission must look to limit the impact of Seabrook on the rates of the Cooperative customers.

Disparities Between Retail Rates and Wholesale Rates

It is well to recall that one of this Commission's main concerns in 1979, when it was considering PSNH's petition to divest itself of 22 percent ownership in Seabrook, was the relationship of the rates charged New Hampshire retail customers vis a vis the rates charged wholesale customers. (64 NH PUC 262-265.) At that time the Commission believed that retail customers were subsidizing wholesale customers. (Id. 64 NH PUC at p. 264.)

The Commission also noted PSNH's obligation to provide for the energy needs of its wholesale customers and that PSNH had not offered a Seabrook ownership interest to its wholesale customers. It was particularly noted that this was an important point relative to the New Hampshire Electric Cooperative because of its access to REA financing. This was the same point which the Commission made in April 1981 when it ultimately approved the transfer of PSNH's Seabrook ownership to the Cooperative.

The Commission clearly viewed it as mutually beneficial to the Cooperative and to PSNH to take advantage of the lower cost financing available to the Cooperative. Certainly it was not contemplated that the Cooperative would be disadvantaged as a result of its Seabrook purchase in comparison to continuing to purchase its power wholesale from PSNH.⁶⁽²²⁶⁾ It would be an irony indeed if in an attempt to rectify an imbalance in 1979, the Commission created a situation that results in an imbalance in the opposite direction. And yet that is precisely what is in danger of happening.

A comparison of the expected retail rates for the Cooperative and PSNH, given the same regulatory treatment for each Company, shows that the Cooperative's retail rates closely track PSNH's through the mid 1990's, but are higher for the remainder of the period for which a rate analysis has been performed. In other words, the rates closely track PSNH's during the period of the sell back, as would be expected, but are relatively higher once the Cooperative takes its Seabrook share directly and purchases the balance of its power from PSNH. The apparent

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[Graphic Not Displayed Here]

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

Table 1

PROJECTED RATES

Projected Retail Rates	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
PSNH Prime Sales (NHCOOP 2) ¹	8.19	8.33	10.67	16.33	16.71	17.90				

19.04	19.12	18.37	18.05					
ADJUSTED Prime Sales ²	8.64	8.79	11.26	17.23	17.64			
18.89	20.09	20.18	19.39	19.05				
NHEC Rates 7.5% Esc. ³	9.05	9.65	11.96	17.16	17.70			
19.00	20.32	20.76	20.51	20.65				
NHEC Rates 5.0% Esc. ⁴	9.05	9.57	11.78	16.86	17.29			
18.45	19.62	19.89	19.44	19.38				
Projected Retail Rates	1995	1996	1997	1998	1999	2000		
2001	2002	2003	2004					
PSNH Prime Sales (NHCOOP 2)	18.02	18.34	19.26	19.79				
20.96	21.99	22.26	23.12	25.27				
ADJUSTED Prime Sales	19.02	19.36	20.33	20.89	22.12			
23.21	23.49	24.40	26.67					
NHEC Rates 7.5% Esc.	21.06	21.83	23.34	25.07	26.58			
28.04	29.01	30.47	32.95	35.36				
NHEC Rates 5.0% Esc.	19.57	20.08	21.31	22.73	23.90			
24.99	25.55	26.56	28.54	30.42				

¹Exhibit R-36A, pp. 34, 35.

²Id., as adjusted per footnote 7.

³Exhibit R-47.

⁴Exhibit R-47.

reason for this is that when the Cooperative takes its Seabrook share directly, Seabrook power is more heavily weighted in the Cooperative's power mix than it is in PSNH's mix of power.⁷⁽²²⁷⁾

This comparison is set forth graphically on Chart 1 and in tabular form in Table 1.⁸⁽²²⁸⁾ The PSNH prime sales rates have been adjusted to be comparable to retail rates.⁹⁽²²⁹⁾ Since the PSNH rates assume an underlying average escalation of about 6%,¹⁰⁽²³⁰⁾ an appropriate comparison would fall between the 5% and 7.5% Cooperative escalation. Because of these adjustments, a precise comparison can not be made. However, the data is adequate to determine that there is a significant difference between the rates of the Cooperative and PSNH after the period of the sell back; and that the retail rates of the Cooperative in this period are 3 to 4 cents/kwh higher than PSNH's.

This comparison of the rates of PSNH and the Cooperative assumed the same regulatory treatment for each Company. However, there is no assurance that the regulatory treatment for each Company would be the same, since PSNH's wholesale rates are set by the Federal Energy Regulatory Commission (FERC). PSNH's wholesale rates set by FERC and the retail rates set by this Commission may vary because of different treatment of abandoned plant costs, different

treatment of rate base and differences relative to rate phase-ins. In fact, the Cooperative witnesses testified that considerable differences were likely based upon the way in which the FERC is currently treating recovery of abandoned plant costs and rate shock. (7 Tr. 1174).

Ms. Smith testified that she did not believe that PSNH's plans to phase-in retail rates were meant to apply to wholesale ratepayers. In any event, she indicated that it was unlikely that FERC would set rates based upon a phase-in. (2 Tr. 324; 7 Tr. 1173, 1174.)

In addition, the present practice of FERC is to include construction work in progress and abandoned plant costs in rates. At the present time, abandoned plant costs are being passed through to New Hampshire ratepayers in the wholesale rates of Granite State Electric Company and Connecticut Valley Electric Company despite RSA 378:30-a.¹¹⁽²³¹⁾ Since the wholesale suppliers of these companies are not New Hampshire companies and the Pilgrim II plant was not in New Hampshire, it is possible that the FERC would accord a different treatment to the wholesale rates of PSNH in recognition of RSA 378:30-a. However, there is no assurance of this being the case particularly in view of the fact that FERC is currently including Seabrook CWIP in wholesale rates charged in New Hampshire. In fact, the Cooperative anticipates that PSNH may try to recover Seabrook Unit 2 costs through its FERC set wholesale rates. (2 Tr. 250, 330, 331).

The position of FERC was set forth in *Re New England Power Co.*, 27 FERC 63,030 (1984). This Commission had argued that FERC should not allow New England Power Company to include in wholesale rates applicable to Granite State Electric Company charges that would otherwise be precluded by RSA 378:30-a, the so-called "Anti-CWIP" law. The Administrative Law Judge responded at 27 FERC ¶ 65,310 as follows:

PUCNH argues that the New Hampshire policy embodied in its statute should not be overridden by the Commission; that PUCNH would be required to allow these CWIP costs, if included by this Commission in NEP's rate base, to be imposed on ratepayers through NEP's affiliate, by way of its purchased power cost adjustment. PUCNH argues that ratepayers of the NEP affiliate will thus be treated differently than other New Hampshire ratepayers who do not pay such costs. PUCNH points out that most of the CWIP proposed to be included in rate base is associated with the Seabrook I nuclear facility in New Hampshire.

Acceptance of PUCNH's argument would mean that a state could

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impose its own limitations upon rate making by this Commission. If a state's policy prevents this Commission from including CWIP in a rate base, it would follow that a state's policy could limit the rate of return allowed, limit the type of plants to be included in the ratebase, and limit the expenses which could be included as costs — for example, a ceiling could be placed on officers' salaries and other compensation. Here, either NEP would have to be required to forego that portion of CWIP which could be allocated to customers in New Hampshire, and treat interstate customers differently in states with different laws, or (if all NEP customers are to be treated alike, in or out of New Hampshire) the State of New Hampshire would determine NEP's rate treatment by this Commission in every other state served by NEP.

There is also no assurance that FERC would follow this Commission's determination relative to the proper Seabrook ratebase treatment. Professor Williamson testified that he believed that there was a possibility that FERC would permit a pass through of PSNH's costs which this Commission does not want to see passed through from the Cooperative to its members. (4 Tr. 722). This may be particularly true if this Commission makes an adjustment for excess capacity, as well as for prudence, as I believe it should.

Furthermore, depending upon the outcome of pending FERC proceedings, it is possible that PSNH may negotiate a discounted wholesale rate with UNITIL. In this instance, PSNH could request FERC approval for a discounted resale rate to UNITIL while requesting a full cost resale rate for the Cooperative. It is very unclear at this point how FERC would deal with these various petitions.

Powers of the Commission Relative to Contracts and Agreements Between the Cooperative and PSNH

The preceding analysis has demonstrated the potential for substantial variance between the projected retail rates of PSNH and the Cooperative. The PSNH wholesale rates charged to the Cooperative will be a very important factor in determining the Cooperative's retail rates and the setting of these wholesale rates will be done at FERC. There is certainly the potential, if not the likelihood, that FERC treatment of abandonment costs, "excess capacity" and "rate shock" may differ from state law or policy, and from the treatment used by this Commission in setting retail rates.¹²⁽²³²⁾ This circumstance is clearly one of the major circumstances in evaluating the public good standard in this case.

This Commission must squarely face the issue whether it can find that the prospective rates of the Cooperative will

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be just and reasonable under these circumstances. This is particularly true in this case because of the history of the Cooperative's Seabrook involvement. It cannot be disputed that the Cooperative purchased a share of Seabrook to help PSNH finance the project after other potential buyers backed out, and to support the State policy of keeping the power in New Hampshire.¹³⁽²³³⁾ At the time of the Cooperative purchase, the issues of abandoned plant, excess capacity and rate shock were not contemplated nor were the potential inequities of differential State and FERC rate treatment. Given this history, I believe the Commission must use its powers to ensure that the Cooperative's customers are accorded the same Seabrook rate treatment in their wholesale rates as this Commission prescribes for retail rates.

How Can the Commission Assure Equitable Treatment Under the Narragansett Doctrine?

There is no dispute that under the current state of the law the "Narragansett doctrine" prevails. This doctrine holds "that a State regulatory Commission lacks jurisdiction to inquire into the 'reasonableness' of a wholesale rate subject to FERC jurisdiction, and that the State cannot refuse to pass the wholesale purchase power costs on through the cost-of service in a subsequent state regulatory proceeding."¹⁴⁽²³⁴⁾ FERC jurisdiction over intrastate wholesale rates has prevailed since the Colton case in 1964, although there have been various legislative

attempts to restore this power to State jurisdiction. The most recent efforts have been supported by the National Governors Association and the National Association of Regulatory Utility Commissioners.

Recent FERC policy and Federal court decisions have taken the position that FERC acceptance of a rate does not preclude a state commission from considering the prudence of the transaction with respect to the purchase.¹⁵⁽²³⁵⁾ Thus, this Commission may review the agreements between the Cooperative and PSNH to determine whether the Cooperative was prudent in entering into the agreements. Should the Commission determine in a subsequent retail rate case that the Cooperative has not acted prudently, it could disallow the recovery of the full costs of purchased power through its retail rates.

There are two significant agreements that have been presented in this case — the agreement for partial requirements resale service (Exhibit R-6) and the sell back agreements contained in the two letters in Exhibit R-8. In addition, the March 8, 1985 letter indicates that the Cooperative and PSNH agree to work on developing a new partial requirements agreement embodying the principles of that letter agreement.

The Commission should put all parties on notice that it considers the present agreements to be inadequate in protecting the interests of the

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Cooperative's customers. The Commission should clearly indicate that any agreements between the Cooperative and PSNH should insure that Cooperative customers will not receive disadvantageous treatment relative to PSNH retail customers.¹⁶⁽²³⁶⁾

Furthermore, the Commission should indicate its strong disapproval of the paragraph in the March 8, 1985 letter (Exhibit R-8) which relates to the agreement relative to small power producers (SPPs). This agreement is contrary to the policy objectives of State and Federal law.¹⁷⁽²³⁷⁾ It is also contrary to the best interests of Cooperative customers.

Following Seabrook completion, the Cooperative may be in a very advantageous position to attract SPPs and to reduce its partial requirements purchases from PSNH. It will be especially important to pursue all means to lower rates, when it appears that the Cooperative's rates will be even higher than PSNH's in the years following the sell back, even assuming the same regulatory treatment. (6 Tr. 1130-1139).

The Cooperative in its brief indicates that if SPPs were paid the avoided cost which was equivalent to the cost of purchased power from PSNH that there would be no savings to consumers. (Reply Brief at 14). However, it is very likely that the Cooperative could negotiate long term contracts at less than its avoided cost. Commission experience has shown that financiers of SPPs prefer long term contracts with the purchasing utility and that a utility that wishes to encourage SPPs can negotiate favorable long term rates. In addition, because of the configuration of the Cooperative's service territory and its distribution points, it is likely that active involvement by the Cooperative in the planning and development of SPP projects to insure compatibility with the Cooperative's system and needs would be particularly important.

The Commission should also put the Cooperative and PSNH on notice that it may be

appropriate for the Commission to pursue other avenues to equalize disparities in rates. This might include Commission purchase of power pursuant to RSA 363:18-a and distribution to utilities in the State. The Commission notes that the State of Vermont claims a portion of the power from Hydro-Quebec. (7 Tr. 1318). This may be an appropriate avenue for this Commission to pursue in its deliberations relative to Hydro-Quebec Phase II.

Finally, the Commission cannot reasonably rely upon the Seabrook cost and completion data presented in this docket if there are significant further delays in achieving funding and a full level of construction. The Commission has already approved funding in this docket sufficient to allow the Cooperative to continue to fund its share of the Seabrook project through June. In accord with my opinion in DF 84-200, (70 NH PUC at p. 383), I would

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schedule a joint hearing for the Cooperative and PSNH at the end of June to receive evidence relative to the status of regulatory approvals and the financing plans of the Joint Owners, at which time PSNH and the Cooperative should be required to show cause why it is in the public interest to continue Seabrook payments.

FOOTNOTES

¹Transcript of February 8, 1984 hearing at 52.

²Report and Supplemental Order No. 16,915 (69 NH PUC 137), citing transcript of February 16, 1984 at 4 to 6. Commissioner Aeschliman dissented from this opinion and would have included the NHEC's continued participation in Seabrook II within the scope of the proceeding.

³Id. 69 NH PUC 137. The majority opinion was by Chairman McQuade and Commissioner Iacopino each of whom elaborated on their individual positions in separate opinions. Commissioner Aeschliman dissented.

⁴New Hampshire Supreme Court Case No. 84-188, Re Easton, 125 N.H. 205, 480 A.2d 88 (1984); Case No. 84-204, Re Holmes; Case No. 84-207, Re McCool. By Order dated May 18, 1984, the Court consolidated these three cases for oral argument.

⁵Order No. 17,060 (69 NH PUC 283).

⁶Id., 69 NH PUC 283.

⁷Supreme Court Order dated June 15, 1984 in consolidated appeal of Case Nos. 84-188, 84-204, and 84-207. In the same order, the Court established a briefing and oral argument schedule for the remaining \$54 million.

⁸Orders No. 16,915 and 16,965.

⁹Re Easton, 125 N.H. 205, 480 A.2d 88 (1984) (Re Easton or Easton).

¹⁰Id., 125 N.H. at p. 211, emphasis in original.

¹¹Id., 125 N.H. at p. 214.

¹²The Yankee Atomic projects are Maine Yankee, Vermont Yankee, Massachusetts Yankee and Connecticut Yankee.

¹³Report to Fourth Supplemental Order No. 17,132 (69 NH PUC 384).

¹⁴Mr. Easton's Motion for Rehearing was filed on July 16, 1984 and Mr. McCool's Motion for Rehearing was filed on July 17, 1984.

¹⁵Sixth Supplemental Order No. 17,143 (69 NH PUC 426).

¹⁶Report and Seventh Supplemental Order No. 17,165 (69 NH PUC 453).

¹⁷SAPL filed an oral Motion to Intervene on January 3, 1985 for the purpose of participating as a party in the proceedings conducted subsequent to that date. See, Tr. of January 3, 1985 at 4. The Motion to Intervene was granted. *Id.*; See also, Tr. of January 30, 1985 at 2.

¹⁸Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26).

¹⁹*Id.*.

²⁰*Id.*

²¹See, *Re Public Service Co. of New Hampshire*, 69 NH PUC 522 (1984) *aff'd Re Seacoast Anti-Pollution League*, 125 N.H. 465, 482 A.2d 509 (1984) (SAPL I); See also, *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 (1984) (SAPL II).

²²Report and Eighth Supplemental Order No. 17,411.

²³*Id.*

²⁴*Id.*

²⁵Ninth Supplemental Order No. 17,464 (70 NH PUC 71). The procedural schedule allowed for the conclusion of evidentiary hearings on April 26, 1985.

²⁶Concurring opinion of Chairman McQuade, Report and Ninth Supplemental Order No. 17,464.

²⁷*Id.*

²⁸CLF, SAPL and Mr. McCool asked for rehearing only on Order 17,411, *supra*, which authorized the second emergency financing. On March 7, 1985, Intervenor Easton filed a Motion for Rehearing regarding the second emergency financing. In that motion, he asked for a rehearing of Chairman McQuade's denial of Intervenor McCool's Motion for Recusal. Chairman McQuade denied Mr. Easton's Motion for Rehearing on the issue of recusal on March 18, 1985 in Eleventh Supplemental Order No. 17,501. (70 NH PUC 117).

²⁹*Re McCool*, 125 N.H. —, — A.2d — (1985).

³⁰The Court also held that Chairman McQuade is disqualified to sit further in this docket. Special Commissioner John N. Nassikas, who served as presiding officer for the Commission as Special Commissioner in prior PSNH Seabrook financings Dockets DF 84-167 and 84-200, assumed Chairman McQuade's responsibilities as presiding officer in this docket subsequent to the date of this Supreme Court Order.

Chairman McQuade did not participate in the second emergency financing and Order 17,411 accordingly was signed only by Commissioners Aeschliman and Iacopino. Therefore, the Chairman's disqualification did not affect the validity of said order.

³¹Re McCool, *supra*.

³²On April 18, 1985, the Commission issued Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164, 66 PUR4th 349) in the PSNH Seabrook financing, Docket DF 84-200. In said Order, the Commission conditionally approved the PSNH petition for authority to prefinance the completion of Seabrook Unit I.

³³Report and Thirteenth Supplemental Order No. 17,514 (70 NH PUC 127).

³⁴Fourteenth Supplemental Order No. 17,568 (70 NH PUC 319).

³⁵*Id.*

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

³⁹RSA 369:1 provides, in pertinent part, that "The proposed issue and sale of securities will be approved by the Commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the Commission may find to be necessary in the public interest. ..."

⁴⁰*Id.*, 70 NH PUC at pp. 321, 322.

⁴¹*Id.*

⁴²*Id.*

⁴³Report and Order No. 17,568, *supra*.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*, 70 NH PUC at p. 326.

⁴⁷*Id.*, 70 NH PUC at p. 327.

⁴⁸Order No. 17,558, *supra*.

⁴⁹Thirteenth Supplemental Order No. 17,514 (70 NH PUC 138).

⁵⁰*Id.*

⁵¹*Id.*

⁵²Tr. 1822.

⁵³NHEC Motion to Enlarge Order No. 17,411 dated May 3, 1985 at 1.

⁵⁴Sixteenth Supplemental Order No. 17,599. The NHEC originally requested authority to borrow the ultimately approved amount of \$2,682,017 but, during the proceedings, it increased the amount requested to \$3,260,581.

⁵⁵See e.g., *Re McCool*, *supra*, and Order No. 17,411.

⁵⁶Order No. 17,599.

⁵⁷*Id.* In its Order, the Commission indicated that the specific circumstances included: 1) a balancing of the risks and benefits of granting or denying the requested relief; 2) the practical impossibility of issuing an Easton Order by May 14, 1985, the date on which the Order No. 17,411 emergency relief was based, despite the best efforts of the Commission and all the parties to bring the matter to a timely conclusion; and 3) the tailoring of the relief granted herein to the particular circumstances confronting the NHEC.

⁵⁸*Re Public Service Co. of New Hampshire*, 64 NH PUC 262 (1979).

⁵⁹*Id.*

⁶⁰*Id.* 64 NH PUC at p. 269.

⁶¹The Commission suspended its authority to transfer the 1% interest in Seabrook to Central Vermont Public Service Company in Fourth Supplemental Order No. 13,829, 64 NH PUC 326, 328 (1979).

⁶²*Id.*

⁶³*Re Public Service Co. of New Hampshire*, 64 NH PUC 286, 287 (1979).

⁶⁴*Re Public Service Co. of New Hampshire*, 64 NH PUC 485 (1979).

⁶⁵*Id.*, 64 NH PUC at pp. 485, 486.

⁶⁶*Re New Hampshire Electric Co-op., Inc.*, 66 NH PUC 139, 140 (1981); *Re Public Service Co. of New Hampshire*, 64 NH PUC 485 (1979); *Re Public Service Co. of New Hampshire*, 64 NH PUC 262, 265 (1979).

^{66A}See Exh. R-1 at 6. This figure excludes Unit II, nuclear fuel, nuclear fuel AFUDC, transmission support, transmission support AFUDC and working capital. See e.g., Exh. R-3.

⁶⁷In their May 14, 1984 resolution, the joint owners agreed to finance under the assumption of a \$1.3 billion cost to go and an October 1987 commercial operation date. On December 10, 1984, the joint owners amended the May 14, 1984 resolution so that the applicable financing assumption was \$1 billion cost to go. See, *Re PSNH*, DF 84-200, Exh. 23. In subsequent resolutions, the joint owners continued to adhere to the \$1 billion cost to go assumption. See, January 16, 1985 resolution, *Id.* at Exh. 23-A; February 19, 1985 resolution, *Id.* at Exh. 23-B. None of the above resolutions addressed the October, 1987 completion date assumption. PSNH witness Staszowski calculated that the change of the to go cost assumption from \$1.3 billion to \$1.0 billion should move the completion date from October 1987 to April, 1987. *Id.* at Exh. 43. Management Analysis Corporation (MAC), in its evaluation of the project cost and schedule estimates, concluded that the plant can be expected to complete its 100 hour warranty run by May of 1987. *Id.* at Exh. 106 at 23.

⁶⁸See generally, Exh. R-33. Representative Easton is also a pro se Intervenor in this proceeding. Thus, his testimony summarizes his own position as well as that of the Consumer Advocate.

⁶⁹The original request for \$49,580,000 has been reduced to \$46,898,000 in view of Order No. 17,599 issued May 10, 1985 (70 NH PUC 363) approving emergency financing for the NHEC in the amount of \$2,682,017.

⁷⁰The payment from PSNH is not a direct payment of interest charges, but rather the return component included in the cost of service.

⁷¹The application for a Certificate of Site and Facility was filed on May 17, 1985; two weeks after the last hearing day in the instant proceeding. The matter has been docketed as DSF 85-155.

⁷²State law: The Limited Electrical Energy Producers Act (LEEPA) RSA Chapter 362-A, Federal law: The Public Utility Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. §§796(17)(A) 824a-3, (1976 ed, Supp. IV). FERC rules promulgated pursuant to that are found in 18 C.F.R. Part 292.

⁷³The Commission recognized this pricing context in *Re: Purchases for Non Generating Utilities*, 67 NH PUC 825 (1982) when it found that although theoretically QF's should be paid the avoided cost of the generator regardless of which utility purchased the power, given the problems of regulatory lag in adjusting the wholesale rates, it was preferable to establish a two-tier purchase power rate for non-generating utilities. Utilities which refused to wheel to the generating supplier were required to pay the full avoided cost of their supplier. QFs who refused to have their power wheeled were eligible for the wholesale purchased power rate.

⁷⁴"The Cooperative agrees to not actively pursue such cogeneration or power from small power producers to replace its Seabrook entitlement or partial requirements service." Exh. R-8.

⁷⁵PSNH wholesale rates have been calculated for this docket based on PSNH financial forecasts. We see no reason to employ different assumptions from those accepted by the Commission for projections of wholesale rates (avoided costs) for QF purposes.

⁷⁶2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders. ..."

⁷⁷Termination of the NHEC's participation in Seabrook Unit I does not necessarily mean that the facility will be abandoned. The Court has not commented on the applicability of RSA 378:30-a to the unrecovered cost of an ownership share of a plant which is sold when that plant is ultimately completed.

⁷⁸Those findings were: 1) Seabrook incremental cost would be \$1 billion (70 NH PUC at p. 223, 66 PUR4th at p. 402); 2) A commercial operation date of December, 1986 is attainable (70 NH PUC at p. 223, 66 PUR4th at p. 402); 3) Capital additions will cost \$15 million in 1984 dollars escalating at 7.5% per year (70 NH PUC at pp. 223, 224, 66 PUR4th at pp. 402, 403); 4) Capacity factor will range between 52.5% and 72% with 60% as a reasonable assumption (70

NH PUC at pp. 224-226, 66 PUR4th at pp. 403-405); 5) Nuclear fuel costs will be 1.41/kwh in 1986 escalating to 2.4/kwh in 2005 (70 NH PUC at p. 226, 66 PUR4th at p. 405); 6) Operating and Maintenance expenses will be \$64 million escalating within a range of 0—4% per year in real terms (the Commission assumed an escalation rate of 1.5 to 2.0% per year within that range) (70 NH PUC at p. 226, 66 PUR4th at p. 405); 7) Decommissioning costs will range between \$170 million to \$311 million in 1984 dollars (the Commission assumed that the cost would be \$170 million within that range) (70 NH PUC at p. 226, 66 PUR4th at p. 405); 8) Plant life will range from 30 to 40 years (the Commission assumed that the life would be 35 years within that range) (70 NH PUC at pp. 228, 229, 66 PUR4th at p. 407); 9) PSNH's cost of capital, used for both retail and wholesale rate purposes, will average 15.4% (70 NH PUC at p. 229, 66 PUR4th at pp. 407, 408); and 10) The consumer discount rate will range between 10% and 15.4% (the Commission found that a 15% assumption within that range would be reasonable (70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409).

⁷⁹Id.

⁸⁰Mr. Anderson also allocated costs between Seabrook Unit I and Seabrook Unit II on the basis of a Coopers and Lybrand study. PSNH did not use that study in its allocation. Additionally, that study has not been accepted by the Seabrook Joint Owners. The issue of whether the allocation was properly carried out is not before us in this proceeding. Thus, we reserve judgment until we evaluate a record developed in an appropriately noticed docket.

⁸¹As discussed *infra* at IV.D., NHEC witness Smith correctly treated the AFUDC on sunk costs the same within both the continued participation and termination alternatives. This treatment is consistent with the above analysis.

⁸²Cost to go of \$882 million; PSNH financing as approved in Re PSNH, DF 84-200; inclusion of Unitil load; No recovery of the cost of Seabrook II. See, Exh. R-21A.

⁸³Cost to go of \$882 million; PSNH financing as approved in Re PSNH, DF 84-200; No Unitil load; Recovery of cost of Seabrook II. See, Exh. R-21A.

⁸⁴Cost to go of \$1.3 billion; PSNH financing as approved in Re PSNH, DF 84-200; 60% capacity factor; inclusion of Unitil load no recovery of cost of Seabrook II. See, Exhs. R-21B, R-36A, R-36B & R-36C.

⁸⁵Cost to go of \$1.3 billion; PSNH financing as approved in Re PSNH, DF 84-200; 60% capacity factor; No Unitil load; recovery of cost of Seabrook II. See Exhs. R-21-B, R-35A, R-35B & R-35C.

⁸⁶Assumptions are reflected in Intervenor Request No. 10 in Re PSNH, DF 84-200. See, Exh. R21C and Re PSNH, DF 84-200, Exh. 174.

⁸⁷See e.g., Exhs. R-16B, R-19 and R-32.

Dissenting in Part

¹DF 84-200, Re Public Service Co. of New Hampshire, (70 NH PUC at pp. 278, 279, 66 PUR4th at pp. 449, 452, separate Opinion of Commissioner Aeschliman.

²Id., 70 NH PUC at pp. 284, 285, 66 PUR4th at pp. 454-456.

³Id., 70 NH PUC at pp. 300-303, 66 PUR4th at pp. 470, 471-473; and Report and Tenth Supplemental Order No. 17,601 (70 NH PUC 367), Opinion of Commissioner Aeschlimann. The basic principle embodied in this regulatory treatment is that customers should only be charged for plant that is necessary and economic.

⁴For example, the Commission is precluded by RSA 378:30- a from including in rates cost recovery for abandoned plant.

⁵If Seabrook II were completed and the Cooperative had 50 MW of Seabrook baseload power, it could have been in the situation of having excess capacity and energy during certain periods and that was apparently what was contemplated in the original sell back agreement of March 30, 1981 where it was provided that "the Cooperative agrees to sell and PSNH agrees to purchase capacity and related energy which is temporarily in excess of the Cooperative's needs from Seabrook Units No. 1 and 2...." (Exhibit R-8).

⁶There is actual recognition of this point in the Partial Requirements Agreement. (Exhibit R-6, p. 4.)

⁷It is possible that the heavier weighting of Seabrook power for the Cooperative could be advantageous in the later years of the plant's life, but we do not have information to make this evaluation.

⁸The projected rates are based on a \$1.3 billion Seabrook cost to go from July 1984, which the Cooperative witnesses testified was essentially the same as a \$1 billion cost to go from January 1985. (1 Tr. 71-73). Under this scenario Ms. Smith found it advantageous for the Cooperative to sell back all of its Seabrook power during the first 10 years. (Exhibit R-21-B. Workpapers 1 revised.)

⁹Projected Retail Rates for PSNH have been obtained by factoring out the wholesale portion from the projected rates for PSNH Prime Sales. The Adjustment factor is an arithmetic mean of the last 7 year (1978-84) percent relationship of rates for Prime sales and rates for Prime Sales net of Electric Utilities. This relationship is expressed below.

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

(Prime Sales Rate Net Electric Utilities)

(Prime Sales Rates) + = (Adjustment Factor)

The projected rates for Prime Sales are multiplied by the adjustment factor to arrive at the Retail Rate for the years 1985-2003.

Projected Prime Sales Rate x
----- = Projected Retail Rate.
Adjustment Factor

This adjustment has been made based upon data from Exhibits 33 and Exhibit 173 (Statistical Supplement) in DF 84-200.

¹⁰DF 84-200, 30 Tr. 5684, 5685.

¹¹Re Connecticut Valley Electric Co., 69 NH PUC 319 (1984); and Re Granite State Electric Co., 69 NH PUC 1 (1984).

¹²See National Regulatory Research Institute, *The Narragansett Doctrine: An Emerging Issue in Federal-State Electricity Regulation*, December 1984 at iii and 1.

¹³64 NH PUC 262-269, 485-486. 7 Tr. 1306.

¹⁴National Regulatory Research Institute, *supra*, at iv. See also, *Re Connecticut Valley Electric Co.*, *supra*, appeal pending, *Re Sinclair Machine Products*, S.Ct. Docket No., 84-380.

¹⁵*Id.* See also, *Re Concord Electric Co.*, 69 NH PUC 701 (1984).

¹⁶It should be noted in this regard that Mr. Harrison, Chief Executive Officer of PSNH, has recognized as a policy matter that this Commission has well founded concerns relative to the need for New Hampshire to regulate what PSNH charges for Seabrook power. (Exhibit R-13).

¹⁷The Limited Electrical Energy Producers Act (LEEPA) RSA 362-A, (Supp. 1982-2); The Public Utility Regulatory Policies Act of 1978 (PURPA 210) 16 U.S.C. § 796(17)(A), 824a-3, (1976 ed, Supp. IV).

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NH.PUC*06/03/85*[61092]*70 NH PUC 496*New England Telephone and Telegraph Company

[Go to End of 61092]

70 NH PUC 496

Re New England Telephone and Telegraph Company

Intervenors: Community Action Program, Volunteers Organized in Community Education, Office of Consumer Advocate, and Department of Defense et al.

DR 84-95, Order No. 17,639

New Hampshire Public Utilities Commission

June 3, 1985

APPLICATION by a local exchange telephone carrier for an increase in rates and charges; granted as modified pursuant to a settlement agreement.

Return, § 26.1 — Capital structure — Actual versus hypothetical structure.

Pursuant to a settlement agreement, a local exchange telephone carrier's current actual capital structure was used as a basis for determining its cost of capital. [1] p.501.

Rates, § 539 — Telephone — Measured local service — Business lines.

Pursuant to a settlement agreement, a local exchange telephone carrier was authorized to implement a rate increase on a uniform percentage basis and to replace flat business line rates with measured business line rates, except that existing flat rate business customers were to be grandfathered into the change. [2] p.501.

Expenses, § 114 — State income taxes — Normalization versus flow through — Federal policies.

A local exchange telephone carrier was authorized to normalize deferred state income taxes rather than flow through the tax benefits to ratepayers, where, although federal tax accounting policies do not necessarily apply automatically to state taxes, the federal plan for normalization was found to be consistent with the carrier's accrual accounting methods and to have been the preferred method of accounting in most jurisdictions for a number of years. [3] p.502.

APPEARANCES

For the New England Telephone and Telegraph Company, Robert A. Wells, Esquire; Christopher M. Bennett, Esquire; Phillip M. Huston, Jr., Esquire; for the Community Action Program, Gerald M. Eaton, Esquire; for VOICE, Alan Linder, Esquire; for the Consumer Advocate, Michael W. Holmes, Esquire; for the Department of Defense and other Federal Executive Agencies, Terry J.R. Kolp, Esquire; for the Commission Staff, Larry M. Smukler, Esquire.

By the COMMISSION:

PROCEDURAL HISTORY

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On May 16, 1984, the New England Telephone and Telegraph Company (hereafter called NET or Company) filed with the New Hampshire Public Utilities Commission proposed rate revisions to its Tariffs Nos. 75 & 76 for effect June 15, 1984, which would produce an increase in intrastate revenues of approximately \$33.5 million (after uncollectibles and Independent Company settlements). By its Order No. 17,040 issued May 22, 1984, the Commission suspended said filing pending investigation and decision thereon.

On June 15, 1984, a prehearing conference was conducted at which a procedural schedule was established. Subsequently, upon the motion of the Staff, the Commission amended its procedural schedule on August 9, 1984, and initiated meetings of the parties to discuss, among other matters, temporary rates. Meetings were held on August 29, September 4 and October 4 in which NET, the Staff, CAP and VOICE participated.

On October 23, 1984, NET filed with the Commission a petition seeking a temporary rate of \$21.627 million pursuant to RSA §378:27. The temporary increase was requested in order to avoid recoupment or refund complexities which might result had NET implemented its filed rates under bond pursuant to RSA 378:6, or sought its existing rates as temporary rates pursuant to RSA 378:27. The amount of \$21.627 million represented the lower end of the range recommended by the Staff's witnesses. A hearing on temporary rates was held on November 8, 1984 with all parties present. By Order No. 17,320 dated November 19, 1984 (69 NH PUC 658), the Commission approved temporary rates in the amount requested effective with all bills on or after December 15, 1984. The temporary increase was directed to be spread generally "across the board."

Upon the motion of NET, the Commission amended the procedural schedule on December 28, 1984, in its Order No. 17,372.

On February 19, 1985, all parties to the proceeding met to discuss further narrowing of issues and the possible settlement of the case. As a result of that meeting, NET, the Staff, CAP and the Consumer Advocate agreed on a settlement proposal; the Department of Defense and VOICE did not sign this proposal.

Under the Settlement Proposal, the signatory parties resolved all issues with the exception of the issue of the ratemaking treatment for deferred state income taxes.

Hearings were held on March 4, 5, and 6 at which the signatory parties presented the Stipulation Agreement. The Department of Defense filed testimony that did not support the Stipulation Agreement and stated that its witnesses would be available for cross examination should the Commission or other parties, having viewed the Stipulation Agreement and the DOD testimony, wish for them to appear. VOICE did not sign the Stipulation Agreement, but in consideration of its terms, withdrew its own witnesses. On March 7, 1985, the Commission issued a letter to all parties stating that having reviewed the DOD testimony it would not be necessary for DOD to present their witness for further inquiry. Further, the Commission stated that it had accepted the Stipulation Agreement.

On March 20, 1985, a hearing was held in which the outstanding issue of

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the ratemaking treatment for deferred state income taxes was heard.

POSITION OF THE PARTIES

New England Telephone

In its original filing, New England Telephone sought an increase in intrastate revenues of about \$33.5 million (after uncollectibles and independent company settlements). That amount represented about a 20% increase in revenues overall. The increase was to come from a variety of structure changes as well as associated repricing.

The bulk of the increase would come from basic exchange services ... about \$23.6 million averaging a 39% increase. Another \$5 million would come from service charges. Private line Services were proposed to jump by 40% bringing an added \$2.8 million. Smaller increases would flow from WATS, MTS, and Directory Assistance. Some offerings were not increased at all.

Significant among the proposals were:

- 1) Elimination of unlimited business services for new subscribers. Current customers could retain and expand unlimited service at existing locations.
- 2) Elimination of multi-party residential service for new subscribers. Again, current subscribers could retain their multi-party service at existing locations. These, however, would face drastic increases.
- 3) Exchange service could be disaggregated with a charge for dial tone and a charge for

usage.

4) Service charges would increase about 17%.

5) Inside wire would continue to be maintained by NET subject to a monthly charge of 20. Of course, subscribers could avoid that charge by maintaining their wire or hire their own contractor.

6) Coin service was proposed to increase from 10 to 25 for the five minute initial period, with three minute overtime going from 5 to 10.

7) Private line services were to be restructured and upped by 40%.

8) WATS rates would be increased 15%.

9) MTS incremental charges were to be increased along with some service charges. 10) Directory Assistance allowance was proposed for reduction from ten to five, with excesses increased 40%. 11) Semipublic coin service was increased significantly while the monthly guarantee was eliminated.

Staff and Intervenor Testimony

Staff testimony addressed three areas of the Company's filing. Chief Engineer Bruce B. Ellsworth and Chief Economist Dr. Sarah P. Voll testified on rate design issues. Dr. Karl Kramer and subsequently Dr. Voll testified on the cost [of] capital. Finance Director Eugene F. Sullivan testified on various expense and rate base issues and on deferred state income taxes. DOD focused primarily on rate base issues (Woodrow Dooley) and cost of capital (Mark Langsam).

Rate Design

Dr. Voll's testimony provided a general analysis of the rate design

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proposals embodied in the Company's filing. NET had adopted a cost-of-service standard as the basis of much of its rate analysis. They had thus moved away from the value-of-service standard on which companies and regulators had relied in the past for the inter- and intra-class allocation stage. However, Dr. Voll criticized the studies presented by the Company (MTS, WATS, Directory Assistance Services, Private Line Local Coin and Semi-public, as well as the more general Embedded Direct Analysis), because they arbitrarily assign all of the fixed costs of providing a network that is jointly used by all services to the basic exchange service. The costs allocated to the more specialized services contain only their own variable costs.

On behalf of Staff, Dr. Voll recommended that if NET finds it necessary to move to cost-based pricing in response to competitive pressures, the Commission should require the Company to perform adequate analyses of their costs. These analyses would include a fully allocated embedded cost study in which local service is costed by the same methodology as MTS, WATS, etc. and jointly used embedded costs are spread across all services; and a long run marginal cost study that would analyze the prospective costs of providing service in a context where there are no fixed (non-traffic sensitive) costs and capacity costs are attributed to the cost causer on the basis of the capacity required to satisfy their demand. Lacking such studies, she recommended that the Commission adopt an across-the-board percentage increase.

Bruce Ellsworth testified on specific rate design issues. He recommended that the Company's proposal to supersede multi-party service where lower priced service alternatives exist be approved as requested. However, contrary to the Company proposal, he stated that any rate increase levied on multiparty customers should be commensurate with the percent increase ultimately approved for other residential services.

Mr. Ellsworth further testified that the Company's proposal to discontinue unlimited business service for new customers wherever measured service was available was justified by the threat of resale and sharing in the intrastate market. However he recommended that the Commission reject the Company's proposal to increase the basic charge on semipublic phones from \$18.75 per month to \$47.00 per month and eliminate the daily guarantee. He concluded that the 250% increase in the basic charge violated the standard of rate continuity and proposed instead a basic rate of \$30.00 per month and an increase of the guarantee from \$.025 to \$0.50 per day. He also advised that the Commission deny the company's proposal to charge \$0.20 per month for the maintenance of inside wiring. This issue is the subject of the generic docket DE 84-67 and he suggested that NET's proposal be addressed in that docket. Finally, he stated that Staff found no justification for the reduction in the allowance for Directory Assistance calls from ten to five. Staff does not believe that the Company has demonstrated that the present ten call allowance is burdensome.

Cost of Capital

Cost of capital testimony was presented by Staff and DOD witnesses. Using the discounted cash flow methodology, Dr. Karl Kramer's testimony as updated by Dr. Voll calculated a range

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for the return on equity of 14.09 -14.58%. However, Dr. Voll testified that she did not find the calculation of 14.09% to be a supportable result as the yield component incorporates a current price which reflects investor expectations that the NET dividend will be increased in 1985 and a dividend calculation which assumes no growth in dividends during 1985. Therefore, the Staff recommended range was 14.21 - 14.58%.

DOD witness Mark Langsam used three different methodologies and calculated an overall range of 13.5 -14.5%; his Comparable Earnings study produced a range of 13.5 - 14.0%, his DCF study, 13.5 - 14.2%, and his Risk Premium Analysis 14.1 - 14.5%.

Mr. Langsam also testified on the issue of capital structure. According to his analysis, NYNEX's capital structure is too heavily weighted with equity. He stated that a lower equity ratio would result in a lower cost of capital without affecting the Company's ability to maintain its credit and raise additional capital. He therefore recommended that the Commission adopt an optimal capital structure of 50% equity and 50% debt.

Dr. Voll testified that while she believed that DOD had raised some interesting points, Staff has not analyzed the Company's capital structure and therefore could neither support nor refute Mr. Langsam's conclusion. The customary recommendation of Staff is the acceptance of either the actual capital structure at the time of the rate case, or some kind of average capital structure. In the instant docket, Dr. Voll had adopted the Company's actual capital structure. Thus the Staff

recommendation of a cost of capital was a range of 11.73 -12.00% (assuming a return on equity of 14.09 - 14.58%) in contrast to the DOD recommendation of 11.2 - 11.7% (assuming a return on equity of 13.5 - 14.5%). The Staff recommendation treats deferred taxes as a rate base deduction while DOD's recommendation includes deferred taxes in the cost of capital calculation as zerocost capital.

NET Utility Operating Income

New England Telephone's 1983 test year results arrive at a net operating income of \$33,289,000. In its original filing the Company claimed miscellaneous pro forma adjustments of \$7,727,000 and adjustments applicable to divestiture of \$6,152,000 or an adjusted net operating income of \$19,410,000.

Starting with the same test year results of \$33,289,000 the staff proposed pro forma miscellaneous adjustments of \$4,336,000 and divestiture adjustments of \$6,147,000 to arrive at a pro forma net operating income of \$22,806,000. The differences between the staff and the Company were in the following areas:

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

Miscellaneous Adjustments

Adjustment	Company	Staff	Variance
4/1/84 Wage Adjustment	\$ 358,000	\$ 268,000	\$ -90,000
8/5/84 Wage Adjustment	730,000	230,000	-500,000
1984 Depreciation			
Represcription	5,229,000	2,574,000	-2,655,000
1984 Exchange			
Reclassification	-0-	146,000	-146,000
Totals	\$6,317,000	\$2,926,000	\$w3,391,000

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The staff's first adjustment of \$90,000 was to include the portion of the April 1, 1984 wage increase which occurred during the twelve months following the test year. The second wage adjustment of \$500,000 was to adjust the nonmanagement wage increase for the known change in the CPI (Consumer Price Index) and to include the increase which was applicable to the twelve months following the test year. Both adjustments are consistent with the past Commission policy of matching revenues and expenses by including known and measurable changes for the 12 month period beyond the test year. The adjustment for depreciation reflects the represcription of depreciation rates which results from a three way agreement between the Company, the Federal Communications Commission (FCC) staff, and the staff of this Commission. The Company's original depreciation adjustment of \$10,650,000 has been reduced by staff to \$5,243,000 to reflect the finally resolved depreciation rates. The resulting difference is \$2,655,000, taking tax effects into consideration. The final miscellaneous adjustment was to increase revenues by \$297,000 to reflect the exchange reclassifications taking place in 1984.

The difference between the Company and staff's divestiture adjustment is \$5,000. Staff adjusted revenues by adjusting interest charged to construction due to the fact that the adjustment would have reflected an amount larger than was actually reflected on the books during the test year and has been included in the miscellaneous adjustment.

STIPULATION AGREEMENT

In the settlement agreement, the signatory parties stipulated to resolutions of all of the issues in dispute with the exception of deferred state income taxes.

All of the parties to the settlement agreement agreed accept the pro forma operating expense adjustments of staff, excluding the state deferred tax issue which will be addressed later in this report.

[1] The parties agreed that 14.25 to 15.0% is a proper range for the return on equity and recommended a point estimate of 14.40%, the midpoint of the Staff range. They agreed to use the current (January 31, 1985) capital structure which results in an overall cost of capital of 12.11%. Recognizing the need for further analysis the parties recommended that the Commission initiate an investigation of the appropriate capital structure and its associated capital cost rates to be used for ratemaking purposes for NET in New Hampshire.

[2] The parties agreed that the rate increases should be allocated on an equal percentage basis (i.e., across-the-board) in the same manner as in NET's temporary rates. NET and VOICE agreed to withdraw their rate design witnesses which, inter alia, represents by the absence of testimony in favor of a change, the agreement of the parties to continue the 10 coin phone charge and not to impose a specific inside wiring maintenance charge. Both the monthly rates and the guarantees for semi-public phones increase by the same percentage increase as all other rates. The proposal to eliminate the flat business exchange offering for new customers where measured service is

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available was accepted by the parties. This recommendation includes the grandfathering of existing subscribers to the unlimited business exchange service. Again recognizing the need for further analysis, the parties recommended that the Commission initiate an investigation of the Company's rate design.

The parties calculated two levels of rate increases after uncollectibles and Independent Company settlements depending on the Commission decision on the issue of deferred taxes: a \$20.282 million increase that assumes a \$275.983 million rate base and a \$9.825 million expense adjustment, and a \$21.46 million increase that assumes a \$275.323 million rate base and a \$10.483 million expense adjustment. Both calculations incorporate the overall cost of capital of 12.11%. All parties reserved their rights with respect to the Commission's order on deferred taxes.

The remaining points in the Stipulation Agreement dealt with procedural matters.

DEFERRED TAXES

[3] The difference in the aforementioned rate increase levels are attributable to the one remaining issue which was not a part of the stipulation agreement; i.e., deferred taxes. The Company has normalized state business profits taxes by deferring the tax difference between straight-line and accelerated depreciation. Accelerated depreciation produces a greater tax depreciation deduction in the early years of an asset's life and a smaller deduction in later years than would the use of the straight-line depreciation methodology. NET uses straight-line

depreciation for financial reporting and ratemaking purposes. Therefore, the taxes are normalized to include taxes in the year which reflect straight-line depreciation and do not reflect the fact that the actual tax liability is less. In the early years of an asset, income taxes reflect a higher amount in the cost of service than is actually paid. Theoretically, the difference, or the deferred taxes, will be used to normalize taxes so that they will be available when straight-line depreciation is higher than accelerated depreciation.

Staff witness Sullivan testified that tax normalization for state business profits taxes was not required in setting rates. Normalization is required for federal income tax purposes under the accelerated cost recovery system (ACRS) of the Economic Recovery Tax Act (ERTA) of 1981. The Company takes the position that the New Hampshire Business Profits Tax (RSA Chapter 77-A) adopted the requirements of the Internal Revenue Code since the enactment of the Tax Reform Act of 1969. NET further claims the Commission has accepted this treatment of federal and state deferred taxes in all NET rate cases since 1970. (Normalization of deferred taxes due to accelerated depreciation was not required by the Internal Revenue Code until 1981. Since January 1, 1981 accelerated depreciation could not be used on plant placed into service after that date if normalization was not allowed by a regulatory authority for ratemaking purposes).

Staff's position that the state tax benefits should be "flowed-through" to ratepayers would result in an increase of \$658,050 in net utility operating income and an increase in the average rate base from \$275,323 million to \$275,983 million. The result of staff's

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adjustment would be a revenue requirement of \$20,282 million as compared to a revenue requirement of \$21.46 million using state deferred tax normalization or \$1.178 million less.

In its brief, NET argues that normalization is required by the N.H. Business Profits Tax law. They claim that the tax was enacted at the same time as the normalization provisions of the Federal Tax Code (IRC § 167[1]) and that the tax structure begins with the definition of "gross business profits" from which, after adjustments relating to apportionment of income and deductions relating to exempt income, "Taxable Business Profits" is derived and subjected to state taxation. NET claims that the taxable amount for business profits taxes relies on the definition of taxable income for U.S. Corporation tax return as a basis for determining taxable income. They further state that because they have adopted accelerated depreciation in calculating federal income taxes and normalizing the results under the Internal Revenue Code that normalization is also required for state business profits tax purposes. Staff witness Sullivan testified that the Internal Revenue Code was used in order to arrive at taxable income and that normalization of the tax timing differences was not required. He further testified that he is aware of other utilities in the State of New Hampshire which "flow through" tax differences in the cost of service. Accelerated depreciation has not been denied utilities under the Business Profits Tax law because they were flowing-through the tax differences to ratepayers.

The Company makes a long argument about the intent of the legislature "to incorporate by reference the federal income tax method of determining taxable income". Staff witness, in effect, agrees with the Company to the degree that the federal tax code is used to determine net taxable business income. Witness Sullivan claims that normalization does not effect federal taxable

income, in as much as accelerated depreciation expense is used to calculate the same. In fact, the Business Profits Tax law does not allow federal income taxes as an allowable deduction and federal corporate income tax law does allow the Business Profits tax expense as a deduction. Business Profits Tax law does not allow investment tax credits while the Internal Revenue Code does.

The Commission is aware of vast amounts of literature that is available on the subject of the normalization of tax timing differences. Congress has had numerous hearings on the subject and has indicated the legislative intent through those hearings and the passage of tax legislation. We agree with the staff witness that the intent of Congress is not applicable to state taxation and that all aspects of federal tax legislation, such as normalization of differences between tax and book depreciation, are not automatically adopted for state tax purposes. Whether or not tax differences are normalized, the tax formula is the same for federal and state income taxes (with the exceptions previously noted). Gross taxable income does not change in any given year due to flow-through and would be the same under federal or state tax computations.

NET argues in its brief that normalization is the preferred method of accounting for income taxes under generally accepted accounting principles

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and is consistent with accrual accounting. The Commission is aware that the accounting profession is presently studying deferred taxes as part of its Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation. We will defer commenting on all of the issues until that accounting standard is finalized. This Commission has allowed NET to normalize taxes since 1970. We will therefore not require a change at this time. We will, however, follow the developments taking place within the accounting profession through the Financial Accounting Standards Board (FASB), the National Association of Regulatory Utility Commissioners and tax legislation currently under consideration, particularly the proposed change in the corporate tax rate.

Counsel for the Department of Defense has asked the Commission to consider the testimony of its witness, Woodrow E. Dooley, in arriving at a decision as to accepting the settlement agreement. The Commission has reviewed the testimony of Mr. Dooley. Several of his proposed adjustments warrant further review in the future. A full investigation by staff into the interest synchronization adjustment issue will be made. The Commission is not adopting the revenue adjustments forecasts for local and intrastate revenues and the imputation of increased revenues and investment for plant which is not fully utilized. Such adjustments are related to the principle of matching revenues and expenses and a determination of having plant available to meet the service needs of the ratepayers. The proposed adjustment for telephone directory revenues is the result of hearings by this Commission on the merits of the contractual agreement between New England Telephone and NYNEX.

The Commission will continue tracking the rate of return earned by the Company in New Hampshire. In the event that the revenue adjustments projected by DOD materialize and result in an excess return being earned, we will take steps to remedy the situation. Meanwhile we will accept the pro forma net operating income as proposed by the other parties and will include state

deferred taxes as proposed by the Company. The rate base is calculated as follows:

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

STATE OF NEW HAMPSHIRE
INTRASTATE RATE BASE

Total Telephone Plant	443,629,126	-20,834,000	422,795,126
Less: Plant Under Const.	9,227,483		9,227,483
Plant Held for Future Use	3,416		3,416
Plant in Service	434,398,227	-20,834,000	413,564,227
Less: Depreciation Reserve	106,026,320	1,942,000	104,084,320
Net Plant In Service	328,371,907	-18,892,000	309,479,907
Plus: Working Capital	7,549,456		7,549,456
Less: Deferred Taxes Pre-1971 ITC's	48,217,097	-6,908,000	41,309,097
	397,435		397,435
RATE BASE	287,306,832	-11,984,000	275,322,831

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The weighted cost of capital which is included in the settlement agreement and used to calculate the revenue requirement is as follows:

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

NEW ENGLAND TELEPHONE
COST OF CAPITAL
January 31, 1985

Amount (000)	Component Ratio	Cost Rate	Weighted Cost Rate	
Common Equity	\$2,575,839	58.45%	14.4%	8.42%
Long Term Debt	1,719,803	39.03%		
Short Term Debt	111,000	2.52%		
Total Debt	1,830,803	41.55%	8.88%	3.69%
TOTAL	\$4,406,642	100.00%	12.11%	

The revenue requirements are calculated as follows:

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

REVENUE REQUIREMENTS

Intrastate Operations
(000's)

Rate Base	\$275,323
Weighted Cost of Capital x	12.11%
Earnings Requirement	\$ 33,342
Less: Adj. Operating Income	22,806
Increased Earnings Requirement	\$ 10,536
Revenue Requirement (49.097%)	\$ 21,460

Therefore, in accordance with the above calculations, the required increase in revenues in order for the Company to earn a just and reasonable rate of return in the State of New Hampshire is \$21,460,000. The Company has been billing customers at an annual rate of increase in

revenues in the amount of \$21,627,000. The Company will be required to submit revised tariffs to effect the revised revenue requirement and to refund the amounts collected while the higher rates were in effect.

Our Order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, authorized an annual increase in intrastate revenue of \$21.460 million, said increase to become effective with all bills rendered on and after June 15, 1985; and it is

FURTHER ORDERED, that such increases be levied in an across-the-board manner similar to that authorized for temporary rates, such rates to become effective with all bills rendered on and after June 15, 1985; and it is

FURTHER ORDERED, that unlimited business service be, and hereby is, restricted to those customers currently authorized such service in their present locations, new applicants for business services to be served only on a measured basis; and it is

FURTHER ORDERED, that Docket DR 85-181 be, and hereby is, established for the purpose of investigating the capital structure of New England Telephone; and it is

FURTHER ORDERED, that Docket DR 85-182 be, and hereby is established for the purpose of investigating the rate structure of New England Telephone; and it is

FURTHER ORDERED, that NET file

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with this Commission appropriate tariff revisions to effect the increase cited above; and it is

FURTHER ORDERED, that NET file with the Commission its plan for refunding the difference between those monies received under the higher temporary rates and those authorized herein for the period from December 15, 1984 to June 15, 1985; and it is

FURTHER ORDERED, that public notice of this order be given by a onetime publication of a summary of its impact in the Union Leader; and it is

FURTHER ORDERED, that each subscriber be given notice of this order via a bill insert accompanying the first billing under the approved permanent rates.

By Order of the Public Utilities Commission of New Hampshire this third day of June, 1985.

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NH.PUC*06/04/85*[61093]*70 NH PUC 506*Policy Water Systems, Inc.

[Go to End of 61093]

Re Policy Water Systems, Inc.

DR 84-321, Order No. 17,642

New Hampshire Public Utilities Commission

June 4, 1985

ORDER rejecting revised water tariffs and granting motion to terminate docket.

By the COMMISSION:

REPORT

Policy Water Systems, Inc. (Policy) on May 22, 1985 filed a motion to terminate proceedings in this docket and in addition filed revised tariff pages to reflect rates previously accepted by Commission Order.

In its initial filing in this docket, made on October 26, 1984, Policy submitted 3rd Revised Pages 6 and 7 of Tariff NHPUC No. 1. These pages were suspended by Order No. 17,322 dated November 20, 1984. On March 12, 1985, Policy filed a motion requesting a two month postponement of these ratemaking proceedings and offered to defer exercise of its rights to put the filed proposed rates into effect under bond pursuant to RSA 378:6 for two months beyond the statutory date. The motion for postponement was granted and a revised schedule of proceedings was established by Order No. 17,512 dated March 21, 1985 (70 NH PUC 125).

We will now accept Policy's motion to terminate this docket case and its scheduled proceedings. We will also reject 3rd Revised Pages 6 and 7 of Policy's Tariff NHPUC No. 1 that were suspended by Order No. 17,322. Second Revised Pages 6 and 7, as authorized by Order No. 15,743 in docket case DR 81-229 (67 NH PUC 151), remain in effect.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the motion to terminate this docket case and its proceedings is granted effective with the date of this Report and Order; and it is

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FURTHER ORDERED, that the revised tariff pages filed with this Motion are not accepted.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1985.

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NH.PUC*06/04/85*[61094]*70 NH PUC 507*Peter Campise d/b/a Camp's Car Wash

[Go to End of 61094]

70 NH PUC 507

Re Peter Campise d/b/a Camp's Car Wash

DE 85-162, Order No. 17,643

New Hampshire Public Utilities Commission

June 4, 1985

ORDER granting interim license for the operation of a customer-owned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS; on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Peter Campise, 285 Amherst Street, Nashua, New Hampshire 03063, on May 17, 1985 filed with this Commission a Petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at Camp's Car Wash, 285 Amherst Street, Nashua, New Hampshire 03063 and at Camp's Self-Service Car Wash, 487 Amherst Street, Nashua, New Hampshire 03063; and

WHEREAS, Mr. Campise has assured the Commission that the instruments to be installed and operated are manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin 54956 and bear FCC registration number EEQ6CH14382-CX-E; and

WHEREAS, Mr. Campise also assures the Commission that his instruments meet all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Peter Campise for the operation of one COCOT to be located at each of the Nashua addresses cited above; and it is

FURTHER ORDERED, that

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noncompliance with guidelines and rules regarding the operation of COCOTs in the State of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOTs specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1985.

=====

NH.PUC*06/04/85*[61095]*70 NH PUC 508*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61095]

70 NH PUC 508

Re Continental Telephone Company of New Hampshire, Inc.

DE 85-194, Order No. 17,644

New Hampshire Public Utilities Commission

June 4, 1985

ORDER requiring telephone utility to appear and show cause for its failure to respond to a commission request for information.

By the COMMISSION:

ORDER

WHEREAS, there was a complaint filed with this Commission by one Robert Barrows against Continental Telephone Company of New Hampshire, Inc. (Continental) regarding the high cost of construction to provide telephone service to his home; and

WHEREAS, on investigation, Continental advised the Commission by telephone that the estimated cost of providing the required service is \$5,250; and

WHEREAS, the Commission by letter dated January 23, 1985, addressed to Continental, requested a breakdown of said costs; and

WHEREAS, Continental caused said information to be hand carried to the Commission Staff; and

WHEREAS, after reviewing the submitted data, the Commission requested additional information of Continental by letter dated February 25, 1985; and

WHEREAS, Continental did not respond to said request within a reasonable period of time; and

WHEREAS, the Commission sent a followup letter to Continental dated April 2, 1985 requesting a timely response; and

WHEREAS, the Commission made several subsequent telephone reminders to Continental; and

WHEREAS, Continental has not responded to either letter of February 25, 1985 or April 2, 1985 or to the subsequent telephone reminders; it is hereby

ORDERED, that Continental Telephone Company of New Hampshire, Inc. appear before this Commission at ten o'clock in the forenoon on July 2, 1985 to show cause why it should not be penalized under the provisions of

RSA 374.17 for neglecting or failing to make specific answer to questions lawfully asked by the Commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of June, 1985.

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NH.PUC*06/05/85*[61096]*70 NH PUC 509*Bridgewater Steam Power Company

[Go to End of 61096]

70 NH PUC 509

Re Bridgewater Steam Power Company

DR 85-97, Order No. 17,645

New Hampshire Public Utilities Commission

June 5, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on April 5, 1985, Bridgewater Steam Power Company (Bridgewater) filed a long term rate filing; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that Bridgewater's Petition for a Twenty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1985.

=====

NH.PUC*06/05/85*[61097]*70 NH PUC 510*Power House Systems

[Go to End of 61097]

70 NH PUC 510

Re Power House Systems

DR 85-105, Order No. 17,646

New Hampshire Public Utilities Commission

June 5, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on April 5, 1985, Power House Systems (Power House) filed a long term rate filing; and

WHEREAS, Power House filed an amendment to its filing on May 13, 1985; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Petition for Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that Power House's Petition for a Twenty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1985.

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NH.PUC*06/05/85*[61098]*70 NH PUC 511*D.J. Pitman International Corporation

[Go to End of 61098]

70 NH PUC 511

Re D.J. Pitman International Corporation

DR 85-139, Order No. 17,647

New Hampshire Public Utilities Commission

June 5, 1985

PETITION by a small power producer for approval of a long term interconnection rate agreement; conditional approval granted.

Cogeneration, § 19 — Long term contracts — Conditions — Junior liens.

Although a small power producer developing a hydroelectric site had not yet provided a junior lien on the buy out value of the site, its long term rate filing was accepted, contingent upon negotiation of a junior lien or surety bond, where the producer stated that it was now prepared to go forward with a lien offer.

By the COMMISSION:

ORDER

WHEREAS, on May 8, 1985 D.J. Pitman International Corporation (Pitman) filed a long term rate filing for the Macallen Hydroelectric Project; and

WHEREAS, Pitman filed amendments to its filing on May 9, 1985; and

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety bond or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Pitman has averred that it is prepared to offer Public Service Company of New Hampshire (PSNH) a "junior lien" on the Macallen Hydroelectric Project; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire the opportunity to respond to Pitman's Petition for Twenty-nine Year Rate Order; and

WHEREAS, Pitman's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra, in all respects other than the lien; it is therefore

ORDERED NISI, that Pitman's Petition for Twenty-nine Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet for the Macallen Hydroelectric Project are approved contingent on satisfactory

negotiation of a junior lien; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of June, 1985.

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NH.PUC*06/06/85*[61099]*70 NH PUC 512*Concord Natural Gas Corporation

[Go to End of 61099]

70 NH PUC 512

Re Concord Natural Gas Corporation

DR 83-206, Order No. 17,649

New Hampshire Public Utilities Commission

June 6, 1985

ORDER approving submission of revised tariff pages by gas utility.

By the COMMISSION:

ORDER

WHEREAS, On May 10, 1985, Concord Natural Gas Corporation filed with the New Hampshire Public Utilities Commission Sixteenth Revised Pages 13 and 14 and Seventeenth Revised Page 15 to N.H.P.U.C. Tariff No. 13 in accordance with Supplemental Order No. 17,567 issued by the Commission on April 19, 1985; and

WHEREAS, the Commission finds the submission of the revised tariff pages to conform to the Commission rules and is in the public good; it is

ORDERED, that Sixteenth Revised Pages 13 and 14 and Seventeenth Revised Page 15 to N.H.P.U.C. Tariff No. 13 submitted by Concord Natural Gas Corporation, be and hereby are, approved for effect as of January 5, 1985.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1985.

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NH.PUC*06/06/85*[61100]*70 NH PUC 513*Continental Telephone Company of Maine

[Go to End of 61100]

70 NH PUC 513

Re Continental Telephone Company of Maine

DR 85-170, Order No. 17,651

New Hampshire Public Utilities Commission

June 6, 1985

ORDER suspending tariffs providing for telephone rate increase pending investigation and decision thereon.

By the COMMISSION:

ORDER

WHEREAS on May 24, 1985, Continental Telephone Company of Maine filed with this Commission certain revisions to its Tariff No. 4 providing for an annual increase in revenues of \$2,820 (10.3%); and

WHEREAS, the Company proposes said tariff revisions become effective on June 12, 1985; and

WHEREAS, the proposed effective date is less than the 30 days specified by RSA 378:3; and

WHEREAS, it appears that such effective date precludes adequate investigation before decision thereon, which the Commission finds detrimental to the public interest; it is

ORDERED, that the following revisions to Continental Telephone Company of Maine tariff NHPUC No. 4 be, and hereby are, suspended pending investigation and decision thereon:

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

```
Section 1, 4th Revised Sheet 1
" 2, 1st " " 12
" 4, 8th " " 4
" 5, OriginalSheets24and25
    1stRevisedSheets21.1and21.3
    3rd " Sheet 17
    4th " " 21
    6th " Sheets9and14
    7th " Sheet11
    8th " Contents
Section 6, 2nd Revised Sheets7and8
    5th " ContentsandSheets1,4and6
    6th " Sheets3and5
    7th " Sheet2
" 100, 1st " " 7
    2nd " " 2
    3rd " " 3
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By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1985.

NH.PUC*06/06/85*[61101]*70 NH PUC 514*Public Service Company of New Hampshire

[Go to End of 61101]

70 NH PUC 514

Re Public Service Company of New Hampshire

Intervenor: Seacoast Anti-Pollution League

DF 84-200, 11th Supplemental Order No. 17,652

New Hampshire Public Utilities Commission

June 6, 1985

ORDER denying motion for rehearing on prior order that removed a commission imposed ceiling on Seabrook nuclear plant construction expenditures.

Procedure, § 21 — Motion for modification of order — Necessity for hearing.

When the argument contained in a motion warrants the modification of a commission order, and when substantial evidence supports that modification, it is not necessary to go through a new hearing process before granting relief. [1] p. 515.

Procedure, § 33 — Request for rehearing — Grounds for denial.

The commission denied a motion for rehearing on its grant of an electric utility's request for modification of a prior order that imposed a ceiling on Seabrook nuclear plant construction costs because: 1) there was no legal requirement for a hearing; 2) the record support existed for the commission's determination; 3) a hearing would have delayed relief to a point where a default by the utility could have been triggered; 4) the motion for rehearing did not present any evidence or argument that had not been considered by the commission in reaching its conclusions; and 5) the modification requested by the utility was consistent with the underlying conclusions of the prior order. [2] p. 516.

(AESCHLIMAN, commissioner, separate opinion, p. 517.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 10, 1985, the Commission issued Tenth Supplemental Order No. 17,601 (70 NH PUC 367) in this docket which, inter alia, granted a Request of Public Service Company of New Hampshire (PSNH or Company) for Clarification or, in the Alternative Modification of a Condition in Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164, 66 PUR4th 349). In essence, Order 17,601 removed a condition imposed in Order 17,558 imposing a ceiling on PSNH Seabrook construction expenditures of 10% of net proceeds of the Units financing

approved in *Re Public Service Co. of New Hampshire*, 69 NH PUC 522 (1984). On May 28, 1985, the Seacoast Anti-Pollution League (SAPL) filed a Motion for Rehearing. PSNH filed a response on May 31, 1985. After review and consideration, we will in this Order deny the SAPL Motion for Rehearing.

SAPL asserts that Order 17,601 is unlawful or unreasonable on the following grounds:

1) The PSNH Motion was actually

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a Motion for Rehearing which should have been treated as such; 2) The Commission could only grant such a Motion for Rehearing after notice and a hearing; 3) The Motion was granted without affording the parties an opportunity for hearing; 4) Before such a Motion could be granted, the parties should have an opportunity to be heard; and 5) Changed circumstances undermine the Commission's rationale for granting relief.

For analytic purposes, we believe that assertions 1 through 4 above are part of the same argument. Accordingly, we shall address here two issues: 1) the process for adjudicating the PSNH Motion; and 2) changed circumstances.

1. Process of Adjudication

[1] SAPL asserts that the PSNH Motion was in essence a Motion for Rehearing which could not have been granted without first affording the remaining parties an opportunity to be heard. We disagree.

Although the PSNH Motion did not request rehearing to modify a condition in Order 17,558, our rationale is not based on distinguishing the PSNH Motion from a formal Motion for Rehearing. Assuming arguendo that the PSNH Motion should be construed as a Motion for Rehearing for the purpose of modifying a condition in Order 17,558, we would not be required to provide an opportunity for other parties to be heard prior to modifying our Order. SAPL in its Motion did not provide, nor did our independent research reveal, any reference to a statute, court decision, Commission rule or Commission policy which would require the Commission to schedule a hearing before granting the PSNH Motion. When argument contained in a Motion warrants the modification of a Commission Order and when substantial evidence supports that modification, it is not necessary to go through a new hearing process to grant the relief. We routinely dispose of Motions for Rehearing both with and without further hearing and, in fact, Order 17,601 disposed of Motions for Rehearing filed by SAPL, the Conservation Law Foundation of New England, Inc. and the Consumer Advocate as well as the PSNH Motion. Each of the above referenced Motions was seriously considered on the basis of the substantial evidence in the record that had already been developed, each merited a detailed ruling by the Commission and each was treated in a manner consistent with the Commission's findings and conclusions in Order 17,558 and Order 17,601. Upon denial of the Motions for Rehearing, the rights of the parties to appeal were preserved. RSA 541:4.

Additionally, we must note that not only was a hearing unnecessary, it would have caused undue adverse consequences had it been scheduled. The record clearly lead us to find that PSNH would have had to terminate its construction contributions in mid-May in the absence of a

Commission modification of Order 17,558. Our rationale in that Order was, inter alia to maintain the status quo of construction pending the resolution of financing uncertainties of the project joint owners. A Commission failure to grant the PSNH Motion in a timely manner would have substantially disrupted the status quo by causing the projects' lead participant to default on its

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construction obligations, triggering a termination of construction. Given our findings and conclusions in DF 84-200, such consequences were neither intended nor consistent with the public good. Thus, the granting of the PSNH Motion, properly conditioned, was the only reasonable course for the Commission to take so that PSNH would not be placed in breach of its obligations and so that there would be no forced hiatus in construction. (70 NH PUC at pp. 369, 370.)

We also remain convinced that the imposition of proper conditions limits the effect of our ruling to the granting of only the relief that was necessary in this instance. Construction continues to proceed at a level of \$5 million per week; and "expenditures in excess of 10% of \$406 million shall be credited against the proposed \$525 million financing and after the issuance and sale of the proposed \$525 million in securities, restored to Public Service Company of New Hampshire for general corporate purposes and monthly accounting of the proceeds in accordance with the requirements of [Re PSNH, DF 84-167] Order No. 17,222..." (70 NH PUC at p. 368.)

We also note that SAPL's May 28, 1985 Motion for Rehearing asserted only that the Commission should not have granted the PSNH Motion without a hearing. In that sense, the Motion was a procedural assertion only. It did not contain information which SAPL believed should or would be developed in a hearing that would lead to a different result, nor did SAPL assert any reason why it might have been prejudiced by the Commission action. Such lack of specificity coupled with the existence of substantial record evidence to support the Commission action and the need to act quickly to prevent undue adverse consequences which were never intended nor consistent with the public good reinforces our finding herein that our action was lawful and reasonable. Cf., *Re Boston & Maine Corp.*, — N.H. —, — A.2d — (1985) (Motion for Rehearing must contain adequate specificity to allow the Commission to identify and understand Movant's concerns).

[2] In summary, we are denying the SAPL Motion on the allegation of unlawful or unreasonable disposition of the PSNH request because: 1) there is no legal requirement for a hearing under the instant circumstances; 2) the record support, developed in the course of 38 hearing days and 173 plus exhibits, already existed for the Commission's determination; 3) a hearing was not needed and, in this instance, would have delayed relief to the point where a default could be triggered; 4) the SAPL Motion was not specific about the need for a hearing; and 5) the modification was the only action consistent with the underlying findings and conclusions of Order 17,558.

2. Changed Circumstances

SAPL asserts that regulatory decisions in other jurisdictions plus the failure by a joint owner to make a payment when due are new circumstances which undermine the rationale for approving the modification. We disagree. If anything, the circumstances as they continue to

evolve, reinforce our rationale of maintaining the status quo of Seabrook construction until financial uncertainties can be resolved. Additionally, we must note that we found in Order 17,558 that PSNH's continued participation of the Seabrook project is

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consistent with the public good. Order No. 17,601 charts the prudent regulatory course of maintaining the status quo of construction pending resolution of the financing uncertainties confronting several of the joint owners. The Motion for Rehearing presents no evidence or argument which had not previously been seriously considered in reaching our conclusions. Accordingly, it will be denied on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is ORDERED, that the Motion For Rehearing of Seacoast Anti-Pollution League be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1985.

SEPARATE OPINION OF COMMISSIONER AESCHLIMAN

I did not agree with the decision in Tenth Supplemental Order No. 17,601 (70 NH PUC 367) to remove on an open ended basis the ceiling imposed in Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164, 69 PUR4th 349) as reflected in my separate opinion in Order 17,601. I would have required PSNH to present additional evidence at the end of June so that the Commission could assess the effect on the findings and conclusions of Order 17,558 of the updated status of financing and regulatory decisions affecting the Seabrook joint owners.

The requirement that expenditures in excess of 10% of \$406 million shall be credited against the proposed \$525 million financing will only be operative if the other conditions are met and the financing is ultimately completed. In addition, continued delays in achieving full construction will invalidate the factual basis for the findings in Order 17,558. Consequently, I believe a further hearing should be scheduled to address these issues.

I agree with the majority that the process of adjudication was lawful and reasonable.

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NH.PUC*06/06/85*[61102]*70 NH PUC 518*New Hampshire Electric Cooperative, Inc.

[Go to End of 61102]

70 NH PUC 518

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 18th Supplemental
Order No. 17,653

New Hampshire Public Utilities Commission

June 6, 1985

ORDER denying motion for rehearing on prior order that had granted emergency financing authority to electric utility for Seabrook construction.

(AESCHLIMAN, commissioner, concurs, p. 520.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 10, 1985, the Commission issued Report and Sixteenth Supplemental Order No. 17,599 (70 NH PUC 363) in this docket which, inter alia, granted a request of the New Hampshire Electric Cooperative, Inc. (NHEC or Company) for emergency authority to borrow an additional \$2,682,017 out of the previously approved and remanded \$111,000,000. On May 24, 1985, Representative Roger Easton, pro se, filed a Motion for Rehearing. After review and consideration, we will in this Order deny the Motion for Rehearing.

The Motion asserts that Order 17,599 was unlawful or unreasonable on the following grounds:

- 1) The reasons for objecting to previous emergency financings and to the instant emergency financing remain valid;
- 2) Circumstances have changed; and
- 3) The NHEC's agreement with Public Service Company of New Hampshire not to pursue aggressively electricity from small power producers renders the NHEC ineligible for relief because it has "unclean hands".

We shall address each assertion in turn.

1. Previous Objections

Representative Easton asserted that he was correct in his previous objections to this and other NHEC emergency financings. No new argument in support of those objections was submitted. We fully considered those objections in our previous Orders and came to a decision based on the record evidence. The Court sustained our analysis. *Re McCool*, 125 N.H. —, — A.2d

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— (1985). We find nothing in either the record or in the submitted argument to cause us to disturb our finding that the public good is best served by maintaining the status quo of continuing Seabrook construction until the financing issues are resolved. This conclusion was the result of a careful balancing of the risks and benefits of incurring additional incremental debt against the risks and benefits of defaulting on obligations to the mortgage lender and the joint owners. Our analysis in resolving the merits of the issues remanded in *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984), Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422),

continues to leave us convinced that the adverse consequences of default outweigh the risk of maintaining the status quo.

2. Changed Circumstances

Representative Easton asserted that regulatory decisions in other jurisdictions plus the failure by a joint owner to make a payment when due are new circumstances which undermine the rationale for approving the emergency financing. We disagree. If anything, the circumstances as they continue to evolve, reinforce our rationale of maintaining the status quo of Seabrook construction until financial uncertainties can be resolved. Additionally, we must note that we found in Order 17,638 that the NHEC's continued participation in the Seabrook project is consistent with the public good. Order 17,599 charts the prudent regulatory course of maintaining construction pending resolution of the financing uncertainties confronting several of the joint owners. The Motion for Rehearing presents no evidence or argument which had not previously been seriously considered in reaching our conclusions. Accordingly, it will be denied on this ground.

3. Unclean Hands

Representative Easton asserted that the NHEC's agreement not to pursue aggressively purchases from small power producers renders the NHEC ineligible for relief. At best, Representative Easton's argument is directed at an issue that goes to the merits of the proceeding; merits that were considered in accordance with *Re Easton, supra*. The emergency financing authority is to allow the NHEC to meet its obligations while the Easton merits are adjudicated. Since we could not have prejudged the issue as a part of an interim emergency financing proceeding and since, in any event, we have subsequently found that the contested provision cannot be construed in a manner that violates public policy (70 NH PUC 422), we cannot find that the NHEC has come to us with unclean hands and that the NHEC is not entitled to equity in our determination of its Petition. The Motion for Rehearing will be denied on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Representative Roger Easton be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1985.

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CONCURRING OPINION OF COMMISSIONER AESCHLIMAN

I concurred in Sixteenth Supplemental Order No. 17,599 (70 NH PUC 363) granting interim emergency financing authority to maintain the status quo until June 30, 1985. Representative Easton's Motion for Rehearing contains no information or argument which I had not previously considered in arriving at my decision. Accordingly, I concur in the ruling of the majority to deny the Motion for Rehearing.

My difficulty with the majority decision is that it relies, to some extent, on the Commission's

findings and conclusions in Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422). Since I filed a separate opinion on that decision of the merits, I do not wish for my decision herein to be construed as a ratification of the majority position reflected in Order 17,638. I believed that the emergency financing to maintain the status quo until June 30, 1985 was in the public good; however, I would have scheduled a further hearing at the end of June so that we could ensure that our findings continue to be valid given the rapidly evolving events affecting the financial and regulatory situations of the Seabrook joint owners.

With respect to Representative Easton's assertion pertinent to the agreement not to pursue aggressively small power production, I concur in the majority's rationale that the assertion is directed at the merits, rather than to an interim emergency financing. My views on the merits are reflected in my separate opinion in Order 17,638.

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NH.PUC*06/06/85*[61103]*70 NH PUC 521*New Hampshire Electric Cooperative, Inc.

[Go to End of 61103]

70 NH PUC 521

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 19th Supplemental
Order No. 17,654

New Hampshire Public Utilities Commission

June 6, 1985

ORDER denying motion for rehearing on prior order that had granted emergency financing authority to electric utility for Seabrook construction.

(AESCHLIMAN, commissioner, concurs, p. 523.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 10, 1985, the Commission issued Report and Sixteenth Supplemental Order No. 17,599 (70 NH PUC 363) in this docket which, inter alia, granted a request of the New Hampshire Electric Cooperative, Inc. (NHEC or Company) for emergency authority to borrow an additional \$2,682,017 out of the previously approved and remanded \$111,000,000. On May 31, 1985, Gary McCool, pro se, filed a Motion for Rehearing. After review and consideration, we will in this Order deny the Motion for Rehearing.

The Motion asserts that Order 17,599 was unlawful or unreasonable on the following grounds:

- 1) The reasons for objecting to previous emergency financings and to the instant emergency

financing remain valid;

2) The Commission placed too much weight on the consequences of default when balancing the risks and benefits of either granting or denying the emergency request;

3) The Commission did not adequately investigate whether funds in "temporary investments" could meet the NHEC's needs;

4) Circumstances have changed.

We shall address each assertion in turn.

1. Previous Objections

Mr. McCool asserted that he was correct in his previous objections to this and other NHEC emergency financings. No new argument in support of those objections was submitted. We fully considered those objections in our previous Orders and came to a decision based on the record evidence. The Court sustained our analysis. *Re McCool*, 125 N.H. —, — A.2d — (1985). We find

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nothing in either the record or in the submitted argument to cause us to disturb our finding that the public good is best served by maintaining the status quo of continuing Seabrook construction until the financing issues are resolved. This conclusion was the result of a careful balancing of the risks and benefits of incurring additional incremental debt against the risks and benefits of defaulting on obligations to the mortgage lender and the joint owners. Our analysis in resolving the merits of the issues remanded in *Re Easton*, 125 N.H. 205, 480 A.2d 88 (1984), Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422), continues to leave us convinced that the adverse consequences of default outweigh the risk of maintaining the status quo.

2. Consequences of Default

Mr. McCool argued that the record does not support the Commission's findings on the consequences of default. We have reviewed the record and we continue to be convinced that there is a substantial risk of adverse consequences, including those of default to the NHEC's lender and to the joint owners. Our findings are supported by evidence which had been in the record prior to the remand, see e.g., Exhs. 1 and 6-15, as well as evidence developed in the course of the remand proceedings. See e.g., Exh R-23. The Motion for Rehearing did not raise new argument or reference evidence not previously considered by the Commission. Since we continue to be satisfied that we correctly balanced the risks and benefits, we will deny the Motion for Rehearing on this ground.

3. "Temporary Investments"

Mr. McCool contended that the Commission failed to ascertain whether the funds held as "temporary investments" could be applied to the NHEC's construction needs. We are cognizant of the NHEC funds held as temporary investments. The record reflects that those funds are, inter alia, funds to maintain TIER requirements, overrecovery of fuel adjustment charges to be refunded to ratepayers and funds borrowed from the U.S. government for construction purposes

which are committed, but not disbursed. See e.g., Transcript of January 5, 1985 at 131135, 2 Tr. 252-254. Mr. McCool has not previously argued that such general funds should be applied to construction. In any event, given the fact that temporary investments are funds committed to, inter alia, particular distribution projects and ratepayers (Id.), and given the Commission's balancing of the risks and benefits of either granting or denying the NHEC emergency request, we believe that the decision to allow the NHEC the authority to borrow to maintain the status quo is reasonable and consistent with the public good.

4. Changed Circumstances

Mr. McCool asserted that regulatory decisions in other jurisdictions plus the failure by a joint owner to make a payment when due are new circumstances which undermine the rationale for approving the emergency financing. We disagree. If anything, the circumstances as they continue to evolve, reinforce our rationale of maintaining the status quo of Seabrook construction until financial uncertainties can be resolved. Additionally, we must note that we found in Order 17,638 that the NHEC's

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continued participation in the Seabrook project is consistent with the public good. Order 17,599 charts the prudent regulatory course of maintaining construction pending resolution of the financing uncertainties confronting several of the joint owners. The Motion for Rehearing presents no evidence or argument which had not previously been seriously considered in reaching our conclusions. Accordingly, it will be denied on this ground.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is ORDERED, that the Motion for Rehearing of Gary McCool be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1985.

CONCURRING OPINION OF COMMISSIONER AESCHLIMAN

I concurred in Sixteenth Supplemental Order No. 17,599 (70 NH PUC 363) granting interim emergency financing authority to maintain the status quo until June 30, 1985. Gary McCool's Motion for Rehearing contains no information or argument which I had not previously considered in arriving at my decision. Accordingly, I concur in the ruling of the majority to deny the Motion for Rehearing.

My difficulty with the majority decision is that it relies, to some extent, on the Commission's findings and conclusions in Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422). Since I filed a separate opinion on that decision of the merits, I do not wish for my decision herein to be construed as a ratification of the majority position reflected in Order 17,638. I believed that the emergency financing to maintain the status quo until June 30, 1985 was in the public good; however, I would have scheduled a further hearing at the end of June so that we could ensure that our findings continue to be valid given the rapidly evolving events affecting the financial and regulatory situations of the Seabrook joint owners.

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NH.PUC*06/07/85*[61104]*70 NH PUC 524*Public Service Company of New Hampshire

[Go to End of 61104]

70 NH PUC 524

Re Public Service Company of New Hampshire

Intervenors: Community Action Program and Campaign for Ratepayers' Rights

DR 84-131, Order No. 17,655

New Hampshire Public Utilities Commission

June 7, 1985

ORDER finding that a force majeure clause did not exempt an electric utility from liability for plant conversion delays caused by credit problems.

Construction and Equipment, § 8 — Costs — Plant conversions — Liability for delay — Force majeure provisions.

Where an electric utility had failed to meet its construction schedule in converting an oil-burning generating unit to a coal-fired unit, allegedly because of an unforeseen credit and liquidity crisis, the utility was not permitted to avoid liability for the delay on a force majeure basis, because force majeure provisions mitigate liability for unforeseen acts of God or work stoppages beyond a company's control, but do not mitigate liability because of problems with financing, as in this case, where the utility had recognized early on the dangers in its financing arrangement for the conversion project but had taken no steps to insure itself against those known possible credit problems.

APPEARANCES: D. Pierre G. Cameron, Jr., Esquire and Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esquire for Public Service Company of New Hampshire; Gerald M. Eaton, Esquire for Community Action Program; Larry S. Eckhaus, Esquire for the Campaign for Ratepayers' Rights; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This docket was opened by Order of Noticed dated June 1, 1984 for the purpose of investigating, inter alia, Public Service Company of New Hampshire's (PSNH or Company) plans for the conversion of Schiller Station from oil-burning to coal-burning as required by, inter alia, Re Conversion of Schiller Stations, 67 NH PUC 741 (1982). The Order of Notice was issued on the Motion of the Commission because it had received notice that the conversion of the Schiller Stations had been suspended. See e.g., Exh. 1. Pursuant to the Order of Notice a hearing

was held on June 18, 1984.

As noted above, the purpose of this proceeding was, inter alia, to investigate PSNH's plans to complete the conversion of the Schiller Units from oil to coal. Prior to the Spring of 1984, that conversion was proceeding more or less

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on schedule at the projected budget. However, due to the Company's Spring, 1984 liquidity crisis, construction was suspended. Accordingly, the Commission opened this docket so that it could be fully informed about the situation at Schiller and take appropriate action. Subsequent to the hearing, the Company was able to complete several financings¹⁽²³⁸⁾ and, as a result, work on the Schiller conversion has resumed. The ultimate cost of the conversion on which recovery may be based and the method of recovery are issues to be addressed in subsequent proceedings as the conversion is completed.²⁽²³⁹⁾ The purpose of this Order is to resolve the open issue remaining in this docket: whether PSNH was relieved of its obligation to complete the conversion on schedule by the force majeure provisions of the settlement agreement.³⁽²⁴⁰⁾ *Re Conversion of Schiller Stations, supra*. We note that evidence was taken on the force majeure issue during the hearing of June 18, 1984 and that written argument was filed by PSNH and Community Action programs (CAP) on August 6, 1984.

As noted above, the issue involves PSNH's obligation to complete the Schiller conversion pursuant to a defined schedule. The Settlement Agreement provided at 7 that:

The first unit will begin commercial operation on August 31, 1984. The second unit will begin commercial operation on October 31, 1984. The third unit will begin commercial operation on December 31, 1984.

Those deadlines were reinforced by the use of incentives for early conversion and penalties for late conversion. Generally, the Settlement Agreement provided that if commercial operation is commenced outside a grace period (one month before and after the target date), the Company could retain one half of the fuel savings resulting from the conversion if the conversion was early and it must credit the ratepayers for one half of the fuel savings forgone (i.e., the fuel savings which would have occurred had there been a timely completion of the conversion) if the conversion was late. The amount of the reward or penalty was limited to a period of six months prior or subsequent to the grace period. See generally, Settlement Agreement at 7-9. The Settlement Agreement also provided a mechanism to relieve the Company of the obligation to complete the conversion on schedule and, accordingly, to relieve the company of any late conversion penalties resulting from delay. Specifically, the Company may be relieved if the delay is the result of a force majeure. For the purposes of the Settlement Agreement, a force majeure was defined at 9-10 as follows:

The term "force majeure" as here employed shall mean an act of God, strike, lockout, or other industrial disturbance, act of public enemy, war,

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blockade, public riot, lightning, fire, storm, flood, explosion, and any other cause, whether of

the kind specifically enumerated above or otherwise, which is not in reasonable contemplation and is beyond the control of the Company.

The record in this proceeding establishes that the conversion was not completed on schedule. Accordingly, in the absence of a force majeure, the late conversion penalty applies. PSNH contends that the delay is the result of a force majeure. CAP contends that the force majeure provisions of the Settlement Agreement are not applicable and, accordingly, the late conversion penalty should be imposed.⁴⁽²⁴¹⁾

There is no argument that the force majeure in this instance arises from an "...act of God, strike, lockout or other industrial disturbance, act of public enemy, war, blockade, public riot, lighting, fire, storm, flood, [and] explosion,...". Rather, PSNH contends that the force majeure resulted from an unanticipated termination of access to the financial markets; a circumstance that was "not in the reasonable contemplation and...[was] beyond the control of the Company." The termination of access to the financial markets occurred when PSNH's short-term lenders, upon notification of PSNH's March 1, 1984 estimate of the completion cost and schedule of Seabrook, told the Company that they would not allow it to draw on its line of short term credit. The lack of short term financing made the marketing of long term instruments impossible on a "business as usual" basis. PSNH's position is that since it could not reasonably contemplate a situation where bank credit would be unavailable and since it had no control over the availability of bank credit, the force majeure provision relieves the Company from its scheduling obligations.

CAP disagrees with the PSNH analysis. CAP contends that the particular mechanisms in the Settlement Agreement were established for the purpose of addressing the financial uncertainty faced by PSNH. The Company had an opportunity to take advantage of the rate mechanisms in the Settlement Agreement to obtain financing, but declined to engage in separate Schiller financing. CAP's position is that since PSNH's financial difficulties had been contemplated and since PSNH had control over the type of financing utilized, the liquidity crisis of the Spring of 1984 is not a force majeure as defined in the Settlement Agreement.

On review of the record and the parties' argument, we find that the consequences of PSNH's financial exposure were matters within the reasonable contemplation of the parties at the time the Settlement Agreement was executed and that the particular method of financing the Schiller conversion was within the control of the Company. Accordingly, we conclude that PSNH's failure to adhere to the schedule established in the Settlement Agreement is not excused by a force majeure.

The Settlement Agreement and the Mediator's Report establish on their face PSNH's October, 1982 concern about its ability to finance the Schiller conversion.

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The Settlement Agreement states at 2:

One primary concern was the ability to finance the project at the lowest reasonable cost and to avoid potential delays in the conversion due to financing.

The Mediator's Report explains the concern at 9-10:

A major challenge facing the participants was PSNH's need to enhance its ability to obtain

financing for the conversion. With the Company's traditional financing modes strained by the construction of Seabrook and with the unstable condition of the money markets, the most promising approach appeared to be some form of project (or trust) financing. In that arrangement, one or more financing sources would supply the funds strictly for the conversion with the repayment supported by an identifiable and reliable stream of revenues. The financier would have reasonable assurance the funds would flow from the ratepayers to the Company and directly on to the financier with limited chance of interruption.⁵⁽²⁴²⁾

The "fixed adder" rate mechanism adopted in the Settlement Agreement was a direct response to the financing concern. Specifically, the purpose of the fixed adder was articulated in the Settlement Agreement at 4-5 as follows:

In order to enhance the Company's access to a source of capital to finance the conversion of Schiller Station from an oil-burning facility to a coal-burning facility the parties recommend that the Company be allowed to collect the total costs of conversion over an accelerated period starting when the Schiller units begin burning coal and are accepted for dispatch by NEPEX. Such costs of conversion are intended to be collected through an adder or surcharge (the Fixed Adder) to the Energy Cost Recovery Mechanism (ECRM) component of the Company's basic rates.

The connection between the Company's financing concerns and the specific rate mechanism adopted is further explained in the Mediator's Report at 13-14:

... The parties felt that a fixed adder which was collected as a percentage of total company sales would provide a more predictable stream of revenue to pay back borrowed funds and would therefore be the most attractive rate mechanism from an investor's viewpoint. At the same time, it was the intent of the parties to provide the Company with this stream of revenue in a manner that could be utilized in connection with innovative financing arrangements.

Thus, a fixed adder based on PSNH total retail sales emerged as a key component in the agreed-upon rate mechanism. It will allow the

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Company to collect the total costs of conversion (sic) over a period of approximately five years following the commencement of coal burning and dispatch of the units by NEPEX. Collection will be through a regular addition to the ECRM component of the Company's basic rates.

We believe that the concerns expressed in the Settlement Agreement, the Mediator's Report and Exh. 2 sufficiently establish that the Company reasonably contemplated financing difficulties associated with the conversion. The Company argued that it could not have reasonably foreseen the particular reaction of its creditors to increased Seabrook cost and schedule estimates.⁶⁽²⁴³⁾ The difficulty with the Company's argument is that if accepted, it would require a degree of foresight into future events that is unduly detailed and, accordingly, could never be satisfied. In essence, the Company is arguing that it had to contemplate precisely what adverse events would occur. We find that it was sufficient to foresee the type of difficulties encountered. Further, the Company's argument that a force majeure exists is based on the

assumption that the bankers reaction to the March 1, 1984 Seabrook estimates was the earliest in the series of events causing the force majeure. Tr. at 150-152. However, the Company's ability to foresee those types of difficulties, as reflected in the Settlement Agreement and the Mediator's Report, leads us to reject the assertion that PSNH could have done nothing to predict and address the need for stable financing of the Schiller conversion until after the time the Company's line of credit was withdrawn.

We therefore find that the Company had the ability to control the financing of the Schiller conversion to an extent that could have allowed it to meet the completion schedule. As noted previously, the fixed adder rate mechanism was adopted for the very purpose of allowing the Company to engage in some type of innovative project financing. The record reflects that the Company was under no obligation to select a particular type of financing. See e.g., Mediator's Report at 10-11;⁷⁽²⁴⁴⁾ Tr. at 170-171. The discretion to design and engage in particular types of financing to complete the conversion resided in the first instance, as it should, with the Company's management. However, the broad scope of management discretion carries with it an accountability if adverse events occur. In the instant matter, it is clear that

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management declined to pursue innovative project financing approaches despite the fact that financing difficulties were foreseen. See e.g., Tr. at 123-127. As a result, PSNH did not insulate the Schiller conversion from its other financing difficulties, but rather allowed the conversion to be delayed directly because of those difficulties. Since the selection of a particular financing mechanism from the range of alternatives was a matter within the control of the Company, the delay caused by that decision cannot be found to be outside the control of the Company.

The Company argued that it could not control the decision of its bankers to withdraw credit. That issue is not determinative and need not be decided here. The issues of PSNH's agreement to the amendment to its credit line in April 1983, supra at n. 6, and its control of and accountability for other matters that affected its financial health and consequently its ability to complete the conversion on schedule are matters which could arise in the course of a prudency determination. Such a determination will of course be made when the amount of the conversion costs on which recovery could be based are calculated. However, we are not engaged here in a prudency determination. Our findings are limited to the proper interpretation of the force majeure provision of the Settlement Agreement. Our analytical framework is accordingly more in the nature of construing a contract than an application of general prudency principles. In this context, we find that the events which caused the delay in the completion of the conversion were reasonably contemplated by and within the control of the company. Thus, we conclude that the force majeure provision of the Settlement Agreement did not relieve the Company of its obligation to complete the conversion within the defined time schedule.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that PSNH is not relieved of its obligation to complete the conversion of

Schiller Units 4, 5 and 6 from oil-burning to coal-burning within the schedule established in the Settlement Agreement by the force majeure provisions of the Settlement Agreement; and it is

FURTHER ORDERED, that this docket be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1985.

FOOTNOTES

¹Re Public Service Co. of New Hampshire, 69 NH PUC 558 (1984), aff'd Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984); Re Public Service Co. of New Hampshire, 69 NH PUC 275 (1984), appeal pending, Re Campaign for Ratepayers' Rights, Docket Nos. 84-325, 84-379, 84-313.

²See e.g., Re Public Service Co. of New Hampshire, 70 NH PUC 24 (1985); 70 NH PUC 66 (1985); Secretarial Letter of May 14, 1985.

³The Commission took administrative notice of the Recommendations of the Parties Concerning the Schiller Coal Conversion, October 22, 1982 (Settlement Agreement) and the Report of the Mediator to the New Hampshire Public Utilities Commission, October 22, 1982 (Mediators Report) which were Exhs. M and N respectively in Re Conversion of Schiller Stations, supra. See, Tr. at 105. ⁴We note that there is no allegation of noncompliance with other aspects of the Settlement Agreement. For example, the Company promptly informed the Commission in writing of the facts causing the delay. Exh. 1. Additionally, the parties have had several opportunities to meet to agree on whether or not the delay was caused by a force majeure and to recommend a change in the schedule for conversion. No such agreements have been proffered to the Commission.

⁵PSNH's concern about its ability to finance the Schiller conversion from general corporate funds as distinguished from some type of project financing is also reflected in the June 25, 1982 preliminary financial feasibility study by Kidder, Peabody & Co., a portion of which is Exh. 2 in this docket. PSNH claims that Exh. 2 is addressed to bankruptcy rather than unavailability of credit and that PSNH was not a party to that particular document. However, the record reflects that the feasibility study was prepared for PSNH at its request. Tr. at 155. Additionally, we do not believe that PSNH intended to argue that bankruptcy and unavailability of credit are unrelated.

⁶The record reflects that the Company's bankers requested an amendment of the short term credit agreement to address the banks' concerns that Seabrook costs may continue to escalate. Thus, on April 25, 1983, PSNH agreed to an amendment which stated that it would no longer be entitled to borrow further sums if there was a material variance from the base case Seabrook construction forecast unless two thirds of the participating banks agreed to a waiver. Tr. at 167-168. To accept the PSNH contention that the termination of short term credit was not in reasonable contemplation, we would have to find that management agreed to an amendment to its credit agreement which it believed had no meaning or weight and represented no increased risk despite the fact that the amendment was proposed by the bankers themselves after the revolving credit agreement had been in effect for a significant period of time.

7"Given the unprecedented nature of this [ratepayer's trust financing] proposal, the participants concluded, after lengthy consideration, that it would be beyond the scope and intent of their negotiations to recommend any particular means of enhancing the financing of the conversion other than through rate design. At the same time, the consensus of the participants was that the rate mechanisms recommended in the Settlement Agreement should be flexible enough to accommodate innovative financing approaches while, in any event, resulting in an enhancement of the Company's ability to raise capital."

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NH.PUC*06/10/85*[61106]*70 NH PUC 534*David C. Dion d/b/a Dairy Queen Brazier

[Go to End of 61106]

70 NH PUC 534

Re David C. Dion d/b/a Dairy Queen Brazier

DE 85-164, Order No. 17,663

New Hampshire Public Utilities Commission

June 10, 1985

ORDER certifying a customer-owned, coin-operated telephone service on an interim basis.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, David C. Dion, dba Dairy Queen Brazier, 715 Second Street, Manchester, New Hampshire 03102 on May 17, 1985 filed with this Commission a Petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at 715 Second Street, Manchester, New Hampshire 03102; 119 Ferry Street, Hudson, New Hampshire 03051; and 38 Broad Street, Nashua, New Hampshire 03060; and

WHEREAS, Mr. Dion assured the Commission that the instruments to be installed and operated are manufactured by International Communications, Inc. 1336 American Drive, Neenah, Wisconsin 54596 and bear FCC registration number EEQ-6CH-14382CX-E; and

WHEREAS, Mr. Dion also assures the Commission that his instruments meet all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to David C. Dion for the operation

of one COCOT to be located at each of the addresses cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules regarding the operation of COCOTs in the State of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOTs specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1985.

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NH.PUC*06/11/85*[61107]*70 NH PUC 535*Merrimack County Telephone Company

[Go to End of 61107]

70 NH PUC 535

Re Merrimack County Telephone Company

Additional petitioner: MCT, Inc.

DF 84-284, Order No. 17,665

New Hampshire Public Utilities Commission

June 11, 1985

ORDER authorizing the corporate reorganization of a local exchange telephone utility and the formation of a holding company.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Formation — Commission power over utility dealings.

A local exchange telephone utility was authorized to establish a holding company whereby all the common stock of the utility would be exchanged for the common stock of the holding company; any agreements or contracts for the provision of services by the holding company to or for the benefit of the utility must be submitted to the commission in accordance with and pursuant to RSA Chapter 366, which gives the commission wide and encompassing powers over relationships, arrangements and contracts between utilities and their affiliates.

APPEARANCES: For the petitioner, Douglas S. Hatfield, Jr., Esquire; for the staff, Eugene F. Sullivan, Finance Director, Michael Burke, Bruce B. Ellsworth, Chief Engineer, and Wynn Arnold, Executive Director and Secretary.

By the COMMISSION:

REPORT

On September 28, 1984 Merrimack County Telephone Company submitted a joint petition of Merrimack County Telephone Company and MCT, Inc. for authority of MCT, Inc. to acquire one hundred percent of the outstanding common stock of Merrimack County Telephone Company and to form a holding company, whereby Merrimack County Telephone Company would become a wholly owned subsidiary of MCT, Inc.

On November 28, 1984 an Order of Notice was issued setting a hearing for December 27, 1984 at 10:00 a.m. Notices were sent to Douglas S. Hatfield, Jr., Esquire (for publication); Alderick O. Violette, President, Merrimack County Telephone Company; and the Office of the Attorney General.

On December 18, 1984 the Petitioner provided a certified copy of the Order of Notice which had been published in the Concord Monitor on December 10, 1984.

The Petitioners presented testimony by Alderick O. Violette, President of Merrimack County Telephone Company and Douglas S. Hatfield, Jr., Secretary of Merrimack County Telephone

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Company together with exhibits reflecting the organizational chart of the Telephone Company and the financial statements, both actual and pro forma of the Telephone Company and the proposed holding company and the financial arrangements proposed and existing between the holding company and the Telephone Company. The testimony and exhibits presented a plan of reorganization for the Merrimack County Telephone Company which would include the establishment of MCT, Inc. as a New Hampshire corporation which would exchange its common stock for the outstanding common stock of the Merrimack County Telephone Company thereby making the Telephone Company a wholly-owned subsidiary of MCT, Inc.

Company witnesses testified that the management and operations of the telephone company would be unchanged by the change in ownership. The witnesses testified that there were no plans to assign the managerial responsibility of the telephone company to the holding company and that the holding company would not be a financier for the operating telephone company. The Company further acknowledged that RSA 366 would require any contract or arrangement to provide services between the holding company and other affiliates with the telephone company be subject to review by the Commission. This procedure allows the Company and its customers, which the Company might not be able to afford if it wasn't for sharing these people with the business opportunities in the unregulated activities. The Company represented that the customers and ratepayers of the Telephone Company would benefit from the opportunity to participate in expanded technological business and personal opportunities which might not otherwise be available in the rural communities which the Telephone Company services.

The Company presented testimony to the effect that the holding Company will not be an operating company and will not participate in the decisionmaking management responsibility of the telephone operations.

The Commission is very concerned about the abuses that can arise from a holding company relationship. A primary concern is that diversification into non-regulated activities can result in subsidization. In this case, where two or more subsidiaries are using common services, the

Commission will require the Company to file contracts for services and will further instruct the staff to investigate those contracts and audit all transactions periodically to determine that there is no subsidization. Another area of concern is the effects of financial transactions between the holding company, the utility, and other non-utility subsidiaries. In setting rates, the Commission will consider any leveraging of funds between the holding company and the utility. A direct result of setting up a holding company in order to diversify is to reflect any unsuccessful non-utility subsidiary results in the overall risk assigned to the cost of capital. That impact will be examined as the holding company enters into non-utility ventures.

Merrimack County Telephone Company presently has a wholly-owned subsidiary, which is engaged in the cable television business. That subsidiary was set up by the investment of \$250,000 in common stock. As of December 31, 1984 the telephone Company had advanced \$127,501 to the cable company. We are concerned that utility funds are

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being used to diversify into non-utility businesses and will expect the company to submit a schedule for the repayment of the advances along with an interest rate to be applied on the balances.

While the Company has assured the Commission that there will be no attempt to change the operations of the telephone Company, we must emphasize that pursuant to RSA 366 this Commission is given wide and encompassing powers over relationships, arrangements and contracts between utilities and their affiliates.

We conclude that the proposed establishment of a holding company and reorganization, whereby 100 percent of the stock of the Merrimack County Telephone Company will be owned by MCT, Inc., will result in a separation of utility and non-utility business. That separation would provide protection to the ratepayers from business risks associated with the unregulated activities.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Merrimack County Telephone Company be, and hereby is, authorized to establish a holding company to be known as MCT, Inc. whereby all of the outstanding common stock of Merrimack County Telephone Company will be exchanged for common stock of MCT, Inc. upon the terms and conditions as set forth in the plan of acquisition, which plan is determined to be consistent with and for the public good; and it is

FURTHER ORDERED, that the plan of stock exchange and establishment of the holding company is hereby authorized, approved and allowed; and it is

FURTHER ORDERED, that any agreements or contracts for the providing of services by MCT, Inc. to or for the benefit of Merrimack County Telephone Company shall be submitted to the New Hampshire Public Utilities Commission pursuant to RSA Chapter 366 and in accordance with and pursuant to the procedures set forth therein; and it is

FURTHER ORDERED, that a plan for repayment of outstanding advances to MCT Communications, Inc. will be submitted, along with the terms and conditions of said agreement.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1985.

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NH.PUC*06/11/85*[61108]*70 NH PUC 538*Bio-Energy Corporation

[Go to End of 61108]

70 NH PUC 538

Re Bio-Energy Corporation

Intervenors: Public Service Company of New Hampshire and Whitefield Power and Light, Inc.

DR 85-157, Order No 17,666

New Hampshire Public Utilities Commission

June 11, 1985

ORDER granting motion to reopen hearing on cogeneration rate filing and denying motion for intervention.

Procedure, § 33 — Rehearings and reopenings — Grounds for granting.

Despite finding that its notice of hearing on a cogeneration rate filing was legally sufficient, the commission granted a motion to reopen the proceeding where the particular circumstances surrounding the issuance of the notice — i.e., 1) the confusion of two orders of notice, 2) the publication of the notice on a holiday, and 3) an expedited schedule — were found to warrant the scheduling of a further hearing day to ensure that all interested persons would not be foreclosed from an opportunity to be heard. [1] p. 539.

Parties, § 18 — Intervenors — Right to intervene — Statutory requirements.

State statute RSA 541-A provides that motions to intervene in commission proceedings must be granted if: 1) the motion is submitted in writing to the commission or the presiding officer, with copies mailed to all parties named in the commission's or presiding officer's notice of hearing, at least 3 days before the hearing; 2) the motion states facts demonstrating that the movant's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or the movant qualifies as an intervenor under any provision of law; and 3) the commission or 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. [2] p. 540.

(AESCHLIMAN, commissioner, dissents, p. 541.)

APPEARANCES: Brown, Olson and Wilson by Robert A. Olson, Esquire for Bio-Energy Corporation; Catherine E. Shively, Esquire for Public Service Company of New Hampshire; Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire for Whitefield Power and Light, Inc.; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On May 17, 1985, Bio-Energy Corporation (Bio-Energy) filed a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). On that same day, Public Service Company of New Hampshire (PSNH), the

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purchaser of the output of the Bio-Energy facility, submitted comments. On May 21, 1985, the Commission issued an Order of Notice to the parties scheduling a hearing for June 18, 1985. Prior to the publication of that Order of Notice, Bio-Energy asserted that it was in financial distress and needed an expedited schedule. Accordingly, the Commission on May 28, 1984 issued an Order of Notice with publication waiving its 17 day notice requirement and scheduling a hearing for June 3, 1984. N.H. Admin. Rules, Puc 201.05 and 203.01. At the hearing, evidence was submitted through the testimony and exhibits of Herman Jacobs and Daniel Nigrosh for Bio-Energy; Wyatt Brown for PSNH; and Mark Collin for the Staff of the Commission. In addition, members of the concerned Citizens of West Hopkinton filed a limited appearance and made a public statement pursuant to N.H. Admin. Rules, Puc 203.03. Additional information requested of Bio-Energy by the Commission was submitted and made a part of the record on June 5, 1985.

[1] On June 7, 1985, Whitefield Power & Light, Inc. (Whitefield) filed a Motion for Intervention and Reopening of Hearings. Whitefield asserted that:

- 1) the notice of the June 3, 1985 hearing was insufficient and defective;
- 2) the Commission is considering in this proceeding issues which affect Whitefield;
- 3) there was insufficient justification for an expedited proceeding; and
- 4) Whitefield is concerned about public perception.

Bio-Energy filed a response on June 11, 1985.

We shall initially address the Motion of Whitefield. After review and consideration, the Whitefield Motion will be granted in part and denied in part. Whitefield's assertions will be addressed in turn.

Whitefield initially asserted that the Commission notice was defective because: 1) the notice was not directly sent to all persons who the Commission knew to be directly interested; 2) the notice was published on May 30, 1985 — a holiday; and 3) because the rescheduling of the hearing was not directly communicated to all persons who had learned of the original hearing date. Our review of the record reveals that all persons who filed requests to be placed on the

service list with the Secretary were in fact served with both the earlier and the amended Orders of Notice. Whitefield asserts that as a party to Re Small Power Producers and Cogenerators, DE 83-62, it is entitled to be automatically placed on the service list of all matters relating to small power producers or cogenerators (jointly SPPs or Qualifying Facilities). Such a procedure is not consistent with Commission practice. Whitefield should be fully aware of Commission practice because it has not routinely been placed on the service list of all SPP filings; nor was its filing served on all other parties to DE 83-62. See e.g., Re Whitefield, Docket DR 84-219. Whitefield also argued that publication on a holiday is defective. In this case, the Commission in its discretion ordered that the Order of Notice be published. There is

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no statute or Commission rule that provides that publication on a holiday voids the effectiveness of notice. We decline to so rule here.

RSA 541-A:26 III provides only that parties must be notified of hearings. Our regulations go further to provide that the Commission must provide notice to "...the applicant, complainant or petitioner, to other parties, to persons required by statute to be notified and to such other additional persons as the commission shall specify." N.H. Admin. Rules, Puc 203.01. In this instance, the Commission provided notice to all persons entitled to notice by statute, by Commission rule and consistent with our responsibility to the public. Accordingly we find that the notice was not defective.

Having found that our notice was lawful, we turn to the issue of whether Whitefield's Motion should be granted as a matter of discretion. We will note that Whitefield has asserted that it was misled about the hearing date due to the fact that it heard about the initial notice, but did not hear of the subsequent Order of Notice. We note further that our notice was published on a legal holiday and, although such publication is not legally defective, it is not as likely to be examined by all interested persons as notice published on a business day. Finally, we are aware that the second Order of Notice waived the Commission notice period and established an expedited hearing. This combination of circumstances (i.e.: 1) the confusion of two Orders of Notice; 2) the publication on a holiday; and 3) the expedited schedule) warrants the scheduling of a further hearing day to ensure that all interested persons are not foreclosed from an opportunity to be heard. We also have a record from the June 3, 1985 hearing that indicates that while Bio-Energy's financial situation is serious, a further hearing on June 19, 1985 will not act as a de facto denial because of delay, if the Commission issues its Order expeditiously thereafter. Accordingly, we will issue a third Order of Notice scheduling a further hearing for June 19, 1985 with publication. All interested persons should be on notice of the Commission's intention to issue an Order on the merits no later than June 28, 1985.

[2] We turn now to Whitefield's Motion to Intervene. Our ruling on that Motion will be based on the standards governing intervention. See, RSA 541A:17, N.H. Admin. Rules, Puc 203.02.¹⁽²⁴⁵⁾ Those standards provide that Motions to Intervene shall be granted if:

(1) The motion is submitted in writing to the Commission or the presiding officer, with copies mailed to all parties named in the commission's or presiding officer's notice of the hearing, at least 3 days before the hearing;

(2) The motion states facts demonstrating that the movant's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the movant qualifies as an intervenor under any provision of law; and

(3) The commission or 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. N.H. Admin. Rules, Puc 203.02(a).

We find that the Whitefield Motion

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fails to measure up to the above standards; in particular, Whitefield has not stated facts demonstrating that its rights, duties, privileges, immunities or other substantial interests may be affected and the interests of justice and the orderly and prompt conduct of proceedings would be impaired.²⁽²⁴⁶⁾ With respect to Whitefield's interests, we note a singular lack of facts asserted in the Motion that would allow us to ascertain how Whitefield will be affected in any manner whatsoever by either a Commission grant or denial of the BioEnergy filing. While there is a conclusory assertion of interest, we cannot in the present circumstances rest a decision on such an assertion given the statutory and regulatory requirement that "the motion states facts demonstrating ..." how the movant's interests are affected by the proceeding. *Id.* While the failure to provide the information to allow us to ascertain how Whitefield's interests are affected is sufficient ground in itself for the denial of the Motion, we must also state that our ruling is based on the third standard. The Motion was filed after the close of record. Because the Motion is deficient in its assertion of the interests affected by the proceeding, we cannot find that any evidence to be offered by Whitefield justifies the reopening of the record and the delay in affording relief to the parties who participated in the June 3, 1985 hearing.

Since the Motion fails to assert how Whitefield's interests are affected and since the grant of a Motion to Intervene on that basis would be inconsistent with the interests of justice and the orderly and prompt conduct of the proceedings, we will deny the Motion to Intervene. However, since we have granted Whitefield's Motion to Reopen, our denial of the Motion to Intervene will be without prejudice. Whitefield will be permitted to renew its Motion to Intervene. Our new Order of Notice will provide that all Motions to Intervene must be filed in writing no later than 12:00 Noon on June 17, 1985. Given the scheduling of a hearing on June 19, 1985, we believe it is reasonable to waive the requirement of submitting Motions to Intervene at least 3 days in advance, N.H. Admin. Rules, Puc. 203.01(1).

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Motion to Reopen of Whitefield Power and Light, Inc. be, and hereby is, granted; and it is

FURTHER ORDERED, that the Motion to Intervene of Whitefield Power and Light, Inc. be, and hereby is, denied without prejudice; and it is

FURTHER ORDERED, that the attached Order of Notice scheduling a hearing for June 19, 1985 be issued.

By order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1985.

Dissent of Commissioner Aeschliman

I disagree with the majority ruling to schedule a further hearing in this matter. The majority correctly concludes that: 1) there was no legal deficiency in our notice of the June 3, 1985

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hearing; 2) that Whitefield Power and Light, Inc.'s Motion to Intervene was deficient; and 3) Bio-Energy Corporation met its burden of demonstrating the need for expedited review of its filing. Additionally, it must be stated that the long-term rate filings of small power producers are typically addressed without hearing through the issuance of Orders Nisi on filings that are consistent with Commission requirements. See e.g., Re Whitefield Power & Light, Inc., 69 NH PUC 519 (1984).

Given the majority conclusions and Commission practice in this matter, I would have established a heavier burden on a Movant who wishes to be accorded procedural rights that could delay necessary relief. At a minimum, such a Movant should provide the Commission with the facts necessary to show why its substantial interests are adversely affected rather than merely relying on a technical legal argument that lacks merit. Since Whitefield clearly failed to meet this burden, I would have denied its Motion to Reopen as well as its Motion to Intervene.

ORDER OF NOTICE

WHEREAS, Bio-Energy Corporation filed a long-term rate request on May 17, 1985 for its cogeneration facility in West Hopkinton, New Hampshire; and

WHEREAS, a duly noticed hearing was held on the Bio-Energy Corporation request on June 3, 1985; and

WHEREAS, the Commission subsequently received information that certain interested persons had not examined the published notice of the June 3, 1985 hearing because, inter alia, the notice was published on a legal holiday; and

WHEREAS, the Commission does not wish to foreclose interested persons from providing relevant and material information to the Commission on the Bio-Energy request; and

WHEREAS, the evidence presented at the hearing of June 3, 1985 supports a finding that there is a need for an expedited proceeding; it is

ORDERED, that the seventeen-day notice requirement in N.H. Admin. Rules, Puc 203.01 be waived pursuant to N.H. Admin. Rules, Puc 201.05; and it is

FURTHER ORDERED, that a further hearing be held in Re Bio-Energy Corporation, Docket No. DR 85-157 before the Public Utilities Commission at its office at 8 Old Suncook Road, Concord, New Hampshire at ten o'clock in the forenoon on the nineteenth day of June, 1985; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 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 requested relief is in the public good, 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 conducted, such publication to be no later than June 14, 1985, said publication to be designated in an affidavit to be made on a copy of this Order of Notice and filed with this office on or before June 18, 1985; and it is

FURTHER ORDERED, that all persons wishing to intervene as a party must file a written Motion to Intervene pursuant to N.H. Admin. Rules, Puc 203.02 no later than twelve noon on June 17, 1985; said Motion to be

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personally served on all parties pursuant to N.H. Admin. Rules, Puc 202.16.

By order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1985.

FOOTNOTES

¹Our regulation is a restatement of the statutory standard. For convenience, we will hereafter refer to the Commission regulation.

²We do not base our findings on Whitefield's failure to file a written Motion to Intervene at least 3 days prior to the hearing. The expedited nature of our schedule was such that such a requirement would be unreasonable.

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NH.PUC*06/12/85*[61109]*70 NH PUC 543*Mountain Springs Water Company, Inc.

[Go to End of 61109]

70 NH PUC 543

Re Mountain Springs Water Company, Inc.

Intervenor: Mountain Lakes District

DR 85-5, Supplemental Order No. 17,667

New Hampshire Public Utilities Commission

June 12, 1985

ORDER granting motion by water utility for specification of issues to be addressed in its rate case.

APPEARANCES: Meyers & Laufer by David W. Jordan, Esquire for Mountain Springs Water Company; Larry M. Smukler, Esquire as General Counsel for the Public Utilities Commission and Lawrence Gardner, Esquire for Mountain Lakes District.

By the COMMISSION:

REPORT

Mountain Springs Water Company, Inc. (Company), pursuant to RSA 378:1 et. seq., filed revised tariff pages with the Commission on December 31, 1984, setting forth an increase of 219.8% over present rates with a proposed effective date of January 31, 1985. By Order No. 17,409 (January 18, 1985), the Commission suspended the filing pending investigation and decision thereon.

On February 5, 1985, the Company filed a motion for specification of issues pursuant to RSA 541-A:16 III (d), which provides, in pertinent part:

III. In a contested case, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include ... (d) A short and plain statement of the issue involved. Upon request an agency shall, when possible, furnish a more detailed statement of the issues within a reasonable time.

The Commission previously issued a "short and plain statement" of the issues as required by RSA 541A:16 III (d) in its Order of Notice dated February 14, 1985 and published in the Manchester Union Leader on February 27, 1984. In said Order of Notice the issue was cited as being the request by Mt. Springs Water Company for an

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annual increase in revenues of \$102,298 pursuant to RSA Chapters 365 and 378.

By letter dated February 21, 1985 the Commission through its Executive Director and Secretary advised the counsel for the company that the only known issues to date were standard rate case issues raised by the company's rate filing. The letter also advised that the motion would be further addressed at the pre-hearing conference scheduled for March 13, 1985, when the parties would have an opportunity to discuss their particular concerns off the record and, subsequently, to make appropriate recommendations on the record to the Commission.

At the pre-hearing conference, after the parties conferred, the company renewed its motion for specification. The company indicated that it did not expect a response until after the Commission has completed its investigation and gathered data. Tr., March 13, 1985 hearing at 11-13. The Commission expressed concern that the company might construe a specification of the issues as precluding review of any issue not specified or as a shifting of the burden of proof from the company to the Commission. Id. at 13-15. The Commission also informed the company that issues frequently change during a proceeding with former concerns being resolved and new concerns developing as the amount of data and analysis progresses. Id. at 14-15.

Staff objected to the motion¹⁽²⁴⁷⁾ arguing that specification of issues is already adequately provided for in the exchange of data requests and prefiled testimony among the parties. Staff did not object to specification of the issues but to the establishment of a date by which written

notification has to be provided.²⁽²⁴⁸⁾ Additional specification of the issues is not possible, staff argues, given the fluid nature of the proceedings and the need to explore issues which are identified and developed in the course of the proceedings.³⁽²⁴⁹⁾

Commissioner Iacopino advised the company at the hearing that one issue of concern to him is whether the uncollected standby fees should be collected by the company. Id. at 20-21.

On March 26, 1985, the Commission issued Report and Supplemental Order No. 17,515 establishing a procedural schedule in this docket as follows:

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

March 29, 1985 Data Requests
 April 12, 1985 Company's Response
 May 3, 1985

4(250) Prefiled Testimony &
 Exhibits
 May 17, 1985 Data Requests
 May 31, 1985 Response
 June 7, 1985 Company's Rebuttal
 June 14, 1985 Data Requests on
 Rebuttal
 June 21, 1985 Company's Response
 June 25, 26, 27, Hearings
 and 28, 1985

In the Order, the Commission stated regarding the pending motion for specification of issues that (70 NH PUC 130):

... adequate notice will be given to the company of any issues which may arise in connection with the rate case; the form of the notice will be determined after a consideration of the circumstances as they will exist subsequent to the prefiling of Staff and Intervenor direct testimony. This is not to be construed in any way as shifting the burden of proof to the Commission.

On May 2, 1985, the company

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renewed its motion for specification of issues asserting that if we failed to specify issues "the substantial rights of respondents will be prejudiced."

On May 10, 1985, two staff members prefiled testimony and exhibits which clearly state the specific issues Staff intends to raise in accordance with their review of capital structure, level of return, rate base and operating expenses. In summary these issues include:

1. The cost of common equity and senior capital. 2. The actual test year costs and pro forma adjustments to the same; including:
 - a. Production Expense
 - b. Cleaning filter beds

- c. Customer Accounting costs.
 - d. Officer's salaries
 - e. Rental Expense
 - f. Auto and Telephone Expense
 - g. Real Estate Taxes
 - h. Depreciation Charges
3. The nature of outstanding loans.
4. Standby fees.

However, as all parties are aware, the Commission's review and consideration of evidence during the hearing phase of the investigation necessarily incorporates a consideration of future capital requirements, efficiency of management and quality of service in determining and setting just and reasonable rates.

As the parties are well aware, the Commission has been particularly concerned in the case of Mountain Springs Water Company with the quality of service provided to customers; in particular, whether the Company is meeting its obligations to provide water to its customers and, if so, whether the quality and amount of the water is adequate. The Commission has received numerous complaints relative to the adequacy of service, the most recent of which required the opening of docket DC 85-173.

The Commission will expect the Company to address the quality of service issue and in particular its proposed rehabilitation of the existing well during the hearings phase of the investigation. All parties including the Company will have adequate opportunity to respond to any positions taken on this issue.

Accordingly, the Company's motion has been granted and addressed through Staff's prefiled testimony and through this Report and Order.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is hereby incorporated by reference; it is

ORDERED, that the relief requested by Mountain Springs Water Company in its motion for specification of issues has been granted.

By order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1985.

FOOTNOTES

¹Transcript, March 13, 1985 hearing at 16-19 and 22-23.

²Id. at 19.

³Id. at 18.

⁴Staff was granted an extension to May 10, 1985 to file their testimony.

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NH.PUC*06/14/85*[61110]*70 NH PUC 546*Penacook Hydro Associates

[Go to End of 61110]

70 NH PUC 546

Re Penacook Hydro Associates

DR 85-86, Order No. 17,668

New Hampshire Public Utilities Commission

June 14, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on April 2, 1985 Penacook Hydro Associates (Penacook) filed a long term rate filing for the Penacook Upper Falls Project; and

WHEREAS, Penacook filed amendments to its filing on April 26, 1985, May 16, 1985 and on May 17, 1985; and

WHEREAS, the Petition requested inter alia a thirty-year rate order; and

WHEREAS, power from the Penacook Upper Falls Project will be delivered to Concord Electric Company (Concord) for the ultimate sale to PSNH; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) such a rate order will be granted to the Petitioner if inter alia a surety bond or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Penacook has averred that it is prepared to offer Public Service Company of New Hampshire (PSNH) a "junior lien" on the Penacook Upper Falls Project; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire the opportunity to respond to Penacook's Petition for Thirty Year Rate Order; and

WHEREAS, Penacook's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra, in all respects other than the lien; it is therefore

ORDERED NISI, that Penacook's Petition for Thirty Year Rate Order for approval of its interconnection agreement with Concord and for approval of its wheeling agreement with Concord to transmit power to Concord's point of interconnection with PSNH and for approval of rates set forth on the long term worksheet for the Penacook Upper Falls Project are approved contingent on satisfactory negotiation of a junior lien; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20

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days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 1985.

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NH.PUC*06/14/85*[61111]*70 NH PUC 547*Pittsfield Hydropower Company, Inc.

[Go to End of 61111]

70 NH PUC 547

Re Pittsfield Hydropower Company, Inc.

Intervenor: Public Service Company of New Hampshire

DR 84-367, Supplemental Order No. 17,670

New Hampshire Public Utilities Commission

June 14, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Pittsfield Hydropower Company, Inc. (Pittsfield) filed a long term rate filing on December 19, 1984; and

WHEREAS, the Commission issued Order No. 17,595 (70 NH PUC 359) approving nisi Pittsfield's filing; and

WHEREAS, pursuant to Order No. 17,595 Public Service Company of New Hampshire (PSNH) filed comments and exceptions on June 4, 1985; and

WHEREAS, PSNH's comments averred that Pittsfield did not serve on PSNH a copy of the interconnection agreement included with the rate filing; and

WHEREAS, Pittsfield was required to serve a complete copy of its long term rate filing on PSNH (See, N.H. Admin. Rules, Puc 202.16); and

WHEREAS, Pittsfield filed a response on June 11, 1985 which indicated, inter alia, that Pittsfield and PSNH are in the process of negotiating an interconnection agreement; it is therefore

ORDERED, that Order No. 17,595 be, and hereby is, suspended; and it is

FURTHER ORDERED NISI, that Pittsfield's petition for a thirty year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that Pittsfield file a new interconnection agreement with the Commission, with a certificate of service attesting that a copy has been served, which certificate shall be acknowledged by secretarial letter; and it is

FURTHER ORDERED, that, if the new interconnection agreement has not been executed by PSNH, PSNH may file comments, exceptions or such other response to the instant petition as it

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deems necessary no later than fifteen days from the date of issuance of the aforementioned secretarial letter; and it is

FURTHER ORDERED, that this order nisi shall be effective upon the filing of an executed interconnection agreement or, if the interconnection agreement has not been executed, twenty-five days from the date of the aforementioned secretarial letter, whichever is earlier, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 1985.

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NH.PUC*06/17/85*[61105]*70 NH PUC 530*Claremont Gas Light Company

[Go to End of 61105]

70 NH PUC 530

Re Claremont Gas Light Company

Additional petitioner: Petrolane-Southern New Hampshire Gas Company, Inc.

DR 84-380, Order No. 17,660

New Hampshire Public Utilities Commission

June 17, 1985

ORDER requiring new hearing, because of procedural defects in prior hearing, on issue of whether a gas utility should be required to use a semi-annual cost of gas adjustment.

Procedure, § 4 — Statutory requirements — Effect of improper procedure.

Because its hearing on the issue of whether a gas utility should be required to use a semi-annual cost of gas adjustment was not conducted in compliance with the procedural requirements of New Hampshire statute RSA 541-A, the commission determined that the record thereat could not be used as the basis of a commission decision and, therefore, scheduled a hearing de novo; the statute requires that all testimony in contested cases be made under oath and that all parties be given the opportunity to conduct cross-examination.

APPEARANCES: Ransmeirer and Spellman by Dom S. D'Ambruoso, Esquire on behalf of Claremont Gas Light Company; Daniel Lanning and James Linehan on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On February 20, 1985, the Commission, upon its own motion, issued Order No. 17,456 (70 NH PUC 69) which opened this docket to determine whether Claremont Gas Light Company (Claremont) and Petrolane Southern New Hampshire Gas Company, Inc. (Petrolane) should be directed to utilize a semi-annual cost of gas adjustment (CGA) instead of the current monthly CGA and scheduled a hearing thereon for March 25, 1985. By letter dated March 25, 1985, Petrolane notified the Commission that it had no objection to adopting the semiannual CGA.

Herbert Lieberman, Claremont's president, presented testimony and exhibits at the hearing on behalf of Claremont's position that the monthly CGA should be retained. He was crossexamined by the Commission Staff, the only other party to this docket. Staff members did not testify but instead submitted a position paper "in lieu of testimony" in which they recommended that Claremont be required to utilize the semi-annual CGA. The hearing examiner ruled that the proceeding was non-adjudicative and did not require the staff members to be sworn; they

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were therefore not subjected to crossexamination. Two Staff members, Assistant Finance Director Daniel Lanning and Rate Analyst James Lenihan, were designated "staff advocates" by the hearing examiner pursuant to Commission Rule No. PUC 203.15 (A)(3).¹⁽²⁵¹⁾ At the hearing both parties were afforded an opportunity to file written arguments. Claremont filed a post-hearing memorandum on April 11, 1985 while the Staff chose to rely on the aforementioned position paper.

In addition to taking the position that the monthly CGA should be retained, Claremont argues in its memorandum that the March 22, 1985 hearing cannot form the basis of a Commission order in this case because of certain procedural defects. Claremont contends that this is an adjudicative proceeding requiring the Commission to make findings of fact and rulings of law, and therefore the parties are entitled to certain procedural due process rights, specifically the right to crossexamine another party's sworn testimony. Because the statements in the staff

advocate's position paper were not sworn or not subject to cross-examination, Claremont argues that those statements cannot be relied upon by the Commission in its decision. According to Claremont, treating Staff's position paper as evidence constitutes a "clear violation" of Claremont's procedural due process rights.

The conduct of administrative proceedings in New Hampshire is governed generally by RSA 541-A, the Administrative Procedures Act. RSA 541A:16(I) requires an agency to commence an adjudicative proceeding if a matter has reached a stage at which it is "considered a contested case ...", while under RSA 541-A:16(II) an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction. This proceeding was commenced by the Commission by Order No. 17,456 issued on February 20, 1985 to determine whether Claremont should be ordered to change from a monthly to a semi-annual CGA. This proceeding requires the Commission to exercise its judgment and render a decision regarding the appropriate CGA methodology for Claremont. It therefore is clearly adjudicatory in nature. As such, it was commenced pursuant to RSA 541-A:16(II).

RSA 541-A sets forth in great detail the procedures to be followed by administrative agencies in contested cases. In determining its applicability in this instance, we must initially decide whether this is a contested case.

At the hearing, there were no intervenors other than Staff. While Staff in most cases acts in an advisory role to the Commission and often does not take a position, in this proceeding two Staff members were designated staff advocates by the hearing examiner pursuant to Commission Rule No. PUC 203.1555(b)(2)(a).²⁽²⁵²⁾ Staff took the position at the hearing that Claremont should be ordered to utilize the semiannual CGA currently employed by all other gas companies instead of a monthly CGA. Claremont opposes any change in its current methodology. Claremont's opposition to Staff's recommendation clearly establishes this to

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be a contested case. Therefore, the procedures and requirements set forth in RSA 541-A are applicable to this proceeding.

Upon review, we have determined that the hearing was not conducted pursuant to certain of the requirements contained in RSA 541-A. RSA 541A:18(I) requires that all testimony of parties and witnesses be made under oath or affirmation. While not designated as such, Staff's position paper is clearly at least part testimony. Staff therein sets forth the facts on which it bases its recommendation that Claremont be ordered to utilize a semiannual CGA. Thus, the hearing examiner should have sworn the Staff members. In addition, RSA 541-A:18 (III) provides that a party "may conduct cross-examinations for a full and true disclosure of the facts." Given that there was no pre-hearing discovery or the pre-filing of testimony, Claremont should have been afforded an opportunity to cross-examine the staff members to provide "a full disclosure of the facts."

The above-described procedural defects lead us to conclude that the March 25, 1985 hearing cannot form the basis of a decision in this case. We therefore will issue an Order of Notice scheduling a new adjudicative hearing at which time we will consider de novo whether Claremont should be ordered to utilize the semi-annual CGA. The testimony and evidence

submitted at the March 25, 1985 hearing will not be relied upon in our decision in this docket; it will be made solely on the basis of the record generated in conjunction with the second hearing.

Our Order will issue accordingly.

ORDER

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

ORDERED, that because the March 25, 1985 hearing was not conducted in compliance with the procedural requirements of RSA 541-A, the record generated thereat cannot form the basis of a decision in this proceeding; and it is

FURTHER ORDERED, that an Order of Notice will issue forthwith scheduling a new adjudicative hearing at which time the Commission will consider de novo whether Claremont should be ordered to utilize a semiannual CGA; and it is

FURTHER ORDERED, that the testimony and evidence submitted at the March 25, 1985 hearing will not be relied upon in our decision in this docket.

By Order of the Public Utilities Commission this seventeenth day of June, 1985.

ORDER OF NOTICE

WHEREAS, Claremont Gas Light Company currently calculates its cost-of-gas adjustment on a monthly basis; and

WHEREAS, all other gas utilities in the State of New Hampshire currently calculate their cost-of-gas adjustments on a semi-annual basis; and

WHEREAS, RSA 365:5 entitled Independent Investigation, provides as follows:

The Commission, on its own motion or upon petition of a public utility, may investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done,

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or having been omitted or proposed by any public utility; and the commission shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission.

and

WHEREAS, this docket has been opened pursuant to RSA 365:5 to determine whether Claremont Gas Light Company should be directed to utilize a semi-annual cost-of-gas adjustment instead of the monthly cost-of-gas adjustment it is currently utilizing; it is hereby

ORDERED, that a hearing be held before this Commission at its offices, 8 Old Suncook Road, Concord, New Hampshire, at 10:00 A.M. on August 15, 1985, at which time the Commission will entertain testimony and argument from Claremont Gas Light Company and other interested parties, including the Commission Staff, on the issue of whether Claremont Gas Light Company should be ordered to utilize a semi-annual cost-of-gas adjustment; and it is

FURTHER ORDERED, that Claremont Gas Light Company notify all persons desiring to be heard to appear at said hearing, when and where they may be heard upon the above-stated question, 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 Claremont Gas and Light Company's franchise area is located, such publication to be no later than August 1, 1985, said publication to be designated in an affidavit to be made on a copy of this Order of Notice and filed with this office.

By Order of the Public Utilities Commission this seventeenth day of June, 1985.

FOOTNOTES

¹No Commission member was present for the hearing. Pursuant to RSA 363:17 and 27, the Commission assigned a Staff member to preside over the hearing.

²This rule provides that the Commission may designate an employee as a staff advocate when the employee "will participate in an adjudicative proceeding in a way which makes likely a commitment to a particular result."

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NH.PUC*06/17/85*[61112]*70 NH PUC 548*Northern Utilities, Inc.

[Go to End of 61112]

70 NH PUC 548

Re Northern Utilities, Inc.

DE 85-136, Supplemental Order No. 17,672

New Hampshire Public Utilities Commission

June 17, 1985

ORDER requiring gas utility to reduce the pressure in its distribution main.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on May 29, 1985 this Commission, in its Order No. 17,636 (70 NH PUC 420) ordered Northern Utilities, Inc. to, among other things, reduce the pressure in its two and one half mile distribution main (the Hampton main) to the lowest pressure which will continue to maintain safe and adequate service to customers but which shall not exceed 60 psig without Commission approval; and

WHEREAS, the Company has, through testimony and evidence presented at a hearing at the Commission's offices on June 11, 1985, testified that adherence to that pressure limitation may jeopardize service to its Hampton customers; and

WHEREAS, the parties have agreed that a new standard has been identified which will satisfy the Commission's commitment to maintaining adequate service to customers while at the same time assuring continued public safety; it is

ORDERED, that Northern Utilities, Inc. shall reduce the pressure in its Hampton main to the extent necessary to maintain a maximum pressure of 15 psig at the Hampton Fire Station; and it is

FURTHER ORDERED, that the Company shall maintain pressure recording devices at, as a minimum, the Hampton Fire Station, the Exeter Road Regulator Vault, and the Newfields Road Regulator Station, throughout the ensuing period ending not earlier than July 11, 1985; it is

FURTHER ORDERED, that the aforementioned recordings shall be made available for Commission and staff review.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1985.

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NH.PUC*06/17/85*[61113]*70 NH PUC 549*New England Telephone and Telegraph Company

[Go to End of 61113]

70 NH PUC 549

Re New England Telephone and Telegraph Company

DR 85-180, Order No. 17,675

New Hampshire Public Utilities Commission

June 17, 1985

ORDER approving the introduction of "Quickway Digital Service" by dominant local exchange telephone utility.

Service, § 433 — Telephone — Digital service — Commission approval.

In approving the introduction of "Quickway Digital Service" by a dominant local exchange telephone utility, the commission found that such service would be in the public good because it would attract business and industry to the state.

By the COMMISSION:

ORDER

WHEREAS, on May 29, 1985, New England Telephone and Telegraph Company filed with this Commission certain revised pages to its Tariff No. 75 by which it proposes to introduce

Quickway Digital Service; and

WHEREAS, the Company advises that it anticipates a market for such service within the state of New Hampshire to meet the growing data communications needs of its business subscribers; and

WHEREAS, the Company further claims that such service provides greater reliability in the transmission of data communications, with bit rates previously unavailable with existing services; and

WHEREAS, the Commission finds such telecommunications improvements in the state of New Hampshire beneficial in attracting new business and industry to the state, and therefore in the public interest; it is

ORDERED, that Part B, Section 4, Table of Contents, Original Page 1 and Original Pages 1 through 6, New England Telephone and Telegraph Company Tariff No. 75, be, and hereby are, approved for effect on June 28, 1985; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Company provide the Commission with quarterly letter reports summarizing the development of the Quickway service, such reports to continue through June 30, 1986.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1985.

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NH.PUC*06/18/85*[61114]*70 NH PUC 550*Pennichuck Water Works

[Go to End of 61114]

70 NH PUC 550

Re Pennichuck Water Works

DF 85-179, Order No. 17,676

New Hampshire Public Utilities Commission

June 18, 1985

ORDER, 1) authorizing the reclassification of water utility property as abandoned plant and setting amortization period for the undepreciated book value of the property, and 2) approving request for approval for amortization of water tank painting expense.

Expenses, § 35 — Amortization of abandoned property.

A request by a water utility to reclassify property as abandoned plant and to recover the undepreciated value of that plant was approved, however, the utility's proposed amortization period of three years was rejected as too short given the normal useful life of the property; the amortization period was set at ten years. [1] p.550.

Expenses, § 33 — Capital amortization — Maintenance — Interior painting of water storage tank.

A request by a water utility to amortize the cost of the interior painting of a storage tank was approved, however, the utility's proposed amortization period of three years was rejected as too short given the useful life of the painted tank; the amortization period was set at fifteen years. [2] p.550.

By the COMMISSION:

ORDER

[1,2] WHEREAS, Pennichuck Water Works, has requested approval to reclassify the Conant Road, Old Coach, and Westgate booster stations to Account No. 141 Property Abandoned, because of their replacement with a single larger station and for amortization of the undepreciated book value; and

WHEREAS, Pennichuck Water Works has also requested approval for amortization of the interior painting costs for its Fifield storage tank; and

WHEREAS, it is the Commission's opinion that these actions are in the public good; it is hereby

WHEREAS, Pennichuck requested that the amortization period be three years; and

WHEREAS, under generally accepted engineering principles, the plant facilities that will now be abandoned from these booster stations should normally have a composite useful life in excess of 40 years and the painting procedures and materials now being employed should ensure a useful life of 15 to 20 years; and

WHEREAS, the Commission is of the opinion that due to the aforementioned useful lives, an amortization period of three years is not reasonable; it is therefore

ORDERED, that Pennichuck Water Works is authorized to transfer the undepreciated book value of the Conant Road, Old Coach,, and Westgate booster stations, in the amount of \$16,514, to NHPUC Account No. 141 - Property Abandoned and to amortize this balance over a ten year period; and it is

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FURTHER ORDERED, that Pennichuck Water Works is authorized to amortize the cost of the interior painting of Fifield storage tank, expected to be in the amount of \$110,000 over a fifteen year period.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of June, 1985.

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NH.PUC*06/20/85*[61131]*70 NH PUC 612*Avery Hydroelectric, Inc.

[Go to End of 61131]

70 NH PUC 612

Re Avery Hydroelectric, Inc.

Intervenor: Public Service Company of New Hampshire

DE 84-346, Second Supplemental Order No. 17,719

New Hampshire Public Utilities Commission

June 20, 1985

ORDER upholding the validity of a small power producer's long term rate filing.

Cogeneration, § 19 — Small power producers — Contracts — Long term — Corporations.

The validity of a small power producer's petition for long term rates to develop a hydroelectric project was upheld despite a claim by an electric utility that the small power production corporation was the alterego of another corporation that had previously contracted with the electric utility for the development of the same project and had been formed for the purposes of avoiding the contract rates and gaining eligibility for more favorable commission set rates; the commission held that the petitioner corporation was not formed for the purpose of avoiding regulatory requirements and that the two corporations were separate and distinct entities.

APPEARANCES: Catherine B. Shively, Esquire and Sulloway, Hollis & Soden by Margaret H. Nelson, Esquire for Public Service Company of New Hampshire; Robert Olson, Esquire for Avery Hydroelectric, Inc.

By the COMMISSION:

REPORT

INTRODUCTION

On November 16, 1984, Avery Hydroelectric, Inc. (AHI) applied to this Commission under Re Small Energy Producers & Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) for approval of a twenty-nine year rate filing. On February 5, 1985 the Commission issued Order No. 17,433 granting nisi AHI's petition. On February 27, 1985, Public Service Company of New Hampshire (PSNH) filed comments which, inter alia, raised certain factual issues. Accordingly, the Commission issued Supplemental Order No. 17,480 (March 6, 1985) suspending the February 5, 1985 Order Nisi and setting a hearing for March 27, 1985.

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The dispute between PSNH and AHI involves the following facts. On February 21, 1984, a

20 year power purchase contract was executed by and between Hydroelectric Development, Inc. -New Hampshire (HDI-NH) and PSNH in which the parties agreed that HDINH would sell its entire output of electric energy generated by the Avery Dam to PSNH at a 9 cents/kilowatt hour rate.

On June 13, 1984 a request for cancellation of the contract was made by letter addressed to John Lyons, agent of PSNH by Donald Pope, corporate counsel for HDI-NH who alleged that a determination had been made that it would be "reasonably unfeasible to pursue the development of the Avery Dam project based on the 9 cent levelized rate control." (Tr. at 100,101).

Subsequently, on November 16, 1984 this Commission was petitioned by AHI for approval of a 29 year rate filing to develop Avery Dam in compliance with Re Small Energy Producers & Cogenerators, supra. In order to make a determination in this matter the Commission must address the following issue:

Whether the Power Purchase Contract of February 21, 1984 entered into by HDI-NH and PSNH to develop Avery Dam and sell its output to PSNH has been cancelled. The resolution of this issue involves a determination of whether AHI is a subservient corporation of HDI-NH bound by the terms of that contract.

POSITION OF THE PARTIES

It is PSNH's position that the contract in question was never cancelled by the Company. PSNH further contends that although HDI-NH requested cancellation of this contract, it never agreed to the request either orally or in writing. It is also PSNH's position that AHI is a subservient corporation of HDI-NH and, as such, is bound by the terms of the contract and is not entitled to the long term rate established by the Commission.

In support of its position, PSNH presented the testimony of Wyatt W. Brown, Energy Management Engineer of PSNH's Energy Management and Research Department, and John Lyons, PSNH's Director of Supplemental Energy Sources.

Mr. Brown testified that in connection with his duties at PSNH he was aware of efforts by several small power producers to be released from their contracts in order to avail themselves of either the higher rate levels set by the Commission, or a better type of arrangement subsequently established by PSNH. Mr. Brown further testified that one of the benefits of making contracts with small power producers is that PSNH is able to obtain power at substantially less than the avoided cost rate set by the Commission, thereby allowing the Company to reduce its overall cost of providing service to its ratepayers. Thus, PSNH's basic policy is "not to allow small power producers out of their contracts" (Tr. at 34).

Mr. Lyons testified that he has been employed by PSNH since June of 1948 in various positions including that of Manager of Hydroelectric Development. He testified that in his present position he is "responsible for the development of PSNH's hydroelectric power sources, for coordinating and assisting in the private development of supplemental private energy sources and for negotiating agreements for the purchase of energy from privately developed supplemental energy sources"

(Tr. at 57). He further testified that he is generally involved with all areas related to small power producers and has authority to act as the Company's representative in making recommendations to his superiors with respect to, inter alia, negotiating cancellation of contracts. Mr. Lyons further testified that when HDI-NH approached him and requested that he terminate its contract with PSNH because the project had become economically unfeasible at the 9 cent rate, he informed HDI-NH that he had no authority to cancel the contract; that his powers were limited and, in a contractual matter such as this, he could only support the case to his superiors, "when a decision would eventually be made as a corporate set up". (Tr. at 67). The witness further stated that although he is the person who interfaces with the small power producers to communicate and implement the Company's policies with respect to contracting arrangements between them and PSNH, his power is limited insofar as the execution, modification and cancellation of contracts is concerned.

Mr. Lyons further testified that since all his dealings and conversations with HDI-NH and AHI in regard to both of these entities were always with the same principals and since AHI had never presented any substantial evidence to establish itself as a separate entity from HDI-NH, it was his position that AHI had clearly failed to meet its burden of proof in this regard. Consequently, AHI is not entitled to the long term rate established by the Commission, as it continues to be bound by the contract formed by HDI-NH and PSNH.

AHI's position is that as it is a separate and distinct corporate entity from HDI-NH and not its successor; it cannot be bound by the terms of the contract executed on February 21, 1984 between PSNH and HDI-NH. AHI also takes the position that as the contract in question had been cancelled at HDI-NH's request by John Lyons, agent for PSNH acting within the scope of his actual or apparent authority, it is no longer in existence and, therefore, cannot either bind or preclude AHI from acquiring a Commission established long term rate.

In support of its position, AHI presented the testimony of Donald Pope, Vice President and general counsel of Hydro-Electric Development, Inc. (HDI); Vernon Knowlton, Chief Engineer of the Water Resources Board; and James Hood, an attorney with the firm of McLane, Graf, Raulerson and Middleton.

Mr. Pope testified that HDI is a development company which acts as consultant to other corporations; that HDI was the first corporation seeking to develop Avery Dam; that a contract was executed by the President, Mike Demos, with PSNH in January of 1983; and that when the site was determined not to be feasible, John Lyons was notified that HDI wanted the contract cancelled as it would not pursue the project at that time. According to Mr. Pope, Mr. Lyons indicated the company would "consider the contract cancelled pursuant to this discussion." (Tr. at 98). Mr. Pope further testified that the contract between PSNH and HDI-NH of February 21, 1984 was negotiated by him also and when this too was considered not to be feasible at the stated rate schedule, Mr. Lyons was notified by letter on June 13, 1984 that the project would not be pursued and a request was made that the contract with PSNH be terminated. HDI-NH

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assumed that this was done in accordance with Mr. Lyons' previous conduct. The witness further testified that HDINH requested by letter of October 26, 1984 "that he [Mr. Lyons]

acknowledge the termination of the old contract in writing, which he had done verbally several times before." Mr. Lyons however did not respond to this request. Concurrently with this letter, another letter was sent to Mr. Lyons requesting "an interconnection agreement for a new rate for the new entity, Avery Hydroelectric, Inc." In response, Mr. Lyons requested the identity of the investors in both corporations. Mr. Lyons also instructed AHI to enter into a new lease with the Water Resources Board and with the State of New Hampshire in order to "show it is clearly a new entity." (Tr. at 106). The witness further testified that Mr. Lyons stated that as a result of AHI complying with these conditions "Public Service Company would not contest any rate filing that we would make before the New Hampshire Public Utilities Commission" and further, "they would consider the HDI-NH contract to be cancelled." (Tr. at 108).

Mr. Pope further testified that there is no relationship between HDI-NH and AHI, and "AHI is a distinct corporate entity." (Tr. at 127).

Mr. Knowlton testified that Mr. Lyons, in a discussion with him around November 5th, stated that if AHI acquired its own water resources board lease, PSNH would not oppose an AHI rate filing with the Commission. (Tr. at 155).

Mr. Hood, testified that, at a meeting held on October 31, 1984 at PSNH, Mr. Lyons stated that "if AHI could be shown to be a different entity from HDI-NH, and if a new lease with the Water Resources Board could be obtained, then the power contract would be terminated and PSNH would go along with a rate filing." (Tr. at 160). According to Mr. Hood, Mr. Lyons also stated the existing site lease would be cancelled. *Id.* Mr. Hood continued his testimony by stating that Mr. Lyons never suggested to him that he talk with any other individual and, in fact, even indicated to him that "the comments filed in response to the Avery rate filing were a matter of routine; a standard response so that the Company could protect itself in its present environment," and that "he would recommend to his legal department that they should not contest the matter." (Tr. at 161).

COMMISSION ANALYSIS:

PSNH has challenged the validity of AHI's position to petition the Commission for a long term rate to develop Avery Dam on the grounds that its 20 year contract with HDI-NH has not been cancelled and therefore, AHI, under the alter ego doctrine, is subservient to HDI-NH and bound by the terms and conditions of that contract. Therefore, it is not eligible for the Commission's rates.

AHI alleges that the contract in question was cancelled at the request of HDI-NH, by John Lyons, the authorized agent of PSNH; therefore, it cannot be an issue as it is no longer in existence. It is AHI's further contention that it never was a subservient corporation to HDI-NH; that it always operated as a separate and distinct entity; therefore, the restrictions in the contract between PSNH and HDI-NH do not apply.

The matter in dispute concerns the

status of AHI; specifically, whether AHI is a separate and distant [sic] entity or one established as the alter ego of HDI-NH. When a corporation is considered to be the alter ego of

another, a Court will only pierce its veil if there is reason to believe it is being used by the dominant corporation to promote injustice or fraud. *New Hampshire Wholesale Beverage Assn.*, 100 N.H. 5 (1955).

Mr. Lyons has indicated that his concern was that AHI was formed by HDI-NH for the sole purpose of allowing it to use the Commission's rates and thereby permit HDI-NH to evade its responsibilities to PSNH. In support of these allegations he refers to the fact that the President and Vice President of both HDI-NH and AHI Corporation are the same individuals. However, the Court has held that it is the shareholders of a corporation that control the entity and not the principals. *Id.*

Finally, the evidence indicates that AHI was formed and entered into a new lease arrangement with the Water Resources Board in order to comply with a condition established by Mr. Lyons. Thus, AHI was not attempting to evade regulatory requirements; rather, it was attempting to satisfy PSNH.

Based on our analysis, we find AHI to be a separate and distinct entity and not under the control of HDI-NH. We therefore will issue our order for approval of AHI's request for a 29 year rate.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the November 16, 1984 long term rate filing of Avery Hydroelectric, Inc. be, and hereby is, approved.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1985.

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NH.PUC*06/21/85*[61115]*70 NH PUC 551*City of Portsmouth

[Go to End of 61115]

70 NH PUC 551

Re City of Portsmouth

Intervenors: New Hampshire Department of Public Works and Highways and B & M Corporation

DX 84-17, Order No. 17,681

New Hampshire Public Utilities Commission

June 21, 1985

ORDER resolving issues regarding cost responsibility for repair and reconstruction of a railroad bridge, and opening docket for the purpose of making the commission aware of a railroad company's long range plans for repairing and maintaining its bridge and rail network.

Service, § 263 — Abandonment — Rail service — Refusal to allow termination of service.

In response to a statement by a railroad company that it would, if it became necessary to protect the travelling public, close rather than repair a deteriorating railroad bridge, the commission (having found that the need for continued rail service existed) ordered that a railroad company not be allowed to terminate rail traffic or remove the bridge. [1] p. 554.

Railroads, § 22 — Construction and equipment — Bridges — Repair and replacement.

A railroad company was directed to develop plans for repairing or replacing a railroad bridge that had a projected remaining life of two years in its present state of disrepair. [2] p. 555.

Railroads, § 22 — Construction and equipment — Bridges — Modification — Cost responsibility.

A proposal to require a railroad company to pay for the modification of a railroad bridge to improve pedestrian traffic was rejected; however, the railroad company was ordered to be prepared to make such modifications to the bridge as are necessary to accommodate pedestrian traffic at the expense of the city where the bridge is located. [3] p. 555.

Railroads, § 21 — Construction and equipment — Maintenance and repair — Bridge and rail network — Reporting requirement.

In order to assure itself that the bridge and railroad network will continue to enhance the state highway system the commission required a railroad company to report on its long range plans for repairing and maintaining its bridge and rail network. [4] p. 555.

By the COMMISSION:

REPORT

On January 6, 1984 the City of Portsmouth, New Hampshire through its City Manager, Calvin A. Canney, requested that this Commission provide assistance involving the repair or reconstruction of the Greenland Road Bridge in Portsmouth.

On February 15, 1984 an Order of

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Notice was issued setting an evening hearing for March 6, 1984 at 7:00 p.m. at the Portsmouth City Hall Council Chambers, 126 Daniel Street, Portsmouth, New Hampshire, and also setting a hearing for March 13, 1984 at 10:00 a.m. at the Commission's Concord offices.

Notices were sent to John Adams, Esquire, B & M Corporation, for publication; Calvin A. Canney, City Manager, City of Portsmouth; Thomas A. Power, Director, Division of Motor Vehicles; John A. Clement, Commissioner, Department of Public Works and Highways; John J. Knee, B & M Corporation; John McAuliffe, Railroad Administrator, Department of Public Works and Highways; Christopher Gallagher, Esquire; John E. O'Keefe, Esquire, B & M

Corporation; V. R. Terrill, B & M Corporation; Timothy Drew; and the office of Attorney General.

The public informational hearing was held in Portsmouth as scheduled for the purpose of receiving information from the public and concerned citizens regarding the overpass, its possible deterioration, and the concerns surrounding it. Mayor Eileen Foley introduced Councilman Evelyn Marconi, Councilman Jeffrey Ott, Councilman John McMaster, Councilman Jay Foley; and Assistant Mayor Keenen as well as the City Manager, Mr. Canney.

Mr. Canney offered written testimony. He contends that the bridge is very narrow and becomes hazardous when pedestrians are crossing it, particularly children visiting neighborhood ball fields. Additionally, he's concerned about the safety of the existing bridge. Periodic bridge inspection reports provided by the State of New Hampshire Department of Highways dated April 5, 1982 indicate that although the bridge had satisfactory capacity for legal loads the bridge did not meet certain standards as recommended and applied to structures of this type. In further comments the inspectors indicate that extensive concrete repairs as well as cleaning and painting of the eyebeams are necessary on this bridge to maintain its present posting. The rating given by the inspector on the deck and superstructure was classified as "poor condition, in need of repair or rehabilitation immediately".

On January 21, 1983 the City sent a copy of this report to the Vice President of the B & M Corporation with a letter requesting the Company's plan to rehabilitate the structure. On March 2 the Company responded that it has no plans for repairs since funds are being used to maintain rail carrying bridges, and further that it was the intention of the B & M to monitor the condition of the bridge and reduce the allowable loading or close the bridge to traffic in order to protect the traveling public should it be necessary.

On January 13, 1984 the City was advised by the New Hampshire Department of Public Works and Highways that the City should assume ownership of the bridge so that it could apply the necessary matching funds to reconstruct the bridge and alleviate the problem without taxing the resources of the B & M Corporation. Mr. Canney notes that there is no question that the bridge is the property of the B & M Corporation.

Mr. Canney recommended that the B & M should be directed to resume its responsibility in maintaining the bridge. He suggested that if this Commission finds there is a need to continue the rail line that the B & M be directed to find the necessary

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matching funds for the rehabilitation and construction of the bridge as well as its modification to accommodate pedestrian traffic. On the other hand, if this Commission determines that this rail line is no longer necessary, and if abandonment is eminent, that the B & M should be directed to remove the bridge, fill in the hole, and provide for the continuity of traffic on Route 101 over the particular railroad section.

Mr. Canney's comments were supported by Councilmen Keenan and Foley. Representative Joseph A. McDonald, representing the district in which the bridge is located and the town of Newington, supported it on the basis that it is a very vital means of communications between the outlying towns and the Town of Portsmouth. If the bridge were closed, the only alternative for

reaching Portsmouth from Newington would be to take the highway or go along Ocean Road, a very long circuitous detour.

Mr. William Cahill, of J. D. Cahill Company, Hampton Company, was recognized as one of five shippers exclusive of Public Service Company which would be effected by the closing of the railroad bridge. He represented that in 1982 there were 460 incoming freight cars delivered to meet the needs of the J. D. Cahill Company, Saxonville Lumber, Foss Manufacturing, Lamprey Brothers, and Wicks Lumber. In 1983 that number increased to 573 cars per year. He projected that in 1984 there would be 700 cars and in 1985 almost 800 cars. Maintaining rail service is essential to these businesses and Company representatives are considering negotiating with the Boston and Maine to begin its own short line operation if the B & M pursues plans for abandonment.

Mr. Cahill's comments were supported by Mr. Stephen Foss, Foss Manufacturing Company.

City Councilman William St. Laurent expressed his concern over the large amount of pedestrian traffic which crosses the bridge. Parents are so concerned over the danger of having their children cross the bridge that they transport them by automobile to eliminate the risk of their being hurt when walking or bicycling across the bridge.

Mr. Sam Fortier, Rockingham Planning Commission, explained a study which had been done to develop a five year plan for the urbanized area for road repairs. In 1990 the railroad bridge will have to be replaced with a much larger structure in order to support the growth in the PortsmouthDover-Rochester area. Requests are reviewed to determine which parties should share in the costs of such upgrading.

The March 13, 1984 hearing was held as scheduled at 10:00 a.m. at the Commission's Concord offices. Mr. Canney again summarized his testimony. The City engineers have made no internal inspection of the bridge but, he said, they concur with the results of State inspections. He testified that traffic problems have existed for approximately one year. A single sidewalk is necessary to assure safe passage for children.

Mr. John Love, Engineer of Bridges and Buildings, B & M Corporation testified that there should be no safety concerns for at least 10 years in view of the bridge's condition.

Mr. Jonathan Gbur, Assistant VP, Marketing Development, B & M Corporation testified that the Hampton

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Branch traffic has been stable for from five to ten years. In 1983 there was a traffic count of 528 rail cars on the branch which produced revenues of approximately \$357,000, or \$677 per car. He estimated that rehabilitation costs to the bridge would be approximately \$466 per car.

COMMISSION ANALYSIS

The Commission's analysis of these proceedings reveals three issues: (1) Should the Boston and Maine be allowed to terminate rail traffic, remove the bridge, and reconstruct the site to become a portion of the highway? (2) Is the bridge unsafe for continued use? (3) Should the B & M Corporation be required to modify the bridge to improve pedestrian traffic?

[1] We will first dispose of the abandonment issue. It is clear from the comments of the community business representatives that rail service is essential to their present and future plans. Whether or not the rail traffic generated by these businesses is adequate to support the costs of maintaining the branch is not a question before us, and mechanisms exist to address that issue.

Having found that the need for continued rail service exists, there is no need to consider whether the B & M should remove the bridge, fill in the hole, and restore the highway to a condition that may have existed prior to the existence of the railroad. Clearly no need to do so exists.

The second issue is whether or not the bridge is unsafe for continued use. Testimony from the bridge inspectors of the New Hampshire Department of Public Works and Highways clearly show that bridge condition is such that continued monitoring is essential. On November 15, 1983 the inspector noted that the estimated remaining life of the structure was two years. An analysis of the report, however, reveals that many discrepancies, while not insignificant, were not such that there was danger of bridge failure. The deck and superstructure were identified as being in "poor condition — repair or rehabilitation required immediately". The substructure was identified as being "generally good condition — potential exists for minor maintenance". The piers and bents were classified as "marginal condition — potential exists for major rehabilitation". Approach alignment was identified as being "generally fair condition — potential exists for minor rehabilitation". None of the components however were classified as "Critical condition — the need for repair or rehabilitation is urgent. Facility should be closed until the indicated repair is complete".

On the basis of evidence presented, the Commission finds that the bridge is structurally safe for continued use at the present time. The Commission also finds that continued close monitoring is essential for the protection of the public.

Since substantial time has elapsed since this case was heard, the Commission has directed its engineering staff to review the most recent bridge inspection reports of the New Hampshire Department of Public Works and Highways.

The Commission is advised that the only physical change to the bridge within the past year is in further deterioration of the bridge deck. Due to the current deck condition, the structural capacity of the bridge has been reduced to a load limit of "legal loads only, no permit loads."

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This information does not necessitate a reopening of this docket or change the Commission findings stated above. However, it reinforces the Commission's concern relative to the deteriorating condition of the bridge. Since the Department of Public Works and Highways has determined that the remaining estimated life of the bridge is about two years and since the bridge carrying route 101 over the railroad in Portsmouth is a vital highway link, planning must be initiated for the repair or replacement of this bridge. Neither the Boston and Maine Corp., the State Highway Department or the City has indicated that any such planning is in progress.

[2] We cannot ignore the element of urgency that results from the remaining two year life projected by the Department of Public Works and Highways. Given the lead time which can be

anticipated for planning, budgeting, coordinating with other agencies, and construction scheduling, it is incumbent upon the parties to begin the planning process now. Accordingly, we will direct the B & M Corp. to develop plans for repairing or replacing the Greenland Road Bridge. We will require them to submit a progress report to us by December 31, 1985 as to the status of these plans. We will expect that, as a minimum, the City of Portsmouth and the N.H. Department of Public Works and Highways will be offered an opportunity to be parties to these plans in order to insure that any future construction or reconstruction will support future as well as present traffic conditions. We will anticipate that the parties will petition the Commission pursuant to RSA 373:2-3 for appropriate approval and apportionment of costs before construction begins.

The third issue is whether the B & M Corporation should be required to modify the bridge to improve pedestrian traffic and if so whether the B & M Corporation should fund the required modifications. The evidence and testimony presented in this case supports the fact that the design of the Greenland Road Bridge is adequate to support the purpose for which it was originally intended — that is to carry vehicular traffic safely. There is no doubt that traffic patterns and citizen needs have changed since the bridge was constructed. Those changes were not the responsibility of the B & M Corporation, however. The City of Portsmouth may well find that modifications to the Greenland Road Bridge are necessary in order to accommodate the needs of its residents. If it does so, however, it must be prepared to bear the cost burden for such modifications.

FUTURE PLANS

[3,4] This docket has clearly shown a need for the B & M Corp. to better inform this Commission as to its future plans for bridge and rail maintenance in New Hampshire. The bridge and rail network has far-ranging direct and indirect impacts on the New Hampshire highway system, and it is essential that we assure ourselves that that network will continue to enhance — and not interfere with — that highway system. We will put the Company on notice that we will not tolerate the cavalier attitude of simply "shutting things down" if they require attention. Accordingly, we will establish a new docket, DE 85-229 to require the B & M Corp. to report to this Commission before September 1, 1985, as to its long range plans for repairing and

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maintaining the bridge and rail network in the State of New Hampshire.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Boston and Maine Corporation shall not be allowed to terminate rail traffic or remove the Greenland Road Bridge; and it is

FURTHER ORDERED, that the Boston and Maine Corporation, in conjunction with the New Hampshire Department of Public Works and Highways, closely monitor the condition of the Greenland Road Bridge and make such repairs as may be necessary to protect the traveling public; and it is

FURTHER ORDERED, that the B & M Corporation shall not be required to modify the bridge at its own expense to accommodate pedestrian traffic; and it is

FURTHER ORDERED, that the B & M Corporation shall be prepared, at the request of the City of Portsmouth, to make such modifications as are necessary to accommodate pedestrian traffic, such costs to be borne by the City of Portsmouth; and it is

FURTHER ORDERED, that the B & M Corp. shall develop plans for repairing or replacing the Greenland Road Bridge; and shall submit a progress report to this Commission by December 31, 1985 as to the status of those plans; and it is

FURTHER ORDERED, that Docket DE 85-229 is hereby opened for the purpose of making the Commission aware of the B & M Corp.'s long range plans for repairing and maintaining its bridge and rail network in the State of New Hampshire; and it is

FURTHER ORDERED, that the Corporation shall be prepared to report to this Commission by September 1, 1985 as to those long range plans.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of June, 1985.

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NH.PUC*06/25/85*[61116]*70 NH PUC 557*Bio-Energy Corporation

[Go to End of 61116]

70 NH PUC 557

Re Bio-Energy Corporation

Intervenors: Public Service Company of New Hampshire and Whitefield Power and Light, Inc.

DR 85-157, Supplemental
Order No. 17,687

New Hampshire Public Utilities Commission

June 25, 1985

ORDER establishing long term rate for electric cogenerator.

Cogeneration, § 19 — Contract modifications — Long term rate filing — Conditions to approval.

An electric cogenerator that had entered a thirty-year contract with an electric utility and subsequently, due to financial distress, negotiated a modification to that contract, and whose modified contract was made contingent on commission approval of its rate filing, received commission approval for a long term rate filing consistent with the modified contract; commission approval was conditioned on: 1) the cogeneration rates reflecting avoided energy costs, but not avoided capacity costs; 2) the establishment by the cogenerator of a maintenance

account to assure the availability of power over the full term of the arrangement; 3) the cogenerator agreeing to allow the electric utility to retain permanently for the benefit of its ratepayers a percentage of the cost of electricity purchased from the cogenerator prior to the contract modification; 4) the cogenerator agreeing to waive its buyout rights and its right to terminate service on 60 days notice.

Cogeneration, § 17 — Contracts — Preference for contract rates.

Statement, in cogeneration order, that, generally, a contractual relationship is to be preferred over a commission mandated arrangement because contracts can be tailored to the needs of the parties and, to the extent that a contract rate is less than avoided cost, the utility's ratepayers receive an economic benefit. p.559.

(MCQUADE, chairman, separate opinion, p. 561.)

APPEARANCES: Brown, Olson and Wilson by Robert A. Olson, Esquire for Bio-Energy Corporation; Catherine E. Shively, Esquire for Public Service Company of New Hampshire; Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire for Whitefield Power and Light, Inc.; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On May 17, 1985, Bio-Energy Corporation (Bio-Energy) filed a long term rate pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC

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352, 61 PUR4th 132 (1984). On that same day, Public Service Company of New Hampshire (PSNH), the purchaser of the output of the Bio-Energy facility, submitted comments. On May 21, 1985, the Commission issued an Order of Notice to the parties scheduling a hearing for June 18, 1985. Prior to the publication of that Order of Notice, Bio-Energy asserted that it was in financial distress and needed an expedited schedule. Accordingly, the Commission on May 28, 1984 issued an Order of Notice with publication waiving its 17 day notice requirement and scheduling a hearing for June 3, 1984. N.H. Admin. Rules, Puc 201.05 and 203.01. At the hearing, evidence was submitted through the testimony and exhibits of Herman Jacobs and Daniel Nigrosh for Bio-Energy; Wyatt Brown for PSNH; and Mark Collin for the Staff of the Commission. In addition, members of the concerned Citizens of West Hopkinton filed a limited appearance and made a public statement pursuant to N.H. Admin. Rules, Puc 203.03. Additional information requested of Bio-Energy by the Commission was submitted and made a part of the record on June 5, 1985.

On June 7, 1985, Whitefield Power & Light, Inc. (Whitefield) filed a Motion for Intervention and Reopening of Hearings. The Commission ruled on the Whitefield Motion in Report and Order No. 17,666 (70 NH PUC 538). The Motion to Intervene was denied without prejudice¹⁽²⁵³⁾ and the Motion to Reopen the Hearing was granted. Accordingly, the Commission scheduled a further hearing on June 19, 1985 with publication.

At the June 19, 1985 hearing, the Commission heard public statements from the Concerned Citizens of Hopkinton, the Town of Hopkinton and individual residents of Hopkinton. Additionally, the Commission heard further testimony from Mr. Herman Jacobs on behalf of Bio-Energy and Mr. Wyatt Brown on behalf of PSNH. Additional financial information depicting the nature and extent of Bio-Energy's financial distress were also admitted into evidence.

The record reflects that Bio-Energy has constructed and operates a 9 MW wood-fired topping cycle cogeneration facility in the Town of West Hopkinton, New Hampshire. The facility consists of a steam boiler designed for wood chip burning and an extraction turbine-generating set. The facility produces electricity which is sold to PSNH and steam which is sold to Hoague-Sprague Corporation for use in its paper mill located in West Hopkinton.

On December 29, 1982 as amended on May 16, 1983, Bio-Energy entered into a thirty-year contract with PSNH for the purchase and sale of the electric output of the facility. The contract provides for an initial purchase price of 8.1/kwh.²⁽²⁵⁴⁾ Bio-Energy is in serious

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financial difficulty due to unanticipated operating costs and unanticipated escalation in project construction costs. Accordingly, Bio-Energy contacted PSNH to attempt to negotiate a modification to the contract that would alleviate the threat of imminent bankruptcy. As a result of those discussions, Bio-Energy has submitted to the Commission the instant long-term rate filing and PSNH has agreed to release Bio-Energy from its existing contract upon Commission approval of the Bio-Energy request.

The Bio-Energy long-term rate filing is consistent with the requirements of the Commission. It also contains several special provisions that, while consistent with Commission requirements, are not typically found in SPP long term rate filings. Those special provisions are:

- 1) Although the Commission has established rates based on the applicable standard of avoided cost,³⁽²⁵⁵⁾ Bio-Energy is requesting the full avoided energy cost, but is not requesting any compensation for avoided capacity costs. Since BioEnergy will be providing capacity to PSNH, the overall payments made to Bio-Energy will be at a rate which is below the full avoided cost.
- 2) Bio-Energy will establish and fund a maintenance reserve account to provide for the maintenance and repair of the facility over its thirty year life in the amount of \$180,000 per year. PSNH requested this account to assure itself of the availability of Bio-Energy power for the full term of the arrangement.
- 3) Bio-Energy has agreed to allow PSNH to retain permanently .9/ kwh for electricity purchased to date for the benefit of PSNH's ratepayers. The .9/kwh had been previously withheld from payment by PSNH pursuant to Article 3 of the contract.
- 4) Bio-Energy has agreed to waive its buy-out rights and its right to terminate service upon 60 days notice. Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th at p. 146.

After review and consideration we find that the long-term rate filing of Bio-Energy is reasonable and in the public interest. Accordingly, we will approve the filing.

As noted supra at n.2, Commission established rates are subordinate to the provisions of any voluntarily negotiated contract. In the instant matter, the parties continue to be subject to the provisions of the contract of December 29, 1982, as amended on May 16, 1983. PSNH has agreed to release Bio-Energy from the contract only if the Commission approves of the instant filing. Thus, in this matter we must evaluate more than whether the filing is consistent with Commission requirements. We must also evaluate whether the new arrangement is reasonable under all of

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the circumstances. Those circumstances include, inter alia, the existence of the contract, the terms and conditions of the contract, the reason for modifying or terminating the contract, and the provisions of the rate filed with the Commission.

In *Re Greggs Falls Hydroelectric Project*, 70 NH PUC 138 (1985), we recognized that, generally, a contractual relationship is to be preferred over the Commission arrangement. Contracts can be more easily tailored to the needs of the parties and, to the extent that the contract rate is less than avoided cost, the utility's ratepayers receive an economic benefit. We also recognized that the prevailing public policy of PURPA and LEEPA is "... to promote the development of facilities that utilize renewable or efficient energy inputs to the extent that they meet the test of economic efficiency." (Id., 70 NH PUC at p. 140.⁴⁽²⁵⁶⁾) It is therefore apparent that the Commission and PSNH priority should be to maintain the advantages to ratepayers of an existing contract unless substantial evidence supports the conclusion that the resource will no longer be available if the status quo is maintained. In order to retain the benefit of the resource, contract modification is warranted. In all instances, the rates in such modified contracts should be as low as possible consistent with maintaining the resource so as to retain maximum benefits for ratepayers. Additionally, we cannot foresee any reasonable circumstance that would justify new rates that are higher than avoided cost.

Accordingly, when the termination of a contract is contingent on Commission approval of an alternative arrangement, we will generally schedule a hearing to take evidence on the circumstances which justify the departure from the contract terms. We will evaluate all the circumstances; the fact that a new rate is at or below avoided cost will not necessarily, in and of itself, be sufficient to warrant Commission approval.

In the instant matter, we are satisfied that the resource would not continue to be available if PSNH required rigid adherence to the contract terms. The evidence leads us to find that the 8.1/kwh rate would lead to the imminent bankruptcy of Bio-Energy which would put in jeopardy not only the development of the resource, but the financial health of Hoague-Sprague Corporation, the purchaser of the facility's steam output. We are therefore confronted with a situation where the denial of the filing results in the substantial risk that: 1) the resource will no longer be available; 2) the cost savings from a below avoided cost rate would no longer be available; 3) Hoague Sprague would be lost as both a New Hampshire industry and a customer of PSNH; and 4) over 60 New Hampshire jobs would be lost. On the other hand, the evidence

supports a finding that the granting of the filing will substantially reduce or eliminate the risk that the above described adverse consequences will occur. We note that the cost of granting the Bio-Energy request is the difference between the contract rate and the rate set forth in the filing. This rate appears to be sufficient to alleviate Bio-Energy's financial distress and no higher. Additionally, as a below avoided cost rate, it continues to provide benefits to PSNH ratepayers. Under such circumstances, the benefits of granting the long term rate filing clearly outweigh the cost.

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Given the circumstances, we believe that the actions of all concerned parties were reasonable. In particular, we commend PSNH for being flexible enough to work with a SPP experiencing financial difficulties to resolve the problem and, at the same time, negotiating a rate that is no higher than necessary so that maximum benefits can be retained for the ratepayers.

Since the proposed arrangement is reasonable and in the public interest, we will approve the Bio-Energy longterm rate filing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that, subject to the following conditions, the long-term rate filing of Bio-Energy Corporation be, and hereby is, approved; and it is

FURTHER ORDERED, that the foregoing approval is conditioned on:

- 1) the rates approved for Bio-Energy Corporation reflect avoided energy costs, but do not reflect avoided capacity costs, as determined in Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984);
- 2) Bio-Energy will establish and fund a maintenance account in the amount of \$180,000 per year in accordance with the provisions of its long-term rate filing;
- 3) PSNH will continue to retain the difference between 9/kwh and 8.1/ kwh (i.e., .9/kwh) for electricity purchased to date by PSNH from BioEnergy Corporation; and
- 4) Bio-Energy will not be entitled to take advantage of the buy-out provision of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th at p. 146, nor to terminate the arrangement on 60 days notice.

By Order of the Public Utilities Commission of New Hampshire this twentyfifth day of June, 1985.

Separate Opinion by Chairman McQuade

I continue to be concerned that the Commission is expected to respond to utility-responsible crises without being afforded the time necessary to perform the kind of in-depth analysis that would enable it to reach decisions that will stand the test of time.

In the instant case, I do not believe that Bio-Energy presented sufficient information on its financial condition to enable the Commission or its Staff to determine Bio-Energy's true

financial requirements. Although, in general, the Commission grants rates based on Public Service Company of New Hampshire's avoided cost, irrespective of the financial needs of the alternative energy developers, avoided cost is not a proper standard in this case. Here, the Commission is asked to approve a rate above that contained in an already existing long term contract, albeit below the long term avoided cost rate found in DE 83-62, Report and Eighth Supplemental Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132). In order to find that it is just and reasonable to approve a rate higher than that contained in the Bio-Energy/ Public Service Company of New Hampshire contract, the Commission must examine the financial records of the Company with the same scrutiny that it applies to other utilities under our jurisdiction

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whose rates are based on their own costs. Neither the Commission or its Staff was provided with the time or the information to conduct such an investigation.

FOOTNOTES

¹By letter of June 17, 1985, Whitefield notified the Commission that it had decided not to pursue intervention because, inter alia it was able to satisfy its concerns by reviewing the record of the June 3, 1985 proceeding.

²At the time of the contract and subsequently, the Commission had established rates for the purchase of electricity by PSNH pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. § 824a-3, (PURPA) and the Limited Electrical Energy Producers Act (LEEPA), RSA 362-A:4. See e.g., Re Small Energy Producers and Cogenerators, supra; Re Small Energy Producers and Cogenerators, 65 NH PUC 291 (1980). Pursuant to LEEPA at RSA 362-A:4 and the regulations of the Federal Energy Regulatory Commission (FERC) at 18 C.F.R. 292.301 (b), this Commission's rates and other terms and conditions for the purchase and sale of electricity by electric utilities from small power producers and cogenerators (jointly SPPs or Qualifying Facilities) are subordinate to the terms and conditions of voluntarily negotiated contracts. See, Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th at p. 135. ("Nothing in this order will prevent any person from negotiating and entering into a contract for the purchase and sale of electric energy at rates and on terms and conditions other than those or in addition to those contained herein.")

³As required by PURPA and LEEPA, the Commission rates are based on the "avoided costs" of the purchasing electric utility. The FERC regulations define "avoided costs" as "... the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(b)(6).

⁴The Commission went on to define the test of economic efficiency as the purchasing utility's avoided cost. Id.

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NH.PUC*06/26/85*[61117]*70 NH PUC 562*New Hampshire Electric Cooperative, Inc.

[Go to End of 61117]

70 NH PUC 562

Re New Hampshire Electric Cooperative, Inc.

DR 85-38, Order No. 17,688

New Hampshire Public Utilities Commission

June 26, 1985

ORDER permitting two month extension of surcharge credit to refund fuel adjustment clause overcollections and requiring electric utility to file a reconciliation of the amount overcollected versus the amount refunded.

Automatic Adjustment Clauses, § 53 — Over- and undercollections — Refunds — Surcharge credits — Reconciliations.

An electric utility was permitted to extend its use of a surcharge credit to refund fuel adjustment clause overcollections; the utility was required to file with the commission a reconciliation of the amount refunded through the surcharge with the amount overcollected.

By the COMMISSION:

ORDER

WHEREAS, on March 28, 1985 the Commission in its Report and Order No. 17,516 (70 NH PUC 131) revised New Hampshire Electric Cooperative, Inc's (Coop) Fuel Adjustment Clause (FAC) rate to \$2.706 per 100 KWH, reflecting a reduction in fuel costs, said order also providing for a surcharge credit of \$1.096 per 100 KWH, refunding an overcollection from the FAC rate previously in effect; and

WHEREAS, the New Hampshire Electric Cooperative, Inc. on June 17, 1985, has petitioned for an extension of the refund period (to expire June 30, 1985 pursuant to Order No. 17,516) until August 31, 1985 due to overcollections accumulating from the FAC rate approved in Order No. 17,516; and

WHEREAS, upon review of the petition the Commission finds the requested extension to be in the public good; it is hereby

ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, permitted a two month extension of the surcharge credit of \$1.096 per 100 KWH, until August 31, 1985; and it is

FURTHER ORDERED, that, on or about August 31, 1985, the Coop shall file a reconciliation of the amount

overcollected versus the amount refunded by said surcharge credit, at which time the Commission will determine whether any additional adjustment is necessary.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of June, 1985.

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NH.PUC*06/27/85*[61118]*70 NH PUC 563*New Hampshire Yankee Electric Corporation

[Go to End of 61118]

70 NH PUC 563

Re New Hampshire Yankee Electric Corporation

Intervenors: Office of Consumer Advocate and Campaign for Ratepayers' Rights

DF 84-339, Order No. 17,690

New Hampshire Public Utilities Commission

June 27, 1985

ORDER authorizing acquisition of New Hampshire Yankee Electric Corporation stock by the joint owners of the Seabrook nuclear plant and permitting a limited enlargement of the corporation's authority to do business as a public utility within the town of Seabrook.

Public Utilities, § 73 — Nuclear plant — Authority to act as managing agent.

New Hampshire Yankee Electric Corporation was granted a limited enlargement of its authority to do business as a public utility in the town of Seabrook so that it would be able to act as managing agent for the joint owners in the operation of the Seabrook nuclear plant; the grant of authority was made pursuant to a commission finding that such authority is in the public good as required by state statute RSA 374:26; i.e., the management service is needed and the applicant is able to provide the service. [1] p.564.

Procedure, § 14 — Scope of proceedings — Matters affecting parties not present — Standing — Petition for order authorizing the issuance of stock.

A petition by New Hampshire Yankee Electric Corporation for an order authorizing the acquisition of its stock by the joint owners of the Seabrook nuclear project was approved as consistent with the public good; the corporation was found to have standing to bring the petition because it would suffer injury in fact if the joint owners were denied the right to acquire its stock; because of its concern as to whether the corporation had the right to represent the interests of the joint owners, approval of the petition was subject to the following conditions: 1) that an order nisi issue, to become effective twenty days following the issue of the order approving the petition, unless the commission provides otherwise; 2) that all sixteen joint owners of the Seabrook plant be made parties to the petition; 3) that notification be given to all parties that they

have fifteen days from the date of the order to submit any objections, comments or exceptions to the petition. [2] p.567.

APPEARANCES: Sheehan, Phinney, Bass & Green by Edward A. Haffer, Esquire, for New Hampshire Yankee Electric Corporation. Larry Smukler, Esquire, General Counsel for Public Utilities Commission. Gerald Eaton, Esquire, for Consumer Advocate. Mary Metcalf, for Campaign for Ratepayers' Rights.

By the COMMISSION:

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REPORT

On November 9, 1984, New Hampshire Yankee Electric Corporation (NHY) the petitioner, applied to this Commission under RSA 374:33 for an Order authorizing the acquisition of its stock by the joint owners of the Seabrook Nuclear Power Facility. Concurrently, the same Corporation applied under RSA 374:22 for permission for a specifically limited enlargement of its authority to do business as a public utility within the Town of Seabrook.

On November 28, 1984 pursuant to RSA 374-A:2 and 374:22, an Order of Notice was issued setting a hearing for December 20, 1984. Notices were sent to Edward A. Haffer, Esquire, attorney for the applicant, for publication, to the office of the Attorney General, to Gerald Eaton, Esquire for Consumer Advocate (CAP) and to Mary Metcalf for Campaign for Ratepayers' Rights (CRR).

An affidavit of timely publication of notice was filed.

We will address each application separately.

APPLICATION FOR PERMISSION FOR A SPECIFICALLY LIMITED ENLARGEMENT OF ITS AUTHORITY TO DO BUSINESS AS A PUBLIC UTILITY WITHIN THE TOWN OF SEABROOK

[1] NHY presented Edward A. Brown as its witness. Mr. Brown is Chairman and Chief Executive Officer of the New Hampshire Yankee Electric Corporation and President and Chief Executive Officer of the New Hampshire Yankee Division of Public Service Company of New Hampshire. He testified that it would be in the public good to grant NHY permission to act as managing agent for the joint owners in the operation of the plant, primarily because its sole purpose in seeking this authority is to assume the safe and efficient operation of the plant. He further testified that not only would NHY be operating with a staff of individuals who possess a background of years of experience in nuclear operation, but, as a separate entity, it would be unencumbered by the day-to-day operational and financial problems that confront other of the joint owners and, therefore, it would be able to devote all of its time to the Seabrook plant.

The specific request made in NHY's application is that the Commission, pursuant to RSA 374:22, "find that it would be for the public good for NHY to have a specifically limited enlargement of its authority to do business as a public utility within the Town of Seabrook, so

that it may act as managing agent for the joint owners in the operation of the Seabrook plant". Based upon such a finding, NHY requests that the Commission grant permission and approval for such a limited enlargement; no further enlargement or authority and approval to sell electricity was requested. (Application, supra, at 2, A and B).

Mr. Brown testified that the plant would be owned by the joint owners in proportion to their ownership shares and that it was not the intention of NHY to own any of the plant. In fact, it was his belief that the Articles of Incorporation specifically prohibited ownership by NHY. Continuing with his testimony, Mr. Brown explained that NHY is still operating as a division of Public Service Company of New Hampshire and will continue to do so

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until all necessary regulatory approvals have been received; that the Nuclear Regulatory Commission (NRC) has given tentative approval with its final decision expected to be forthcoming in January; that if NHY receives permission to act as managing agent for operations, application will then be made to the NRC by NHY to amend its operating license to designate it as the technically qualified entity to operate the plant.

The future direction that NHY contemplates taking subsequent to the commercial operation of Seabrook was then discussed by Mr. Brown. He explained that the concept referred to as "Super Yankee" is one that will encompass a management oversight with a central engineering licensing construction service division with NHY and Massachusetts Yankee under the purview of that management organization. Mr. Brown stated also that, while the future role of Super Yankee is still undecided, it was agreed that for the present, it was "neither prudent nor appropriate to attempt to get Super Yankee into place prior to the commercial operation of Seabrook". (Transcript p. 15, 16)

Position of the Parties

It is NHY's position that it would be in the public good for it, rather than PSNH, to assume responsibility for the safe and efficient operation of Seabrook. NHY cited PUC Order No. 17,245 (69 NH PUC 590) in docket DF 84-229 as supporting its position. In that order the Commission held that it is in the public good for NHY to function as a separate entity as manager of the construction of the Seabrook project. It is also NHY's position that this petition for authority to manage the operation of the plant was discussed and contemplated in the earlier docket as a natural progression for NHY to take after assuming responsibility for construction.

Concerns were raised by the CAP regarding the future ownership of the plant and NHY's intentions in that area. The CRR's concerns centered around the requirements of the NRC and whether NHY's request for permission to operate the plant was a prerequisite to obtaining approval by the NRC to continue the construction.

Commission Analysis

Pursuant to RSA 374:22 and 26, NHY was granted authority by this Commission to engage in business as a public utility within the town of Seabrook for the purpose of acting as managing agent for the joint owners in the construction of the Seabrook Nuclear Power Project (69 NH PUC 590). NHY now petitions this Commission for a specifically limited enlargement of its

authority to permit it to act as managing agent for the operation of the plant as well as for its construction. To guide us in making a determination in this matter, we look to RSA 374:26, which reads as follows:

374:26 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

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without hearing when all interested parties are in agreement.

Pursuant to this statute, permission by the Commission shall only be granted if it would be "for the public good and not otherwise". We define our criteria for the public good as: 1) a need for the service, and 2) the ability of the applicant to provide the service. The Commission believes that the applicant has supported the need for a managing agent for the operation of the plant.

The testimony of Mr. Brown indicates that a separate entity having as its sole purpose the safe and efficient operation of the plant would obviously be of benefit to the joint owners. Its separation from the problems that the other joint owners are faced with, would allow it to devote all of its time to the Seabrook operation. Mr. Brown also testified that as the position of NHY as managing agent for the operation of the plant had been contemplated at the time of the prior hearing, to go from permission to manage the construction to that of managing the operation should be considered to be a natural progression.

In response to the concerns raised by the intervenors, Mr. Brown testified that the Seabrook plant is owned by the joint owners in proportion to their ownership shares and it is not NHY's intention to own any part of it. Mr. Brown also testified that permission from this Commission to manage the operation of the plant is not a prerequisite to receiving permission from NRC to proceed with the construction.

Based on this analysis, we find that there is a need for the services by NHY and, further, that NHY has demonstrated that it has the expertise required to perform that service. Also, it does appear that managing the construction of the plant to that of managing its operation is the natural progression for NHY to take. Consequently, we find that it is in the public good to grant NHY's petition for a specifically limited enlargement of its authority to do business as a public utility within the town of Seabrook so that it may act as managing agent for the joint owners in the operation of the Seabrook plant. This authority is limited in this order to the specific language set forth herein.

APPLICATION FOR ORDER AUTHORIZING ACQUISITION OF ITS STOCK BY THE JOINT OWNERS OF THE SEABROOK NUCLEAR POWER FACILITY

Mr. Brown testified that NHY is seeking permission from the Commission for the joint owners of the Seabrook project to acquire the stock of NHY. The Commission, at a prior hearing held on October 12, 1984 (69 NH PUC 590) pursuant to RSA 369, granted permission to NHY

to issue and sell 1,000 shares of its Common Stock to the joint owners. This order, however, only authorized NHY to issue and sell the stock. It did not specifically grant authority for the joint owners to acquire the stock.

The specific request made in NHY's application of Nov. 9, 1984 was that the Commission, "... consistently with its order of October 12, 1984, expressly further order that each of the joint owners of the Seabrook nuclear power facility is authorized to acquire stock of NHY."

Based on a finding that the Commission's intent in its order of October

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12, 1984 was to grant authority for the joint owners to purchase the stock, NHY requests that the Commission grant authority to each joint owner to acquire this stock and for such other relief as is just. (Application, *supra*, at 2, A & B).

Position of the Parties

The staff expressed its concerns, pursuant to RSA 374:33 and 34 as to whether:

1. NHY has standing to bring this petition,
2. Whether the Commission has authority to grant NHY's petition, and
3. Whether NHY has written evidence of its authority to represent the joint owners.

Concern was also raised by the staff regarding the wisdom of granting a petition without first making the determination that it is in the public good to do so.

NHY's position is that while RSA 374:33 states that a public utility must be authorized by the Commission to buy stock it does not specify that the applicant must be the buyer. NHY also takes the position that if the Legislature had intended to limit applicants to buyers, it would have so specified. In further support of its position, NHY contends that the language of 374:33 is for the protection of the company issuing the stock to be acquired, therefore, "it makes sense that that Company be allowed to apply for the order." (Memorandum of Law of NHY, at 2). The CRR raised concerns about the possible realignment of ownership if NHY's petition was granted.

Commission Analysis

[2] Our prior Order (DF 84-229, Order No. 17,245), dated October 12, 1984, pursuant to RSA 369, authorized NHY to issue and sell not more than 1,000 shares of common stock. RSA 369:1 provides:

Authority To Issue Securities.

A public utility lawfully engaged in business in this state may, with the approval of the commission but not otherwise, issue and sell its stock, bonds, notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes. The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find necessary in the public interest; provided, however, that the provisions of RSA 293-A

shall be observed by corporations organized under the laws of this state in respect of the corporate authorization required and of other formalities to be observed.

Pursuant to RSA 369:1, and based on our analysis of NHY's application, we found that the issuance and sale of 1,000 shares of NHY common stock to the sixteen joint owners was consistent with the public good. We accordingly approved petitioner's application and it

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is consistent now to authorize purchase of the NHY stock by the joint owners.

The questions now before us are: (1) Whether NHY has standing to bring this petition on behalf of the joint owners, or (2) Whether each joint owner should petition in its own right.

In our examination of New Hampshire law, we find the test for standing to be injury in fact. *New Hampshire Bankers Asso. v. Nelson*, 113 N.H. 127, — A.2d — (1973). There the Court held that an Association had standing to bring a petition since it would "unquestionably suffer injury in fact" were the Commission's decision allowed to stand. As NHY would also suffer injury in fact if the joint owners were denied the right to acquire its stock, we accept its standing to bring a petition on its own behalf. Our concern, however, is whether, under New Hampshire law, NHY may also represent the interests of others. Our examination of New Hampshire law revealed no authority to support a finding such as this. In fact, the Court has clearly stated that one cannot bring a petition to assert the rights of others. *Blanchard v. Boston & Maine Railroad*, 86 N.H. 263, 1 PUR NS 182, 167 Atl. 158 (1933). (petitioner could not represent the interests of others). In its petition, NHY seeks to represent the interests of others, i.e., the sixteen joint owners of the Seabrook facility. On this basis we are reluctant to issue an order that will have a direct impact on the joint owners without first allowing them the opportunity to be heard; without their input, we have no assurance that their interests are being adequately protected.

We turn now to the particular facts in the application. The sixteen joint owners of the Seabrook project, as buyers, under RSA 374-A:7, will be subject to this Commission's regulation.

The total cost for all NHY stock will be only \$70,000 with Public Service Company responsible for the largest single acquisition cost (35%) which will be \$24,989.59. Each joint owner's investment, therefore, will be less than 1% of the projected completion cost of \$1 billion.

We accept that the costs of NHY operations are expected to be passed through to the joint owners as charges for services rendered and we reserve the right to investigate, audit, or otherwise monitor those costs to assure that they are (1) necessary costs of doing business; and (2) properly allocated.

NHY estimates that its initial capitalization costs will be only \$70,000. The Commission will expect the cost projections, as they occur, to be submitted to this Commission for its review in order that it may assure itself of the propriety of these costs.

Based on the evidence presented, we find the acquisition of NHY's stock by the sixteen joint owners of the Seabrook Nuclear Power Facility to be in the public good. However, although we acknowledge NHY's right of standing to bring a petition in its own behalf, we remain unconvinced that it has the right to represent or to adequately protect the interests of the joint

owners. Accordingly, our approval of NHY's application will be subject to the following conditions:

1. That an order NISI issue, to become effective twenty (20) days from the date of this decree, unless the Commission provides otherwise.
2. That all sixteen joint owners of the Seabrook Nuclear Power Plant

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be made parties to this application; and further,

3. That notification be given to all parties that they have fifteen days from the date of this order to submit any objections, comments or exceptions to the petition.

Conclusion:

We have found that, pursuant to RSA 374:22, it is in the public good to grant NHY's application for a specifically limited enlargement of its authority to do business as a public utility. Therefore, we are authorizing NHY to act as managing agent for the joint owners in the operation of the Seabrook plant as specified in its application. We have also found that it is in the public good to allow the joint owners of the Seabrook Nuclear Power Facility to acquire the stock of NHY subject to the terms and conditions described above. No other authorization is intended and this order is not to be construed as granting any authorization other than that explicitly set forth.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Commission finds that it would be for the public good for New Hampshire Yankee Electric Corporation to have a specifically limited enlargement of its authority to do business as a public utility within the Town of Seabrook so that it may act as managing agent for the joint owners in the operation of the Seabrook plant; and it is

FURTHER ORDERED, that New Hampshire Yankee Electric Corporation be, and hereby is, granted such a limited enlargement, but no further enlargement, and specifically not for selling electricity; and it is

FURTHER ORDERED NISI, that consistent with our Order No. 17,245, (DF 83-229) of October 12, 1984 (69 NH PUC 590), each of the joint owners of the Seabrook Nuclear Power Facility be, and hereby are, authorized to acquire stock of New Hampshire Yankee Electric Corporation; and it is

FURTHER ORDERED, that all sixteen joint owners of the Seabrook Nuclear Power Facility be made parties to this proceeding; and it is

FURTHER ORDERED that all parties may submit comments or exceptions to the application as they deem necessary no later than 15 days from the date of this order; and it is

FURTHER ORDERED, that the Order Nisi shall become effective 20 days from the date of this order unless the Commission provides otherwise in a supplemental order issued prior to the

effective date.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of June, 1985.

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NH.PUC*06/27/85*[61120]*70 NH PUC 571*Town of Lincoln

[Go to End of 61120]

70 NH PUC 571

Re Town of Lincoln

Intervenor: New Hampshire Department of Public Works and Highways

DE 85-110, Order No. 17,693

New Hampshire Public Utilities Commission

June 27, 1985

PETITION for authority to convert a private crossing into a public crossing; granted subject to conditions.

Crossings, § 38 — Establishment — Conversion of private crossing to public crossing — Safety measures — Cost responsibility.

A petition by a municipality for authority to convert a private crossing into a public crossing was granted; approval was conditioned upon the municipality instituting certain safety measures and bearing the costs of installation, maintenance and repair.

APPEARANCES: Edmond Gionet, Selectman, and Kalene H. Roberts, Administrative Assistant to the Selectmen, on behalf of the Town of Lincoln; John W. Clement, Railroad Operations Engineer, on behalf of the N.H. Department of Public Works and Highways Railroad Division; Walter King, Commission Rail Safety Inspector, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On April 15, 1985, the Town of Lincoln filed a petition for authority pursuant to RSA 373:1-3 and 6-a et seq. to change the present private grade crossing over the tracks of the State-owned railroad in Lincoln, New Hampshire to a public crossing. An Order of Notice was issued April 25, 1985 setting a hearing for May 23, 1985. Edmond Gionet, Selectman for the Town of Lincoln, offered testimony and exhibits in support of the petition.

The private crossing which is the subject of this proceeding was constructed by the Town of Lincoln sometime in 1968 or 1969.¹⁽²⁵⁷⁾ Located approximately 300 feet north of Mile Post 21

(AARDOT 400-638D at M.P. 21.05), this grade crossing provides access to both the Lincoln wastewater treatment facility and the Lincoln/No. Woodstock incinerator facility. Despite its designation as "private", the crossing is currently being used by the public to gain entrance to these facilities during their regular business hours. At all other times there is a locked gate across the crossing which is maintained by Lincoln.

On February 21, 1979, Lincoln filed

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a petition for authority to construct a public grade crossing across the same tracks to provide access to the treatment facility and the incinerator which the Commission granted in Report and Order No. 13,550 (DT 79-42) issued on March 28, 1979 (64 NH PUC 59). According to the Report, the crossing was to be located either 841.5 feet or 641.5 feet north of MP21. For reasons unknown to Mr. Gionet or Mr. Clement, the only witnesses in this proceeding, that public crossing was never constructed. Instead, as noted above, Lincoln and its residents began utilizing the private crossing for access to the facilities.²⁽²⁵⁸⁾ By this petition, Lincoln seeks to legitimize the use of the existing crossing by formally designating it a public crossing. The Railroad Division of the N.H. Department of Public Works and Highways and the Commission Staff support Lincoln's petition on the condition that the Town of Lincoln bears all maintenance and repair costs associated with the crossing.

At the hearing, the parties agreed to an inspection of the crossing by Walter King, the Commission's Rail Safety Inspector, and to be bound by his recommendations regarding appropriate safety measures for the crossing. Mr. King made his inspection on May 27, 1985 at which time all parties were present. On June 12, 1985, he submitted a memorandum with his findings and recommendations. He stated therein as follows:

The present private grade crossing is 280 feet north of milepost 41 to the center of the paved traveled way. The quadrant is clear and travel restricted by large rocks. The northwest quadrant is covered with vegetation and travel will be restricted by large rocks and a drainage ditch. The southeast quadrant is clear and the northeast quadrant is clear, as the access road to the incinerator travels parallel with the railroad track. The entrance will be controlled by the town of Lincoln and will be open only during the hours of incinerator operation.

Based upon his findings, Mr. King recommends that the Commission impose the following safety measures should it choose to grant authority:

1. A single crossbuck facing east and west and located in the southwesterly quadrant at such an angle that it can be viewed by the easterly approaching traffic;
2. One advance warning disc on the westerly approach;
3. A suitable gate be maintained by the town on the westerly approach which should be kept locked when the incinerator is not open for receiving waste material; and
4. The railroad institute a stop and protect procedure before occupying this crossing (which requires the railroad to stop prior to entering the crossing and a member of the crew protect the train against highway traffic).

Upon review, we find that the change in designation of the above-described crossing from private to public is in the public good. The utilization of this heretofore private crossing will dispense with the need for an additional crossing which Lincoln apparently contemplated constructing in 1979. Accordingly, we will grant Lincoln's petition

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on the condition that Lincoln undertake the above-described safety measures and that it bear whatever installation, maintenance and repair costs are incurred.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of the Town of Lincoln to change the present private grade crossing over the tracks of the State-owned railroad in Lincoln, New Hampshire to a public crossing be, and hereby is, granted; and it is

FURTHER ORDERED, that the granting of said petition is conditionally upon the Town of Lincoln complying with the safety measures outlined in the foregoing Report; and it is

FURTHER ORDERED, that the Town of Lincoln will bear whatever installation, maintenance and repair costs incurred in connection with said crossing.

By order of the Public Utilities Commission this twenty-seventh day of June, 1985.

FOOTNOTES

¹This crossing was apparently constructed without this Commission's authority.

²In conjunction therewith, Lincoln constructed a gravel road east of and parallel to the railroad tracks, within the railroad right of way, for a distance of approximately 500 feet which runs up to the incinerator.

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NH.PUC*06/28/85*[61121]*70 NH PUC 573*New Hampshire Electric Cooperative, Inc.

[Go to End of 61121]

70 NH PUC 573

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate et al.

DF 83-360, 20th Supplemental
Order No. 17,699

New Hampshire Public Utilities Commission

June 28, 1985

ORDER denying rehearing of Seabrook nuclear plant financing order.

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Security Issues, § 131 — Procedure — Authorization of financing — Grounds for rehearing — Changed circumstances — Nuclear plant construction.

A motion for rehearing of a commission order authorizing an electric utility to borrow funds for Seabrook unit I nuclear plant construction, on the grounds of changed circumstances, was denied; the commission found that circumstances had not changed to a point necessitating rehearing and that it had recognized that there were constantly changing and developing events that have a direct impact on the Seabrook project when it issued the financing order. [1] p.578.

Security Issues, § 131 — Procedure — Authorization of financing — Grounds for rehearing — Errors in analysis — Nuclear plant construction.

A motion for rehearing of a commission order authorizing an electric utility to borrow funds for Seabrook unit I nuclear plant construction, on the grounds of errors in the commission's analysis of demand forecasts and long run price elasticity effects, was denied; the commission found that it had properly considered the long run price elasticity effects of continued Seabrook construction before issuing its financing order. [2] p.578.

Security Issues, § 131 — Procedure — Authorization of financing — Grounds for rehearing — Errors in findings — Nuclear plant construction.

A motion for rehearing of a commission order authorizing an electric utility to borrow funds for Seabrook unit I nuclear plant construction, on the grounds that the commission erred in finding that there existed no reasonable alternative to an electric utility's continued participation in the Seabrook project, was denied; the commission found

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that it properly considered alternatives to continued participation before issuing its financing order. [3] p.581.

Electricity, § 3 — Generating plant — Authorization of financing — Load forecasts — Price elasticity — Denial of rehearing.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that its use of an incremental cost analysis in determining the reasonableness of the utility's continued participation in the project incorrectly ignored the possibility that sunk costs in abandoned plant may be disallowed pursuant to state statute RSA 378:30-a; the commission recognized that sunk costs of abandoned plant may not be recovered from ratepayers; however, it found that it has a responsibility to consider the interests of those who would bear the sunk costs of abandoned plant and was thus correct in applying an incremental cost standard. [4] p.581.

Security Issues, § 136 — Procedure — Rehearings — Grounds for granting — Evidence — Need for quantitative evidence — Nuclear plant construction financing.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in accepting certain utility evidence based on a qualitative or logical analysis rather than a quantitative estimate of the costs of various alternatives to continued utility participation in the Seabrook project; the commission found that where substantial record support for a qualitative analysis exists, it is not required to find that the utility failed to meet its burden simply because it declined to perform unnecessary, costly, and time consuming quantitative studies, and, therefore, affirmed its finding that its authorization of utility financing to complete Seabrook construction in light of available alternatives was in the public good. [5] p.582.

Electricity, § 3 — Generating plant — Authorization for financing — Need for power — Alternatives to construction of new plant — Conservation measures.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in discounting testimony on the benefits of heat pumps and other conservation measures in its analysis of the reasonableness of alternatives to continued utility participation in the project; the commission found that while evidence in the record indicated that heat pumps and other conservation measures may reduce demand for electricity, the need for Seabrook unit I capacity would not be diminished; accordingly, it did not grant the motion for rehearing. [6] p.584.

Electricity, § 3 — Generating plant — Authorization for financing — Need for power — Alternatives to construction of new plant — Cogeneration and small power production.

In considering motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in its finding that electricity produced by small power producers and cogenerators cannot be viewed as a substitute for Seabrook capacity; the commission held that the record evidence indicated that small power production would displace the utility's incremental or marginal power requirements rather than its baseload requirements, and, therefore, could only be viewed as a complement to, rather than a substitute for, Seabrook capacity. [7] p.585.

Security Issues, § 44 — Authorization — Factors considered — Alternatives to construction of new plant.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in addressing each alternative to continued utility participation in the project separately rather than in combination; the commission held that its order reflected an analysis which examined and identified all alternatives identified by all parties both singly and in combination. [8] p.586.

Electricity, § 3 — Generating plant — Authorization for financing — Need for power — Alternatives to construction of new plant — Construction of new transmission systems —

Wheeling of power.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in its analysis of alternatives to the utility's continued participation in the project by not requiring quantitative studies of the cost of constructing a transmission system to interconnect the utility's service territory or, in the alternative, wheeling alternative power through the existing transmission system; the commission held that record evidence established the reasonableness of rejecting the option of constructing a duplicative transmission system without first quantifying the costs, and, that given that the record does not support a finding that any alternative is less expensive than the utility's share of Seabrook unit I on an incremental cost basis, quantification of wheeling costs would not add to the analysis. [9] p.587.

Security Issues, § 49 — Authorization — Factors considered — Alternatives to construction of new plant — Sensitivity analysis.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in its analysis of alternatives to the utility's continued participation in the project by not considering a sensitivity analysis to reflect pessimistic assumptions about the cost of constructing, operating, and maintaining the plant; the commission held that it did consider pessimistic alternatives and the record supported its finding that completion of Seabrook unit I is preferred over cancellation under the most pessimistic assumptions proffered by any party to the proceeding. [10] p.587.

Costs — Intervenor compensation — Financing proceeding — Statutory authority to grant compensation.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in its denial of intervenor compensation; the only proceedings in which the commission may grant intervenor compensation are those brought under the Public Utility Regulatory Policies Act of 1978 (PURPA); discussion of PURPA issues in the course of a financing proceeding is insufficient to convert the proceeding into a PURPA proceeding. [11] p.589.

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Security Issues, § 54 — Authorization — Factors considered — Ratemaking effects.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that the record did not support its finding that the projected utility rates were reasonable to support Seabrook financing; the commission held that its conclusions about the probable level of rates for the utility were reasonable because approximately 90% of the utility's revenue requirement is based on the wholesale rates of the principal owner of Seabrook and those rates had been found reasonable for Seabrook financing in a prior proceeding. [12] p.590.

Security Issues, 49 § — Authorization — Factors considered — Financial condition — Times

interest earning ratio.

In its consideration of considering motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in assessing rates based on a 1.0 times interest earning ratio (TIER); the commission held that, despite the fact that the Rural Electrification Administration (REA) currently requires the utility to maintain a 1.5 TIER, a 1.0 TIER is sufficient to meet financing requirements as well as other operational requirements; the commission expressed doubts as to whether the REA would enforce its 1.5 TIER requirement. [13] p.591.

Security Issues, § 49 — Authorization — Factors considered — Financial prospects.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in failing to examine the consequences of cancellation and default; the commission held that ample record evidence indicated that even in the event of default, continued participation in Seabrook was to be preferred over termination of that participation. [14] p.592.

Security Issues, § 44 — Authorization — Factors considered — Matters outside scope of proceeding.

In its consideration of motions for rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project, the commission rejected a claim that it erred in failing to assess the effect of the utility's treatment of Seabrook unit II; the commission held that the treatment of unit II was not before it in the financing proceeding and it was therefore correct in declining to speculate on the effect of unit II. [15] p.593.

Security Issues, § 131 — Procedure — Authorization of financing — Grounds for rehearing — Changed circumstances — Errors in findings.

Statement, in dissenting opinion, that the commission should have granted rehearing of its order authorizing an electric utility to borrow funds for the Seabrook unit I nuclear plant construction project on the grounds of changed circumstances and commission errors in its findings on the reasonableness of rates. p.593.

(AESCHLIMAN, commissioner, dissents in part, p. 593.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 31, 1985, the Commission issued Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422) (Decision) which granted the Petition of the New Hampshire Electric Cooperative, Inc. (NHEC, Cooperative or Company) for authority to borrow \$46,898,000. The Decision was issued pursuant to a remand of the Court, Re Easton, 125 N.H. 205, 480 A.2d 88 (1984) (hereinafter Easton or Re Easton) after nine days of further evidentiary hearings commencing on April 23,

1985 and ending on May 3, 1985. On June 19, 1985, a Motion for Rehearing was filed by Representative Roger Easton, pro se. On June 20, 1985, Motions for Rehearing were filed by the Consumer Advocate and by Gary McCool, pro se.

The Motions assert that the Decision is unlawful and unreasonable for a number of reasons. Since the Motions raise common issues, we will address them on an issue-by-issue basis, rather than as individual discrete Motions. Issues that relate to common findings or common rationales have been combined, even if they were labeled in a different manner in the Motions. For reference, we shall set forth which Movant or Movants raised a particular issue when those issues are defined. The Commission has considered each and every argument raised by the Movants in its decision in this Order. To the extent that a particular argument is not explicitly addressed herein, the Commission relies on the analysis, findings and conclusions in the Decision. Accordingly, those arguments not explicitly addressed herein are denied. Specifically, the Motions assert:

- 1) The Commission's findings and conclusions have been overtaken by events and, accordingly, are stale (Motions of Roger Easton and Gary McCool).
- 2) The Commission did not adequately address the issues involving the effect of rate increases on demand for electricity. Included in this argument is an assertion that the Commission erred in not directing the Staff to prepare and present testimony on the issue of elasticity. (Motions of the Consumer Advocate, Roger Easton and Gary McCool).
- 3) The Commission erred in its ruling on argument that NHEC's participation in Seabrook¹⁽²⁵⁹⁾ is ultra vires (Motion of Roger Easton).
- 4) The Commission erred in its evaluation of the alternatives to the NHEC's continued participation in Seabrook Unit I (Motions of the Consumer Advocate, Roger Easton and Gary McCool).
- 5) The Commission erred in its findings pertinent to the cost of constructing, operating and maintaining Seabrook Unit I (Motions of the Consumer Advocate, Roger Easton and Gary McCool).
- 6) The Commission erred in its denial of compensation to intervenors (Motions of the Consumer Advocate and Roger Easton).
- 7) The Commission erred in its findings about the probable level of rates to support the NHEC's Seabrook investment and in its findings that those rates will be reasonable. This includes the Commission's reliance on a 1.0 times interest earned ratio (TIER) assumption. (Motions of the Consumer Advocate, Roger Easton and Gary McCool).
- 8) The Commission erred in its analysis of the consequences of Seabrook cancellation and the consequences of denying the requested financing authority (Motion of Gary McCool).
- 9) The Commission erred in not considering the effect of sunk investment in Seabrook Unit II in its

evaluation of the proposed financing (Motion of Gary McCool).

We shall address each of the above issues in turn.

1. THE EFFECT OF EVENTS SUBSEQUENT TO THE DECISION

[1] The Motions assert that the Commission's findings and conclusions have been overtaken by events. In particular, the Movants argue that regulatory decisions in other jurisdictions and a default by Fitchburg Gas & Electric Co., one of the joint owners, have altered the situation to a point where further hearings are required to ascertain whether the NHEC's continued participation in Seabrook Unit I remains in the public good.

After review, we find that circumstances have not changed to a point necessitating additional hearings in this docket. We recognize that there are constantly developing and changing events that could have a direct impact on Seabrook Unit I. The findings and conclusions in the Decision were based on a fluid situation. However, even if we were to accept that all events identified by the Movants have occurred, we cannot find that our analysis should be altered. Our findings and conclusions incorporated an analysis of regulatory uncertainty and the risk of default by a joint owner. (See e.g., 70 NH PUC at pp. 481, 482. See Also, Re Public Service Co. of New Hampshire, 70 NH PUC 367 [1985].) We recognized that the NHEC's ability to participate in continued construction faces the same limitations de facto as are imposed on PSNH. *Id.* This de facto limitation is appropriate precisely because of the uncertainties relating to the financial commitment of the joint owners to complete construction of Seabrook I.

Additionally, we note that some of the events identified by the Movants have apparently been resolved to assure financing by the owners in question. For example, the Movants have identified the findings of the Maine Commission as an event warranting further hearings. However, an examination of the June 3, 1985 Order of the Maine Commission in Re Central Maine Power Co., Docket Nos. 84-120, 84-146 and 85-43 reveals that Maine has resolved many of the remaining Seabrook Unit I issues and that the resolution of those issues contemplates the timely completion of Seabrook Unit I.

Additionally, we have been informed by our Staff Auditors that construction of the Seabrook plant is proceeding without interruption and that in the course of that construction, milestones are being achieved. Thus, "changed circumstances" would also include an updated construction estimate which, in all likelihood would lower the incremental cost of completing the facility.

Given that the events identified by the Movants had been considered in arriving at the Decision and given that no additional events have been brought to the attention of the Commission which, if proved, would require reconsideration of these findings and conclusions, the Motions for Rehearing on this ground will be denied.

2. ELASTICITY

[2] In their Motions for Rehearing the Intervenors assert that the Commission has erred in its analysis of demand forecasts and in particular the long run elasticity effects.

In his motion for rehearing, Mr.

Easton presents two additional calculations of the price elasticity effects on demand. He calculates his estimates by using the price elasticity from the NEPOOL study (DF 84-200, Exh. 169) and the summary tables from a 1981 work by Douglas R. Bohl of the elasticities found in various studies of residential demand. He concludes that even after removing the error of double-counting the \$15 million interest payment from his calculations, NHEC still experiences the "death spiral". Therefore he asserts that the Commission erred by not finding that "elastic affects will probably reduce the Cooperative energy sales for the foreseeable future ... [and] for not accepting the logical consequences of" Exhibit 169. Further he criticizes the Commission because it does not explain how the flaws in his elasticity approach should be remedied and because it "still completely ignores the long run elasticity effects".

Mr. Easton does not explain his calculations and therefore it is not possible to evaluate his mathematics. Assuming, however, that his basic methodology remains the same as presented in his testimony, our criticism of his approach remains the same. While he recognizes that his elasticity/"death spiral" analysis depends on the fixed costs of the utility increasing (Motion at 4), as previously noted (70 NH PUC at p. 458), he fails to recognize the fundamental difference between PSNH and the NHEC because of the sell-back arrangement with PSNH. Seabrook does not represent a fixed cost for the NHEC for its first ten years of operation. Thus, the iterative effects of increased prices leading to decreased sales resulting in further increased prices applies only to the proportionally small transmission/distribution portion of the NHEC's rates.

Mr. Easton appears to counter the criticism that he has mixed real prices (the basis of his elasticity estimates) and nominal prices (used in his calculations of price increases) by noting that he has held distribution costs constant. In our view, this adjustment is neither appropriate nor sufficient to correct the disparity between the relationships derived by the elasticity models and the data that he uses the models to analyze. This is in contrast to the use of nominal prices by the Dalton Associates model in which nominal prices are consistently used both to derive the price/demand relationships and as the data to be analyzed.

Mr. Easton has analyzed thoroughly, although not without flaws, one component of the factors which determine the demand for electricity. As noted in the Decision at 69 and 82, his study does not incorporate the factors of income elasticity, growth in number of customers served and inflation that offset in varying degrees the price effects.

Mr. Easton and Mr. McCool (Motion at 10) err when they state that we have ignored the long run elasticity effects. "Long run elasticity effects" are the relationships between price and demand over the long run, in whatever mathematical formulation best explains the data. The Dalton Associates found that a linear equation based on monthly data from a ten year period best explained the relationship between price and kilowatt hour usage for the NHEC. Their formulation relates level of prices to levels of demand rather than short and long run demand changes in response to price changes. However, as we found in our Decision (70 NH PUC at pp. 457) all price changes,

regardless of when they have occurred in the past, which result in a given price level are

incorporated in the Dalton analysis. Therefore in accepting the Dalton study as reasonable, the Commission has considered the long run elasticity effects (or demand effects) that are contained in the Dalton methodology.

The Commission was presented with two analyses of the relationships between price and demand, one by the Cooperative (the Dalton/Smith study) and one by the Intervenors (Easton's elasticity study). Having found that the methodology of the Dalton/Smith study yields a reasonable result to assess demand for electricity in the Cooperative's territory, it is not necessary for the Commission or its Staff to develop an alternative methodology or to assist the Intervenors in refining their presentation.

Mr. Holmes has raised the additional point that "new technology has dramatically changed the cost relationship between conservation and KWH consumption" and therefore asserts that "regression analysis is inappropriate and the Commission should review the approach offered by Mr. Easton". (Motion at 6). To the degree that changes in technology have occurred over the past ten years, those changes are incorporated in the data on which the Dalton multiple regression model is based. If there are radical changes in technology occurring subsequent to the data base (December 1984), as Mr. Holmes asserts, such changes are not incorporated into the model. However, the problem of incorporating future events into methodologies based on historical data is not unique to multiple regression equations. Both multiple regression equations and elasticity formulas derive the numerical relationships between price and demand from historical data. The regression equations develop coefficients and the elasticity methodology derives elasticities to describe this relationship. Both approaches then use these historically derived coefficients and elasticities to project future demand given assumptions of future prices. To the degree that future price/demand relationships are different from those of the past, both the coefficients and the elasticities will be incorrect. Therefore, the proposition that there is new technology which will change the price/demand relationships does not lead us to a conclusion that an elasticity model would be a more accurate predictive tool than a multiple regression model, and Mr. Holmes is mistaken when he asserts that it does.

Accordingly, the Motions for Rehearing on this ground will be denied.

3. ULTRA VIRES

Representative Easton's Motion asserts that the Commission's findings on his ultra vires argument are inapplicable. No further argument was proffered. While it is difficult to review an assertion which does not state why the Movant believes that the Commission erred and while such an unsupported assertion is deficient, RSA 541:4, we have nevertheless reviewed our analysis as set forth in the Decision (70 NH PUC at p. 445). There, we concluded that Representative Easton's argument that the NHEC's participation in Seabrook was the result of ultra vires actions on the part of the NHEC Directors was unsupported and without merit in this financing proceeding. We have been presented with no reason to

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disturb that analysis, nor has any such reason emerged from our independent evaluation of the issue. Accordingly, the Motion on this ground will be denied.

4. ALTERNATIVES TO THE NHEC'S CONTINUED PARTICIPATION IN SEABROOK

UNIT I

[3] The Movants claimed that the Commission erred in its finding that there exists no reasonable alternative to the NHEC's continued participation in Seabrook Unit I. Specifically, the Movants asserted:

- a) The Commission erred in employing an incremental cost analysis;
- b) The Commission erred in accepting a qualitative analysis;
- c) The Commission erred because it discounted testimony on the benefits of heat pumps and other conservation measures;
- d) The Commission erred in its finding that the development of the small power production resource is not a substitute for the NHEC's continued participation in Seabrook I;
- e) The Commission erred because it evaluated alternatives separately, rather than in combination;
- f) The Commission erred in its evaluation of the evidence on the advantages and disadvantages of constructing a new transmission system or arranging to have alternative power wheeled through the existing transmission system; and
- g) The Commission erred in its evaluation of the economic analysis submitted by the NHEC.

We will address each assertion in turn.

- a) The Incremental standard of analysis.

[4] The Movants claim that the Commission incorrectly utilized an incremental cost standard in its analysis of whether the NHEC's continued participation in Seabrook I is a preferred alternative. Specifically, Mr. McCool contends that the use of the incremental cost standard does not account for the possibility that sunk costs may be disallowed pursuant to RSA 378:30-a, reflects an improper Commission perception that it has the responsibility to protect the Rural Electrification Administration (REA) investment and presents an unreasonable and insurmountable obstacle to the consideration of alternatives.

After review of our previous analysis (See e.g., 70 NH PUC at pp. 468, 469) and the argument of Mr. McCool, we adhere to our belief that the incremental cost analysis is appropriate because we believe that the incremental standard is grounded in sound economic theory, it was the analytic standard noticed in this proceeding and the incremental cost standard has been recognized by the Court as appropriate for the purpose of evaluating the alternatives to Seabrook I. See e.g., *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 472-475, 482 A.2d 509 (1984).

Mr. McCool's arguments reflect a misunderstanding of the rationale for employing an incremental cost analysis. Mr. McCool is correct that sunk costs may not be recovered from ratepayers if the plant is not completed.

RSA 378:30-a; *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). However, the fact that particular costs may not be allocated to ratepayers in

certain circumstances does not cause those costs to disappear. Thus, as noted previously, the issue is not whether costs must be borne, rather the issue is the allocation of the responsibility for those sunk costs. Mr. McCool's argument to the contrary notwithstanding, the Commission has a responsibility that is broader than an examination of the issues from a ratepayer perspective. RSA 363:17-a provides, in essence, that the Commission must balance all material interests in its evaluation of the public good including the ratepayer and the utility. We have heavily weighted the interests of the NHEC's ratepayers in receiving safe reliable service at just and reasonable rates from a financially viable entity. See e.g., Decision, 70 NH PUC at pp. 448-468 (Need for Power); 70 NH PUC at pp. 468-474 (comparison with alternatives); and, 70 NH PUC at pp. 474-482 (Financial Feasibility including consequences of default). However, we also have a responsibility to the United States Government and, ultimately, the U.S. taxpayer, acting through the REA in its role as principal investor in the NHEC and to the public at large to minimize economic waste. Our findings and conclusions in the Decision were that the interests of all concerned persons would be best served by granting the requested authority. These findings and conclusions were based on an incremental cost standard applied to alternatives; a standard that recognizes that sunk costs will be borne by at least one of the interests which the Commission must consider. The findings and conclusions were also based on a total cost standard applied to the issue of financial feasibility; a standard that recognizes that the exposure to ratepayers is based on total costs. The incremental analysis of alternatives recognizes that if an alternative is selected, society will bear the sunk cost of Seabrook plus the incremental cost of the alternative. Thus, from the viewpoint of the public, we must treat sunk costs consistently in our analysis of alternatives. We therefore conclude that the issues in this docket were considered under standards of analysis that were proper and consistent with the responsibility of this Commission to consider whether the NHEC's proposed borrowing is consistent with the public good.

b) The Use of a Qualitative Analysis

[5] The Movants assert that the Commission erred in accepting certain NHEC evidence based on a qualitative or logical analysis, rather than a quantitative estimate of the cost of various alternatives. The NHEC evidence at issue rejected certain alternatives as unpractical or uneconomic without first attempting to quantify the comparative costs. According to the NHEC, such an exercise would be useless and wasteful because the qualitative or logical analysis conclusively established that the alternatives would cost more than continued Seabrook participation even if the precise price difference was not calculated. According to the Movants, the lack of quantitative data means that the NHEC failed to meet its burden of proof under *Re Easton*.

Underlying this entire argument is the issue of the NHEC's burden of

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proof and the Commission's responsibility under *Easton*. We will initially address the issue of Commission responsibility. We will then address the issue of whether the NHEC has met its burden of proof.

In the Decision (70 NH PUC at pp. 445-447), the Commission identified the deficiencies in its previous record that lead to the reversal of Report and Supplemental Order No. 16,915 (69

NH PUC 137) in Easton. Our analysis concluded that all of the concerns of the Court in Easton have subsequently been addressed by the Commission, not only in the instant docket, but also in the dockets adjudicating PSNH financing requests. (See *Re Public Service Co. of New Hampshire*, 70 NH PUC 367 [1985], and *Re Public Service Co. of New Hampshire*, 70 NH PUC 164, 66 PUR4th 349 [1985]; *Re Public Service Co. of New Hampshire*, 69 NH PUC 558 [1984]; *aff'd Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 [1984].) In the instant docket, as well as those involving PSNH, the Commission has received evidence on a broad range of issues. Indeed, we believe that in the nine days of evidentiary hearings and the sixty-five exhibits on remand the Commission has considered fully the evidence proffered by all parties in conformity with its responsibility to conduct a searching inquiry into the public good. Our reexamination of this issue in the context of the instant Motions for Rehearing leads us to conclude that the Commission has fulfilled its "duty to determine whether, under all the circumstances, the financing is in the public good — a determination which includes considerations beyond the terms of the proposed borrowing". (Easton, 125 N.H. at p. 213.)

Having decided that the inquiry conducted by the Commission was in conformity with applicable legal standards, it remains to address the issue of whether the NHEC met its burden of proof. The Motions were correct in their assertion that much of the data submitted in this proceeding was based on qualitative expert judgments rather than a quantitative cost comparison. However, the Motions incorrectly asserted that such a quantitative cost comparison is required by Easton. The Court in Easton clearly did not intend to place an impossible burden on the NHEC to present evidence on whether its proposed financing is consistent with the public good. If a logical analysis leads to a rational conclusion regarding realistic alternatives to the NHEC, it would be a futile and unrewarding exercise to conduct costly studies which would lead to the same conclusion. Thus, the test is not absolute - quantitative analysis is not required in all instances. Rather, the issue is whether the NHEC's logical analysis is rational and whether the record supports the NHEC's assertion that a quantitative analysis would be duplicative and result in the same conclusion. Our evaluation of the rationale of the NHEC's decision to forego quantitative analysis in some instances (e.g., the cost of constructing a duplicative transmission system to interconnect its 27 delivery points, Decision, 70 NH PUC 450) and to utilize a quantitative analysis in those instances where the result could not be definitively predicted with a logical analysis (e.g., the Net Present Value comparison of participation versus termination scenarios, Decision 70 NH PUC at pp. 471-473) was rational and

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supported by the evidence. (See generally, 70 NH PUC at pp. 459-474.) Our reexamination of the record in the context of the Motions for Rehearing revealed nothing to disturb that finding. The record evidence supports the judgment of expert witnesses that a logical analysis was sufficient to reject certain alternatives as substitutes for Seabrook power. See e.g., 5 Tr. 857-891 (Smith); Exhs. R-26, R-27, R-28 (Request 5) and R-29 (Request 10). The Movants had a full opportunity to present evidence to the contrary and, after an examination of that evidence, we continue to be satisfied that they failed to rebut the NHEC's evidence of the adequacy of the qualitative analysis to the extent it was employed. Where substantial record support for a qualitative analysis exists, we are not required by Easton to find that the NHEC failed to meet its

burden simply because it declined to perform unnecessary, costly and time consuming studies. We affirm our finding that the NHEC sustained its burden of proving that the proposed financing to complete construction of Seabrook I in the light of alternatives was consistent with the public good.

c) The Testimony in Support of Heat Pumps and Other Conservation Alternatives

[6] Representative Easton argued that the Commission's findings with respect to heat pumps is based on an inadequate record. Mr. McCool argued that the Commission unfairly faulted the testimony of Witness Flavin. The Consumer Advocate supported both assertions. Our further review supports the analysis in the Decision and, accordingly, the Motions on this ground will be denied.

Representative Easton asserted:

The Commission's reasoning on heat pumps is confusing and perhaps the result of an inadequate record. Recognizing Witness Smith is an economist and not an engineer leads to concluding additional testimony on heat pumps is necessary. I would be glad to provide that testimony and ask for a rehearing to do so. Motion of Roger Easton at 6.

Our analysis of the heat pump issue was that the use of heat pumps to substitute for all or a significant portion of Seabrook power (15 MW of peak residential hot water heating) was not supported by the evidence. (70 NH PUC at p. 463.) Our reexamination of the record reveals nothing to disturb that conclusion. We appreciate but are constrained to decline Representative Easton's offer to provide additional testimony. We find such testimony was available at the time of the remand hearings. We also note the absence of an offer of proof to allow us the opportunity to evaluate whether the proffered additional evidence merits rehearing. Additionally, the evidence submitted to date indicates that while additional heat pumps may reduce demand, the need for Seabrook I capacity is not diminished. Under such circumstances, we are not required to grant a Motion for Rehearing, *Re Gas Service, Inc.*, 121 N.H. 797, 435 A.2d 126 (1981); *O'Loughlin v. New Hampshire Personnel Commission*, 117 N.H. 999, — A.2d — (1977), nor is the granting of such a Motion for Rehearing warranted as a matter of Commission discretion.

Mr. McCool asserted that the Commission unfairly faulted the analysis of

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Witness Flavin. In particular, Mr. McCool did not agree that "Mr. Flavin's testimony is of limited benefit in this proceeding since he offers no specific program and deals only in generalities". (70 NH PUC at p. 464.) Mr. McCool asserts that a different standard was applied to Mr. Flavin and evidence proffered by NHEC witnesses which was accepted on the basis of a qualitative analysis. Our evaluation of the record continues to lead us to conclude that the alternatives described by Mr. Flavin cannot be viewed as a substitute for Seabrook capacity.

Mr. McCool is incorrect in his assertion that different standards were applied to the testimony of Mr. Flavin and the NHEC witnesses. As noted supra, we accepted an analysis that included qualitative judgmental elements which were applied to the NHEC system when that analysis was supported by the record. Mr. Flavin's analysis addressed the general benefits of certain alternatives, but did not purport to apply those benefits to the NHEC system. Rather, Mr.

Flavin recommended that studies be undertaken to ascertain whether those alternatives would benefit the NHEC system and, if so, the extent of the benefit. Thus, we were not weighing one qualitative analysis against another; we accepted a logical analysis which was rationally applied to the circumstances of the NHEC system while we noted that a general description of the benefits of alternatives not applied to the NHEC system was of limited value in this proceeding.

When we review Mr. Flavin's testimony and apply it to the merits of this proceeding, we find nothing to disturb the analysis in the Decision. We do not discount the benefits of the alternatives described by Mr. Flavin; we believe such alternatives should be pursued as compliments to the NHEC's share of Seabrook capacity. However, substantial evidence indicates that the incremental cost of the alternatives exceeds the incremental cost of Seabrook (See e.g., 70 NH PUC at p. 474.) Further substantial record evidence pertinent to the nature of the NHEC's power supply options, service territory and load requirements shows that alternatives are a complement to, but not a substitute for the 25 MW of NHEC Seabrook power (See e.g., 70 NH PUC at pp. 471-474.) Accordingly, we conclude that rehearing regarding conservation alternatives is not warranted.

d) Small Power Production

[7] The Movants asserted that the Commission erred in its finding that electricity produced by Small Power Producers and Cogenerators (SPP's, Qualifying Facilities or QF's) cannot be viewed as a substitute for Seabrook capacity. In particular, the Consumer Advocate and Mr. McCool argue that the NHEC agreement not to actively pursue SPP power reflects an effort by the NHEC to discount a viable alternative to Seabrook. After review, we find no reason to disturb the analysis set forth in the Decision. There, we stated (70 NH PUC at p. 462):

The Commission finds that there is no effective agreement between PSNH and the NHEC to restrict sales of power from QFs to the Cooperative; such a term could not exist because it would be inconsistent with public policy.

NHEC has an obligation to pursue the SPP resource to the extent that its

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customers are benefited. Thus, the NHEC and PSNH agreement cannot be construed as restricting sales of QF power to the NHEC. The NHEC simply will not be able to rely on that agreement to escape its obligation to secure the least cost blend of power for its ratepayers.

Given our interpretation of the PSNH/NHEC agreement, it could have no bearing on our analysis of the SPP alternative. Our analysis was based on the record evidence which indicated that SPP power would displace the NHEC's incremental or marginal power requirements rather than its baseload requirements.²⁽²⁶⁰⁾ Thus, SPP power can only be viewed as a compliment to rather than a substitute for Seabrook capacity.

e) Separate Evaluation of Alternatives

[8] In his Motion, Mr. McCool asserted that the Commission erred in addressing each alternative separately. Mr. McCool argued that the Intervenors intended to profer certain combinations of alternatives which, when considered together, would be a substitute for Seabrook power. After review and consideration, we will reject Mr. McCool's assertion.

Mr. McCool is incorrect when he asserts that the Commission did not consider whether a blend of alternatives could substitute for Seabrook. The Decision reflects a Commission analysis which examined all alternatives identified by all parties both singly and in combination. We found that there is no combination of alternatives that cost less than Seabrook under an incremental cost standard. (70 NH PUC at pp. 471-474.)

The Movants would have us view alternatives in an "either/or" fashion. However, as indicated in our Decision (70 NH PUC at p. 465), the NHEC's load requirements are such that they may be met through a combination of sources. In this context, the 25 MWs of Seabrook represents the least cost means of meeting the NHEC's base load requirements under an incremental cost standard of analysis. Other sources can also contribute. However, we do not believe that we are compelled to find that if one or more alternatives can contribute to serving the NHEC load, it must be viewed as a Seabrook substitute. In the absence of substantial evidence that the synergism of discrete alternatives and other conservation measures will substitute for Seabrook capacity and energy, we cannot responsibly abandon Seabrook for conjectural and inadequate sources of power to meet demand. In the aggregate, based on record evidence and cold hard analysis, there is no realistic substitute for Seabrook I. Our reexamination of the record leaves us satisfied that the various sources of power complement rather than displace each other.

It must also be noted that the evidence on alternatives was presented through separate witnesses. It is our responsibility to examine all the evidence of record and to state why we did or did not rely on such evidence. See e.g., RSA 363:17-b. Accordingly, it was necessary to analyze each individual alternative identified by a party as a predicate to our analysis of

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combinations of alternatives. Our review leaves us convinced that the analysis in the Decision was reasonable, based on substantial evidence and consistent with applicable legal standards. Accordingly, the Motions on this ground will be denied.

f. Transmission Alternatives

[9] The Movants asserted that the Commission erred in not requiring quantitative studies of the cost of constructing a transmission system to interconnect the NHEC's service territory or, in the alternative, wheeling alternative power through the existing transmission system. We addressed this issue *supra* when we discussed the application of a qualitative analysis to alternatives. There we accepted record evidence that established the reasonableness of rejecting the option of constructing a duplicative transmission system without first quantifying the costs. (See, 70 NH PUC at pp. 450, 451, 459, 465; 3 Tr. 437, Exh. R-24 at 3.

With respect to the issue of wheeling, we note that the NHEC is not automatically entitled to wheeling services over transmission lines owned and operated by other utilities. To the extent that wheeling services are secured, the rates would be subject to the approval of the Federal Energy Regulatory Commission (FERC). See generally, Sections 211 and 212 of the Federal Power Act, 16 U.S.C. §§ 824j and 824k. Such a wheeling charge would have to be evaluated on a case-by-case basis and, to the extent such a transaction is completed, the wheeling cost must be considered as a cost over and above the basic cost of the electricity. Given that the record does

not support a finding that any alternative is less expensive than the NHEC's 25 MW of Seabrook on an incremental cost basis, we do not believe that a quantification of wheeling costs, if it could be achieved, would add to the analysis. Rather, the cost of wheeling, at whatever level, has the affect of increasing the direct cost of the alternatives considered, correspondingly favoring the NHEC's continued participation in Seabrook. Accordingly, the Motions for Rehearing on this ground will be denied.

g. Evaluation of NHEC's Economic Analysis

[10] The Motions argued that the Commission erred in not considering a sensitivity analysis to reflect pessimistic assumptions about the cost of constructing, operating and maintaining Seabrook.³⁽²⁶¹⁾ After review and consideration, we will deny the Motions on this ground. The Motions incorrectly assert that only optimistic assumptions were evaluated. In the Decision, we stated (70 NH PUC at pp. 472, 473):

... Thus, the NHEC presented a series of scenarios ranging from PSNH's base case assumptions (Exh. R-21A) through the more pessimistic assumptions on which the proposed financing is based (Exh. R21B, 6 Tr. 1110-11) to the most pessimistic assumptions proffered by Intervenors in Re PSNH, DF 84-200 (Exh. R-21C). Although we believe that the more optimistic assumptions in Exh. R-21 are attainable, we will confine our analysis to the more pessimistic assumptions which form the

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basis of the proposed financing request (Exhs. R-21B and R-21C).

In each instance, the cost of the continued participation and the cancellation cases were compared. In all cases net present value (NPV) analysis favored continued participation over the cancellation scenarios.

Given that the completion of Seabrook is preferred over cancellation under the most pessimistic assumptions proffered by any party to this proceeding (Exh. R-21C), we affirm our belief that the requested financing authority is consistent with the public good.

5. THE ESTIMATE OF SEABROOK COSTS

The Movants assert that the Commission findings on the Seabrook cost and schedule are inconsistent and incorrect. In particular, the Movants assert that the Commission granted financing authority based on a projected incremental cost of \$1 billion; a cost which translates to \$4,779 per installed kw. The Movants further assert that the figure is based on the assumption that the facility will be completed in October, 1987. The Movants argue that the financing authority permitted by the Commission is inconsistent with the Commission's findings in Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349 (1985), adopted in this proceeding, Report and Fourteenth Supplemental Order No. 17,568, (70 NH PUC 319). Those findings were that the plant will probably cost between \$4.6 and 4.7 billion, and that a completion date of December, 1986 is attainable. This translates to a total cost of \$4,087 per installed kw.⁴⁽²⁶²⁾

After review and consideration, we will deny the Motions on this ground. The Movants argument reflects a misunderstanding of the Commission's Order in Re PSNH, DF 84-200, supra

and of the Commission's rationale in the Decision. In *Re PSNH DF 84-200*, supra, we found that Seabrook will probably be completed at a total cost of between \$4.6 and 4.7 billion and that a date of December, 1986 is attainable. There, we recognized that there is sufficient risk of delay to warrant the grant of financing authority based on a conservative \$1 billion to go figure. See e.g., *Re PSNH, DF 84-200*, supra. This translated to an incremental completion cost of \$870 per installed kw.⁵⁽²⁶³⁾ We went on to note that even when the more conservative assumptions are adopted for financing purposes, the incremental cost analysis favors the completion of the plant. In the instant case, the same analysis was employed. The NHEC proffered three scenarios: 1) a scenario based on a \$882 million to go assumption (Exhs. R-4 and R-21A); 2) a scenario based

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on a \$1.3 billion⁶⁽²⁶⁴⁾ to go assumption used for financing purposes (Exhs. R-3 and R-21B); and 3) a scenario based on the conservative Request 10 assumptions proffered by Intervenor in *Re PSNH, DF 84-200* (Exh. R-21C). While there may have been minor inconsistencies in the completion dates used and the precise dollars in the completion costs, the scenarios are substantially the same as those adopted in *Re PSNH, DF 84-200*. (See e.g., 70 NH PUC at p. 440, n. 67 [Reconciliation of October, 1987 completion date with the December, 1986 completion date].) More significantly, the economic analysis as contained in the record favors the completion of Seabrook Unit I under even the most conservative assumptions utilized in Exh. R-21C. Thus, the Commission was justified in granting relief based on the \$1.3 billion to go assumption given the uncertainty of attaining the projected incremental cost of \$882 million and given the finding that completion continued to be favored under the more conservative assumptions. The rationale for the Commission's finding is all the more compelling in the instant docket given that the NHEC does not have to prefinance the completion cost inasmuch as its financing takes the form of a line of credit with the REA.

Representative Easton raised additional issues about the Commission's findings pertinent to Seabrook project life and the capacity factor. Representative Easton acknowledges that the Commission's findings are not necessarily incorrect; he asserts that in his judgment, the findings are too optimistic. Motion at 3. After review and consideration, we continue to be satisfied that the Commission's findings are based on a rational evaluation of the substantial evidence of record. Since we have not identified any reason to disturb those findings, the Motion will be denied on this ground.

6. INTERVENOR COMPENSATION

[11] Representative Easton and the Consumer Advocate argued that the Commission erred in its denial of Intervenor compensation in this proceeding. (See, 70 NH PUC at p. 445; *Re Public Service Co. of New Hampshire*, 70 NH PUC 42 [Order 17,430].) In the Decision, we denied Intervenor compensation for the same reasons set forth in Order No. 17,430. There, we concluded that the Commission lacks authority to grant Intervenor compensation absent statutory authorization. We noted that the only statutory authorization is that set forth in the Public Utility Regulatory Policies Act of 1978, P.L. 95-617, 92 STAT. 3117 (November 9, 1978) (PURPA). It is manifestly evident that the instant proceeding was noticed and conducted as a financing proceeding pursuant to RSA Chapter 369. While certain PURPA issues may have been discussed

in the course of the testimony, such discussion is insufficient in and of itself to convert this financing proceeding to a PURPA proceeding. Since there is no statutory authority to grant Intervenor compensation in proceedings that are not based on PURPA, the Commission correctly denied the request.

It may be further noted that even if one assumes arguendo that the instant proceeding could be construed as an

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adjudication of PURPA issues, the requests were procedurally deficient. Our regulations require that any Intervenor seeking compensation must file a "Request for Finding of Eligibility for Compensation" averring specific required elements. N.H. Admin. Rules, Puc 205.03. Such a request should have been filed within 30 days of the first pre-hearing conference in this docket. N.H. Admin. Rules, Puc 205.04. Since no timely request was filed and, to the extent that we construe the request in Representative Easton's trial brief to be an untimely Request for Finding of Eligibility for Compensation, the request did not contain the assertions required by the rule, we must find that the Intervenors are not eligible for compensation. It must be noted that we are considering deficiencies that are more than mere technicalities. The regulations are designed to allow us to adjudicate with notice whether the Intervenors are eligible. Absent such an adjudication, a utility would have no opportunity to object [in order] to prevent the cost of such compensation from being passed through to its ratepayers. See N.H. Admin. Rules, Puc 205.05 (Objections) and 205.06 (Findings of Eligibility).

7. FINANCIAL FEASIBILITY

[12] The Motions assert that the record does not support the findings of the Commission that the projected NHEC rates to support the Seabrook investment are reasonable for financing purposes. After review and consideration, we believe that our analysis, as set forth in the Decision (70 NH PUC at pp. 476-479) is correct and we affirm our finding that the estimated rates are reasonable. Accordingly, the Motions on this ground will be denied.

We note initially that in Re PSNH, DF 84-200, we found that the projected PSNH rates to support Seabrook are reasonable for financing purposes. (70 NH PUC at p. 378.) In addition, on rehearing we affirmed our finding of reasonable rates. See, Re Public Service Co. of New Hampshire, 70 NH PUC 367 (1985). Since approximately 90% of the NHEC's revenue requirement is based on PSNH wholesale rates, our finding in Re PSNH, DF 84-200 is applicable. As we stated in the Decision, definitive rates for PSNH will involve hearings before both this Commission and the FERC to evaluate inter alia the appropriate rate of return on the appropriate level of prudent investment. (See e.g., 70 NH PUC at pp. 482-484. See also, Re PSNH, 125 N.H. 46, 49-51, 60 PUR4th 16, 480 A.2d 20 [1984].) Similar rate hearings will be held for the NHEC.

The parties were notified of their opportunity to present evidence to distinguish the NHEC from PSNH. (See e.g., paragraph (4) of the Decision [70 NH PUC at p. 433] and Report and Fourteenth Supplemental Order No. 17,568 [70 NH PUC 319].) The record reveals that no such evidence was presented. Our independent analysis leads us to conclude that there are no material distinguishing factors that could have been presented on the issue of the rates necessary to

support the NHEC's 25 MW share of Seabrook. (See also, 70 NH PUC at p. 477.)

Mr. McCool in his Motion asserted that the Commission's analysis is inconsistent with the Court's ruling in *Re Easton*. Mr. McCool argued that the Commission cannot defer to a later ratemaking proceeding the issue of whether rates are just and reasonable while deciding in the instant proceeding that rates are reasonable for

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financing purposes. We disagree with Mr. McCool's analysis. We do not believe that we are required by *Re Easton* to go through the evidence required in a rate case to arrive at definitive findings that rates either are or are not just and reasonable when we undertake a financing proceeding. Rather, *Easton* requires that we assess the probable level of ratepayer and investor exposure by calculating the level of rates necessary to support the financing. We expressly found that estimated rates to support total capital investment in Seabrook I are reasonable in terms of the financial feasibility of completing construction of Seabrook I. (70 NH PUC at pp. 477.) Otherwise expressed, "Rates to Support Future Revenue Requirements to Fund the Capital Investment Resulting from the Proposed Borrowing Authority are Reasonable." (70 NH PUC at p. 476.)

As noted previously, since rates are based on total cost rather than incremental cost, we utilized a total cost standard in this evaluation. While we were able to assess ratepayer exposure and conclude that it is reasonable for financing purposes, we did not and could not engage in the type of detailed ratemaking proceeding necessary to establish just and reasonable rates. Such a proceeding cannot be undertaken until ratemaking treatment is sought. This analysis was clearly set forth in the Decision in the sentences preceding the language quoted by Mr. McCool in his Motion at 6 when we stated (70 NH PUC at p. 477):

The estimated rate level to support capital investment approximating \$138 million upon completion is within a reasonable range for purposes of financing NHEC's share of the cost to complete Seabrook I. Clearly, as mandated by SAPL II, SAPL I and *Easton*, the projected investment resulting from this and associated financing may be supported by a level of rates to enable NHEC to earn operating costs, depreciation and other charges to enable electric consumers to receive electric service at reasonable rates.

An additional analytic point considered by the Commission in this docket was the sell-back agreement between the NHEC and PSNH. Exh. R-8. This agreement ensures that the NHEC's ratepayers will not be required to pay for the NHEC's ownership share of Seabrook for the first ten years of operation if the cost of that ownership share is higher than alternative sources of power. Thus, we are really assessing the reasonableness of rates that may commence ten years after the plant is operational. In that interim period there will be rate reviews after Seabrook becomes operational and subsequently. Those rate reviews will ensure that the NHEC rates continue to be just and reasonable consistent with sound and historically proven regulatory principles.

[13] Finally, we have considered Mr. McCool's assertion that we erred in assessing rates on the basis of a 1.0 TIER. Mr. McCool argues that since the NHEC is required to maintain a TIER of 1.5 or better (Exh. R-9 at 10), the 1.0 TIER assumption presented an unrealistically optimistic

estimate of future rates. After review and consideration, we continue to be satisfied that the use of a 1.0 TIER is appropriate. Our responsibility under Easton is to assess the rates necessary to service the financing as well as to meet the other operational requirements of the utility if the

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proposed financing is approved. The record reflects that the rates under a 1.0 TIER will do just that. Additionally, the testimony indicates that while the REA currently requires a 1.5 TIER, it is unrealistic to expect that this requirement will be allowed by this Commission or enforced by the REA. Direct testimony of Ms. Smith, Exh. R-24 at 10; 7 Tr. 1240-45; Testimony of John Pillsbury, Tr. 1336-41.

⁷⁽²⁶⁵⁾ In fact, the NHEC is capitalizing Seabrook interest as AFUDC on the assumption of a 1.0 TIER. *Id.* Accordingly, on the basis of our evaluation of the substantial evidence, we find no reason to disturb our findings pertinent to the reasonableness of rates in the Decision.

8. CONSEQUENCES OF CANCELLATION AND DEFAULT

[14] Mr. McCool asserted that the Commission erred in failing to examine adequately the consequences of a Seabrook cancellation and the consequences of default by the NHEC. After review and consideration, the Motion on this ground will be denied.

Our analysis indicates that Mr. McCool has misstated the issue. In *Re PSNH*, DF 84-200, *supra*, the Commission found, *inter alia*, that the completion of Seabrook I is consistent with the public good. Thus, the issue here is not whether or not Seabrook I should be completed; rather, the issue is whether the NHEC's continued participation in Seabrook I is in the public good. To determine the above issue, we allowed the parties the opportunity to bring to the record evidence relevant and material to aid the Commission in its evaluation. All such proffered evidence was considered. That evidence compared the net present value of continuing NHEC Seabrook participation and with that of terminating participation. (See e.g., 70 NH PUC at pp. 471473, 480; Exhs. R-21A, R-21B, R-21C, R-24 and R-48.) In all instances, the net present value of continued NHEC participation exceeded the net present value of terminating the participation of the NHEC in Seabrook I. We also compared the incremental cost of the NHEC's 25 MW share of Seabrook with the incremental cost of the alternatives identified by all parties. In each instance, the incremental cost of the NHEC's 25 MW of Seabrook was lower than the incremental cost of the alternatives. Decision at 114-115. Thus, the record compels a conclusion that the NHEC's continued participation in Seabrook is to be preferred over a termination of that participation.

With respect to the issue of default, Mr. McCool argues that we have an inadequate record on the consequences or bankruptcy. We disagree. In addition to the evidence administratively noticed from *Re PSNH*, DF 84-200, we have substantial evidence in the instant record to assess the consequences of default. That evidence includes the testimony of Professor Williamson (Exh. R-23) and the contractual terms and conditions between the NHEC and its lenders (Exh. 6-15). It was not necessary to compel the NHEC to produce a witness from the REA to speculate on whether and how the REA would enforce its contractual rights, nor was it necessary to assess the possible rulings of a court if a default is claimed. The documents in the record are sufficient to assess the exposure of the NHEC and its ratepayers if the NHEC

should be placed in a position where it has to default. Our analysis reveals that even in the event of a default, the NHEC debt to REA, the Federal Finance Bank and the Cooperative Finance Corporation on sunk investment will remain. Our evaluation of the evidence is set forth in the Decision (70 NH PUC at pp. 479-481) and we find no reason to disturb that analysis.

9. THE EFFECT OF UNIT II

[15] Mr. McCool asserted that the Commission erred because it did not assess the effect of the NHEC's treatment of Unit II on financial feasibility. In particular, Mr. McCool argues that there is a basis to conclude that the cancellation of Unit II makes a NHEC default inevitable and, accordingly, the Commission should analyze financial feasibility in that context. After review and consideration, we will deny the Motion on this ground.

Mr. McCool is correct in his assertion that there is contradictory evidence (McCool Motion at 11-12). Professor Williamson indicated that the NHEC must seek some kind of recovery for Unit II in order to avoid default. 4 Tr. 732. Mr. Pillsbury, on the other hand, testified that he believed that the NHEC had the equity resources to carry Unit II investment. 8 Tr. 1389. Our evaluation of the testimony of the two witnesses as well as other underlying evidence (See e.g., Exh. R-9) caused us to give more weight to the testimony of Mr. Pillsbury in this instance. The evidence supports Mr. Pillsbury's testimony that no default will occur due to Unit II cancellation. We recognize that Professor Williamson's testimony indicates that there may be a risk of default at some future time if the issue is not resolved. His testimony is premature. The rate treatment of Unit II is not before us in this docket and we decline to speculate on how future alternative regulatory actions will affect the likelihood of default. It is sufficient to accept Mr. Pillsbury's testimony that a default is not imminent and to retain regulatory flexibility to address the Unit II issues if and when they arise in the future.

10. CONCLUSION

After review and consideration, we have found no reason to revise our analysis, findings and conclusions as set forth in the Decision. We will therefore deny the Motions for Rehearing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Motion for Rehearing of Roger Easton be, and hereby is, denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of the Consumer Advocate be, and hereby is, denied; and it is

FURTHER ORDERED, that the Motion for Rehearing of Gary McCool be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentyeighth day of June, 1985.

Opinion of Commissioner Aeschliman Dissenting in Part

In accordance with my previous opinion in this docket, I would grant

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the Motions of the intervenors and the Consumer Advocate as they relate to the questions of the reasonableness of rates and changed circumstances. (Easton points 1 and 3; Consumer Advocate point 4 and McCool 9, 15 and 18.)

A further hearing should be scheduled to receive evidence relative to the status of regulatory approvals and the financing plans of the Joint Owners. The Commission should also require the presentation of evidence relative to the availability of investors to purchase Seabrook shares of the Joint Owners. Representations have been made that investors are available and that interim financing is available to carry payments while negotiations proceed.

The testimony of the New Hampshire Electric Cooperative's witnesses Williamson and Smith assumed that if the Cooperative could not continue its Seabrook payments it would be subject to the default penalties of the Joint Owners Agreement (Exhibit R-23 at 7-10; Exhibit R-24 at 8).

In light of the representations of the Joint Owners, these assumptions may no longer be valid and consequently, a sale of all or part of the Cooperative's Seabrook ownership share may be more feasible and attractive than the testimony indicated. Given the level of risk involved and the difficulty in limiting the exposure of the Cooperative's ratepayers, the Commission should be exploring all possibilities.¹⁽²⁶⁶⁾

I would deny the Motions for Rehearing on the other grounds raised by the intervenors and the Consumer Advocate. Although I agree with some of the individual points they raise relative to alternatives, elasticity, and Seabrook cost and schedule assumptions, the basic analytic approach they would have the Commission employ is not appropriate to the Cooperative's situation.

The intervenors and the Consumer Advocate suggest an analysis of Seabrook versus alternatives that is appropriate for a generating utility such as Public Service Company of New Hampshire. With a generating utility the questions for analysis are whether the capacity under consideration (i.e., Seabrook) is needed to meet anticipated growth in demand or to replace retiring units and whether that capacity is economic relative to alternatives.

The New Hampshire Electric Cooperative, however, is not a generating utility; it is a distributing utility. The Cooperative's original Seabrook purchase was undertaken because of the financing difficulties of its supplier (PSNH) and its access to relatively inexpensive financing from the REA. (See Opinion of Commissioner Aeschliman Report and Order No. 17,638 [70 NH PUC at p. 489].)

Without an integrated distribution system and with the REA as its only source of funds, the Cooperative does not have the alternatives of other distribution companies (i.e., Concord Electric Company and Exeter & Hampton Electric Company). It is unrealistic to suggest that an analysis of the cost of building a transmission network should

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be required when the Cooperative has no source of financing for a transmission network. Clearly the REA is not going to provide financing for a distribution network if the Cooperative is in default on its Seabrook loans.

Consequently, I agree with the majority that the Cooperative must depend upon its Seabrook capacity or purchased power from PSNH for much of its requirements for some time to come. I disapprove of the agreements with PSNH which attempt to eliminate any flexibility the Cooperative may have and should pursue to reduce purchases from PSNH if cheaper alternatives are available particularly from small power producers and conservation.

FOOTNOTES

¹Unless otherwise explicitly indicated, references to Seabrook in this Order are directed at Seabrook Unit I and common facilities. We do not intend that a general Seabrook reference apply to Seabrook Unit II.

²This analysis is reinforced by the requirement that rates for the purchase of SPP power be based on the purchasing utility's incremental (avoided) cost. See, RSA Chapter 362-A; Public Utility Regulatory Policies Act, Section 210, 16 U.S.C.A. §824a-3; 18 C.F.R. §292.101(b)(6); Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984).

³This assertion is inconsistent with the assertion that the Commission erred by granting financing authority greater than that needed to complete Seabrook I at the cost projected by the Commission (*infra*).

⁴The \$4,087 per installed kw total cost is an average of the cost to all of the joint owners. Since the cost of financing for each joint owner is different, the cost to a particular joint owner may vary from that which would exist if the average total cost is divided by the joint owner's ownership share. See e.g., Re Public Service Co. of New Hampshire, 70 NH PUC 367 (1985). Since the calculations contained in Exhs. R-3, R-4, R-21A, R-21B and R-21C are NHEC costs, rather than the average project cost to all joint owners, it is improper to extrapolate the NHEC's cost per installed kw to determine the total cost of Seabrook.

⁵The \$870 per installed kw is calculated by dividing the incremental cost of \$1 billion by the 1,150,000 kw of Seabrook capacity.

⁶As noted in the Decision (70 NH PUC at p. 440, n. 67) the \$1.3 billion incremental cost assumption is comparable to PSNH's \$1 billion assumption when appropriate adjustments are made to the dates on which incremental cost calculations commence.

⁷Accord, Re Walnut Hill Teleph. Co., Docket No. 83-010-U, April 10, 1985 (Ark.P.S.C.), reported in Vol. 115, PUBLIC UTILITIES FORTNIGHTLY, page 67, June 13, 1985.

Opinion of Commissioner Aeschliman Dissenting in Part

¹An indication of the degree of risk that venture capital investors attach in putting up new money for the completion of the Seabrook project can be found in the NU MAINE CO Corporation filing with the Federal Energy Regulatory Commission. (Exhibit 152, DF 84-200.) Under this proposal new investors would receive a 40% rate of return — 30% for debt and 50%

for preferred stock. (Id. at 13.) Certainly the kind of risks that venture capitalists may wish to take are not appropriate for a Cooperative with no equity investors if they can be avoided.

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NH.PUC*07/01/85*[61122]*70 NH PUC 595*Pennichuck Water Company, Inc.

[Go to End of 61122]

70 NH PUC 595

Re Pennichuck Water Company, Inc.

DR 85-2, Supplemental Order No. 17,700

New Hampshire Public Utilities Commission

July 1, 1985

MOTION for rehearing of commission denial of water utility's request for temporary rates; granted in part.

Return, § 24 — Factors affecting reasonableness — Cost of money — Zone of reasonableness.

The fact that a water utility was found to be earning a rate of return lower than its cost of money did not necessarily mean that the rate was confiscatory; the concept of fair rate of return is, in essence, a zone of reasonableness within which the actual rate of return may fluctuate, even to the point of occasionally falling below the utility's cost of money. [1] p.598.

Return, § 31 — Factors affecting reasonableness — Additions to plant in service — Declining rate of return — Temporary rates.

In response to a water utility's claim that its earned rate of return would drop due to additions to plant in service, the commission ordered that the utility's existing rates be deemed temporary pursuant to state statute RSA 379:29, thereby allowing recoupment of any deficiency in return suffered while the temporary rates are in effect. [2] p.600.

APPEARANCES: As Previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 1, 1985, Pennichuck Water Company, Inc. (Pennichuck), a public utility engaged in gathering and distributing water to the public in Nashua and Merrimack, New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of \$1,457,979 (27%) to be effective April 1, 1985. In addition, pursuant to RSA 378:27, Pennichuck filed a Petition for Temporary Rates requesting temporary rates applicable to all service rendered after April 1,

1985.

By Order No. 17,487 dated March 12, 1985, the Commission suspended the effective date of the tariff revisions. An Order of Notice was issued on March 13, 1985 setting a hearing for April 2, 1985 to address the issue of temporary rates and the procedural aspects of the permanent rate increase request. After reviewing the testimony

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and exhibits submitted at the hearing, the Commission issued Report and Order No. 17,619 (Order) on May 28, 1985 (70 NH PUC 405) which denied Pennichuck's petition for Temporary rates and established a procedural schedule for the rate case. Thereafter, on May 31, 1985, Pennichuck filed a Motion for Rehearing (Motion) pursuant to RSA 541:3. On June 14, 1985, Pennichuck filed a Motion Regarding Petition For Temporary Rates which we will construe as a Supplemental Motion For Rehearing (Supplemental Motion).

In the Report accompanying the Order, the Commission accepted both Pennichuck's and the Staff's analysis that as of September 30, 1984, Pennichuck's allowed rate of return was 11.70%. This was calculated utilizing the cost of Pennichuck's embedded debt as of September 30, 1984 and the 14.5% cost of common equity found reasonable by the Commission in Pennichuck's last rate case (65 NH PUC 363). However, the Commission rejected Pennichuck's contention that it was actually earning 10.16% as of the same date and instead calculated Pennichuck's earned rate of return to be 11.75%.¹⁽²⁶⁷⁾ Because the actual earned rate of return was in excess of that allowed, the Commission therefore found that Pennichuck had not sustained its burden of establishing a need for temporary rates.

2(268)

While not requested by Pennichuck, the Commission in the Report also calculated the allowed and actual return for the 12 months ending December 31, 1984 by utilizing the information contained in the 1984 annual report. Therein, at page 6, the Commission stated as follows:

Our preliminary analysis indicates that the Company's allowed rate of return for that period was 11.68%; it actually earned 11.47%. While the actual is less than the earned, the difference is not substantial. We cannot conclude from this analysis that the Company is entitled to temporary rates. In view of the above, the Commission found pursuant to the provisions of RSA 378:27 that the public interest does not require the fixing of temporary rates in this case. It therefore denied Pennichuck's petition.

In its Motion, Pennichuck argues that

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the Commission's Report and Order is unjust, unreasonable and/or unlawful. In support thereof, it states that New Hampshire law requires that temporary rates be granted where it is found that the Company's rate of return is less than its cost of money, the cost of money being "the minimum rate of return to which the Company is entitled". New England Teleph. & Teleg.

Co. v. New Hampshire, 95 N.H. 353, 361, 78 PUR NS 67, 64 A.2d 9 (1949). Thus, because the Commission in this instance found that Pennichuck was earning less than its cost of money (11.68% allowed versus 11.47% earned), it argues that the Commission's denial of its petition results in confiscatory rates.

Pennichuck also argues that the Commission neglected other evidence which requires that temporary rates be granted. It contends that there is sufficient evidence in support of (1) Pennichuck's pro forma earned rate of return of 10.16%; (2) the actual rate of return of 11.59% as shown on Schedule A of Exhibit 2; and (3) the actual earned rate of return of 11.63% as calculated by the Staff in Exhibit 3. Pennichuck further contends that there is not sufficient evidence to support the Commission's earned rate of return calculation.

In its Supplemental Motion, Pennichuck requests that if the Commission denies the relief sought in its original Motion For Rehearing, it award in the alternative temporary rates effective as of June 3, 1985. In support thereof it cites an affidavit of Maurice L. Arel, Pennichuck's president, which states that Pennichuck completed construction of certain plant, including the so-called Merrimack River Supplement Project, on June 1, 1985 and that this plant became used and useful in its operations as of that date. Pennichuck argues that performing these additions to the Company's plant as calculated by the Commission on page 5 of its Report decrease its actual rate of return from 11.75% to 9.70%. Thus, according to Pennichuck, failure to allow recoupment as of June 3, 1985 will result in significant revenue erosion. It argues that the Company will lose these revenues forever if recoupment via the setting of temporary rates is not allowed.

It should be noted that the amount of temporary rates is not in dispute. While Pennichuck originally requested a level of temporary rates which is higher than its current rates, its witnesses testified that if the Commission did not grant that request, Pennichuck would accept its current rates as temporary rates, a position also taken in its Supplemental Motion. This Commission has in other utility rate cases set existing rates as temporary rates. In the event the Commission grants a permanent rate increase, this allows a utility to recoup pursuant to RSA 378:29 the difference between the temporary (existing) and permanent rates back to the date the temporary rates went into effect. RSA 378:29, enacted in 1941, was "designed to protect utilities against confiscatory rates and to permit recoupment of any deficiency in return suffered under a temporary order". *New Hampshire v. New England Teleph. & Teleg. Co.*, 103 N.H. 394, 395, 40 PUR3d 525, 173 A.2d 728 (1961).

II. COMMISSION ANALYSIS

After review, we remain convinced that the record supports our finding that Pennichuck's actual (or earned) rate of return as of September 30, 1984 was 11.75%. As stated above, in calculating that figure, the Commission utilized the testimony, exhibits, reports on file with the Commission (RSA 378:27) and data submitted by Pennichuck subsequent to the hearing. The calculation and its underlying data are explained in the report, which sets forth the Commission's methodology and findings fully and accurately. See *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 341, 31 PUR4th 333, 402 A.2d 626 (1979). We therefore reject Pennichuck's contention in its Motion that its actual earned rate of return as of the above date is below its 11.70%

allowed rate of return.

Notwithstanding its finding that Pennichuck had failed to meet its burden of proof, the Commission, sua sponte, went beyond September 30, 1984 to determine the allowed and actual as of a more recent date. This analysis was based upon data contained in Pennichuck's 1984 annual report, then recently filed with the Commission. As stated above, this revealed an allowed rate of return of 11.68% versus an earned rate of return of 11.47%. Pennichuck argues that this difference results in confiscatory rates in violation of its rights under New Hampshire law and the Constitutions of the State of New Hampshire and the United States.

The figures contained in Pennichuck's 1984 annual report cannot form the basis of a decision in this case. Those figures have not been subjected to the same scrutiny normally afforded rate case filings. The Commission therefore referred to the figures contained therein as "preliminary". (Report, page 4.) This was used merely to show that three months after the original calculation Pennichuck was earning close to its allowed rate of return.³⁽²⁶⁹⁾ Notwithstanding the preliminary and unverified nature of these figures, we will assume arguendo their accuracy for the purpose of addressing Pennichuck's argument that the difference between the actual and the allowed return (11.47% v. 11.68%) results in confiscatory rates.

[1] We begin our analysis with a brief review of the relevant statutory and constitutional law. RSA 378:27 requires that temporary rates awarded by the Commission "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 ... " (Emphasis added.) In determining what constitutes a reasonable return for either temporary or permanent rates, this Commission adheres to the principles set forth in *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944) and *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). These principles have long been accepted by this Commission and the New Hampshire Supreme Court. See e.g., *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 31 PUR4th 333, 402 A.2d 626 (1979); *New England Teleph. & Teleg. Co. v. New Hampshire*, 113 N.H. 92, 98 PUR3d 253, 302 A.2d 814 (1973); *New England Teleph. & Teleg. Co. v. New Hampshire*, 104 N.H. 229, 44 PUR3d 498, 183 A.2d 237 (1962). The relevant portions of *Hope* and *Bluefield* are as follows:

... A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional rights to profits such as are realized in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its

credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally. *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 252 U.S. at pp. 692, 693, PUR1923D at pp. 20, 21.

The rate-making process under the Act, i.e., the fixing of "just and reasonable" rates, involves a balancing of the investors and the consumer interests. Thus we stated in the *Natural Gas Pipeline Company* case that "regulation does not insure that the business shall produce net revenues." 315 U.S. at p. 590. But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. ... By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. ... *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. at 603, 51 PUR NS at pp. 200, 201.

The concept of a reasonable or fair rate of return is thus in essence a "zone of reasonableness", a range within which earnings may fluctuate. *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 341, 342, 31 PUR4th 333, 402 A.2d 626 (1979). "There is a wide area between the lowest return allowable so as to not be confiscatory, see *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944), and the highest return allowable so as to not be excessive or extortionate." *Id.* at 342. Thus, more than one rate constitutes a just and reasonable rate of return.

Pennichuck's claim of confiscatory rates must be examined in light of these well-established principles. Even if Pennichuck is currently earning 11.47%, the rates resulting therefrom are not confiscatory. While it is lower than the allowed return as of the same date, we note that the 11.68% allowed return calculation contains as one of its components a 14.5% cost of common equity as allowed in the last Pennichuck rate case in 1980, a time of high capital costs and double-digit inflation.⁴⁽²⁷⁰⁾ We are aware that since that time there has generally been a significant decline in capital costs. We cannot say as of this time how that decline has affected Pennichuck. Indeed, that will be an issue in the forthcoming rate case. However, if the general trend in capital costs applies, Pennichuck's current cost of common is probably lower than the 14.5% authorized in the last rate case. In view of this, we find, on the basis of the record, Pennichuck's reports and our judgment, that the 11.47% is well within the "zone of reasonableness" and the resulting rates are therefore "reasonable".

[2] In view of the above, we will deny Pennichuck's original Motion For Rehearing to the extent it argues that the Commission's Report was unjust, unreasonable and/or unlawful. We will, however, grant Pennichuck's request to set temporary rates as of June 3, 1985 at its current

rate level based upon the matters asserted in its Supplemental Motion and verified by the accompanying affidavit of Maurice Arel, Pennichuck's president. The placement of the Merrimack River Supplement in service will seemingly result in a significant increase in Pennichuck's plant used and useful in providing service, and thus a corresponding decrease in its earned rate of return. To prevent against likely revenue loss and to "permit recoupment of any deficiency in return" (RSA 378:29), we will grant Pennichuck temporary rates at its current rate levels for service rendered on or after June 3, 1985.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Pennichuck Water Company, Inc.'s Motion For Rehearing be, and hereby is, granted in part and denied in part; and it is

FURTHER ORDERED, that pursuant to RSA 374:29, Pennichuck's current rates be, and hereby are, set as temporary rates as of June 3, 1985.

By order of the Public Utilities Commission this first day of July, 1985.

FOOTNOTES

¹The 11.75% calculation is fully set forth in the Report accompanying the Order. It is based upon an analysis of the testimony and exhibits presented at the hearing as well as Pennichuck's then recently filed 1984 annual report. RSA 378:27 specifically authorizes the Commission to utilize "the reports of the utility filed with the commission" in determining whether to award temporary rates.

²RSA 378:8, entitled Burden of Proof, provides as follows:

When any public utility shall seek the benefit of any order of the commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.

³As stated infra, the Commission found that the difference between 11.47 and 11.68 was not substantial.

⁴Re Pennichuck Water Works, 65 NH PUC 363 (1980).

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NH.PUC*07/02/85*[61119]*70 NH PUC 570*Merrimack County Telephone Company

[Go to End of 61119]

70 NH PUC 570

Re Merrimack County Telephone Company

DR 85-212, Order No. 17,692

New Hampshire Public Utilities Commission

July 2, 1985

ORDER approving special contract rate for telephone service.

By the COMMISSION:

ORDER

WHEREAS, Merrimack County Telephone Company, a utility selling telephone service under the jurisdiction of this Commission has filed with this Commission Special Contract No. 2 (MCT002) with Kearsarge Reel Corporation, effective on approval by Commission order, for telephone service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist relative thereto which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective July 2, 1985.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1985.

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NH.PUC*07/02/85*[61123]*70 NH PUC 600*Fuel Adjustment Clause

[Go to End of 61123]

70 NH PUC 600

Re Fuel Adjustment Clause

Intervenors: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, Municipal Electric Department of Wolfeboro, Woodsville Water and Light Department, and Connecticut Valley Electric Company, Inc.

DR 85-175, Order No. 17,702

New Hampshire Public Utilities Commission

July 2, 1985

ORDER approving revisions to electric utility fuel adjustment clause rates.

Page 600

Automatic Adjustment Clauses, § 53 — Over- and undercollections — Electric utility.

The commission accepted a stipulation agreement that provides for monthly reports on actual

versus estimated fuel adjustment clause (FAC) revenues and that requires an explanation by the electric utility for all FAC revenue over- and undercollections in excess of 5 per cent.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Warren Nighswander, Esquire; for Granite State Electric Company, Philip Cahill, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 19, 1985 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company, and Granite State Electric Company, for the second half of 1985. I. Concord Electric Company and Exeter & Hampton Electric Company

Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") were represented by two witnesses, Heidi C. Blais and George R. Gantz.

Concord's FAC in effect during the period April 1, 1985 through June 30, 1985 was a credit of (\$0.295) per 100 KWH and Exeter & Hampton's FAC was a credit of (\$0.299) per 100 KWH during the same period (both credits are exclusive of franchise tax effects). These two companies filed revised FAC surcharge credits of (\$0.703) and (\$0.658) per 100 KWH for Concord and Exeter & Hampton respectively.

On June 17, 1985 the companies filed an exhibit which supported the proposed revision to Concord and Exeter & Hampton's FAC surcharge credits. Additionally, during the hearing a Company witness revised Exeter & Hampton's filing, and staff presented a stipulation agreement which outlines a proposed mechanism for six month FAC.¹⁽²⁷¹⁾

Both Concord's and Exeter & Hampton's FAC are decreasing \$0.4080 and \$0.3590 per 100 KWH respectively in the proposed filing. This decrease is attributable to a decrease in estimated fuel costs from the companies' sole electricity supplier, Public Service Company of New Hampshire (PSNH), and substantial overcollections of the second quarter 1985 FAC for Concord and Exeter & Hampton.

This Commission is concerned with the overcollections recently accumulated by both Concord and Exeter & Hampton. The overcollection by Exeter & Hampton is a particular concern. During cross-examination the Company witness revealed that Exeter & Hampton's FAC overcollected approximately 12% above the cost of fuel through that second quarter of 1985 and ended the quarter overcollecting by 16%. The witness further explained that although there is a 10% trigger the Company's analysis of the cost of fuel during the period provided for an estimated overcollection which was less than 10% overall, without changing the FAC rate. The Company therefore did not file a revision to the rate.

This is not an adequate explanation.

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Failure to inform the Commission of the excessive overcollection is improper and is not

acceptable. RSA 374:4. It is especially unacceptable when we consider the Company's testimony concerning their lack of knowledge about the inputs used by PSNH in formulating the fuel costs passed onto Exeter & Hampton.

The Commission hopes that the stipulation agreement (exhibit 3) submitted and signed by staff, Concord, Exeter & Hampton, and Granite State Electric Company will correct this apparent information gap. This agreement provides for monthly reports on the actual versus the estimated FAC. It also provides a "trigger" on revenue which is over or under collecting fuel costs in excess of 5%. Although this trigger does not automatically require a hearing, it does require an explanation from the Company about the over or under collection and allows other parties to the FAC an opportunity to request such a hearing. We find that these additions to the FAC mechanism are just and reasonable. Therefore, the Commission will accept the agreement as proposed.

Other issues discussed during the hearing were sales forecasts; lost and unaccounted for electricity; and a potential agreement between Concord, Exeter & Hampton, and PSNH for recovery of the Schiller Conversion costs.

The lost and unaccounted for utilized by Exeter & Hampton and Concord in the original and first revised filings were based on 1982-1983 actuals. Staff requested additional information on the subject. On June 27, 1985 the Company filed revised tariff pages to display the effect on the FAC rate if the following is incorporated: 1) the use of 1984 actual lost and unaccounted for figures; and 2) an update through June of actual wholesale FAC changes from PSNH. These adjustments changed the first revised FAC to (\$0.656) per 100 KWH for Concord and (\$0.658) per 100 KWH for Exeter & Hampton (Company filed "Scenario B" for both companies).

The Commission accepts these revisions. The June actual wholesale rate is a known and measurable change. Using 1984 figures, in Exeter & Hampton's case, to reflect an improvement in the "Lost and Unaccounted For" as well as in "Company Use".

The Commission feels that the difference between sales and purchases, to a certain extent, is within a utilities control. Specifically the Company use. The Companies will file the individual components of said difference, as estimated, in all future FAC filings. In addition, the Companies are expected to present prefiled testimony on the estimates of sales, purchases, and the individual components of the difference between sales and purchases (Company Use, Lost and Unaccounted for, and Compensating Adjustments).

II. Granite State Electric Company

Granite State Electric Company (Granite State) made its July - December 1985 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on June 13, 1985. Granite State had an FAC rate of \$0.204 per 100 KWH in effect for April 1, 1985 through May 31, 1985, and an OCA rate of \$0.278 per 100 KWH in effect for April 1, 1985 through May 31, 1985. In June, 1985, Granite State revised its FAC to reflect a substantial overcollection through May, 1985. The rate for June

was a surcharge credit of (\$1.079) per 100 KWH.

The rates requested on June 13, 1985 were \$0.696 per 100 KWH for FAC, and \$0.14 per 100 KWH for OCA. In addition Granite State filed a revised Qualified Facilities average rate of 5.160.

A comparison of the estimated rate as filed and the rate in effect through June is not appropriate. The June rate was designed to refund a substantial overcollection in a one month period whereas the filed rate is designed to collect costs over a six month period. Generally, the cost of fuel charged to Granite State is decreasing due to an overall change in generation mix from New England Power Company (NEPCo.), Granite State's major source of power.

According to Granite State's witness, William McDade, about 50% of NEPCo's capacity is now from coal fired generation. In addition, the price of oil has been decreasing. Offsetting these two reductions of fuel costs in this filing is an undercollection estimated for June.

Issues raised during the hearing included:

1. the stipulation agreement on a mechanism for the six month FAC (previously discussed in this report);
2. the estimated oil, coal, and natural gas prices for the upcoming period;
3. projections of generating station capacity factors;
4. a projected decrease in sales;
5. the substantial overcollection in April and May, 1985; and
6. the calculation of the Qualified Facilities rate (QF).

Staff questioned a number of generating plants capacity factors used by Granite State in developing their FAC. Canal Unit #1 was one of these plants in question. Granite State's forecast had inadvertently left out generation for Canal Unit #1. The inclusion of generation from this plant decreased the FAC by \$0.06 per 100 KWH. Subsequent to the FAC hearing, Granite State filed a revised FAC rate reflecting this adjustment. The Commission will accept the revised FAC rate of \$0.636 per 100 KWH.

This revision also reduces Granite State's average QF rate to 4.79, which the Commission will also approve.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 26th Revised Page 19A of Concord Electric Company tariff, NHPUC No. 9 - Electricity, providing for a fuel surcharge credit of (\$0.656) per 100 KWH for the months of July through December, 1985, be, and hereby is, permitted to go into effect for the month of July, 1985; and it is

FURTHER ORDERED, that 26th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 - Electricity, providing for a fuel surcharge credit of (\$0.658) per 100 KWH for the months of July through December, 1985, be, and hereby is, permitted to go into effect for the month of July, 1985; and it is

FURTHER ORDERED, that 14th Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for an oil

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conservation adjustment of \$0.140 per 100 KWH for the months of July through December, 1985, be, and hereby is, permitted to go into effect for July, 1985; and it is

FURTHER ORDERED, that 17th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge for the months of July through December, 1985 of \$0.636 per 100 KWH, be, and hereby is, permitted to go into effect for July, 1985; and it is

FURTHER ORDERED, that 4th Revised Page 11C of Granite State Electric Company tariff, NHPUC No. 10 electricity, providing for a Qualifying Facility Power Purchase Rate be, and hereby is, accepted for effect during July through December, 1985; and it is

FURTHER ORDERED, that 55th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 -Electricity, providing for a fuel surcharge of \$1.98 per 100 KWH for the month of July, 1985, be, and hereby is, permitted to become effective July 1, 1985; and it is

FURTHER ORDERED, that 106th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 -Electricity, providing for a fuel surcharge credit of (\$1.21) per 100 KWH for the month of July, 1985, be, and hereby is, permitted to become effective July 1, 1985; and it is

FURTHER ORDERED, that 103rd Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 -Electricity, providing for an energy surcharge credit of (\$0.49) per 100 KWH for the month of July, 1985, be, and hereby is, permitted to become effective July 1, 1985; and it is

The above noted rates may be 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 second day of July, 1985.

FOOTNOTE

¹This agreement was submitted pursuant to Commission Report and Order No. 17,517 (70 NH PUC 133).

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NH.PUC*07/02/85*[61124]*70 NH PUC 605*Manchester Gas Company

[Go to End of 61124]

Re Manchester Gas Company

DR 85-89, Second Supplemental Order No. 17,703

New Hampshire Public Utilities Commission

July 2, 1985

ORDER approving revision to cost of gas adjustment.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,593 (70 NH PUC 357) approved Manchester Gas Company's Cost of Gas Adjustment, 17th Revised page 26 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0442 per therm for the period May 1, 1985 through October 31, 1985; and

WHEREAS, a significant decrease in rates from Tennessee Gas Pipeline, supplier of natural gas to Manchester Gas Company, is anticipated to be effective July 1, 1985; and

WHEREAS, a reduction of \$.39 in liquefied natural gas prices from Manchester Gas Company supplier, Boston Gas Company, has occurred; and

WHEREAS, a reduction of the prime interest rate from 10 1/2% to 9 1/2% effects both the LNG and LPG inventory costs; and

WHEREAS, on June 25, 1985, Manchester Gas Company filed 18th Revised page 26 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0167 per therm for the period July 1, 1985 through October 31, 1985; it is hereby

ORDERED, that 18th Revised page 26 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0167 per therm for the period July 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this Order become effective with all billings issued on or after July 1, 1985.

The above rate is to be adjusted by a factor of approximately 1% as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this second day of July, 1985.

NH.PUC*07/02/85*[61125]*70 NH PUC 606*Gas Service, Inc.

[Go to End of 61125]

70 NH PUC 606

Re Gas Service, Inc.

DR 85-88, Second Supplemental
Order No. 17,704

New Hampshire Public Utilities Commission

July 2, 1985

ORDER approving revision to cost of gas adjustment.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,594 (70 NH PUC 358) approved Gas Service, Inc.'s Cost of Gas Adjustment, 13th Revised page 1 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0376 per therm for the period May 1, 1985 through October 31, 1985; and

WHEREAS, a significant decrease in rates from Tennessee Gas Pipeline, supplier of natural gas to Gas Service, Inc., is anticipated to be effective July 1, 1985; and

WHEREAS, a reduction of \$.39 in liquefied natural gas prices from Gas Service, Inc. supplier, Boston Gas Company, has occurred; and

WHEREAS, a reduction of the prime interest rate from 10 1/2% to 9 1/2% effects both the LNG and LPG inventory costs; and

WHEREAS, on June 25, 1985, Gas Service, Inc. filed 14th Revised page 1 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0107 per therm for the period July 1, 1985 through October 31, 1985; it is hereby

ORDERED, that 14th Revised page 1 of NHPUC Tariff No. 6 - Gas, providing for a cost of gas adjustment of \$0.0107 per therm for the period July 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this Order become effective with all billings issued on or after July 1, 1985.

The above rate is to be adjusted by a factor of approximately 1% as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this second day of July, 1985.

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NH.PUC*07/02/85*[61126]*70 NH PUC 607*Concord Natural Gas Corporation

[Go to End of 61126]

70 NH PUC 607

Re Concord Natural Gas Corporation

DR 85-201, Order No. 17,711
New Hampshire Public Utilities Commission
July 2, 1985

ORDER authorizing natural gas distribution utility to implement and conduct an energy conservation program.

By the COMMISSION:

ORDER

WHEREAS, on May 17, 1984, the Commission issued Report and Order No. 17,036 (DR 84-94) (69 NH PUC 248) which authorized Concord Natural Gas Corporation to implement and conduct an energy conservation program during the summer months of 1984; and

WHEREAS, in Report and Order No. 17,036, the Commission also allowed Concord Natural Gas Corporation to recover the reasonable costs incurred as a direct result of the implementation of the conservation program by including those costs in the second Step Adjustment to Concord Natural Gas Corporation's 1983 rate case (DR 83-206) effective January 5, 1985, and

WHEREAS, on June 4, 1985, Concord Natural Gas Corporation filed a request for approval to implement and conduct another energy conservation program during the summer months of 1985; and

WHEREAS, the energy conservation program proposed for the summer of 1985 will be duplicative in scope to the energy conservation program conducted by Concord Natural Gas Corporation in 1984 as approved in Report and Order No. 17,036; and

WHEREAS, Concord Natural Gas Corporation also requests that it be allowed to recover the cost of the 1985 energy conservation program by continuing the Second Step Adjustment increase attributable to the 1984 energy conservation program once that cost has been recovered; and

WHEREAS, the estimated costs of the 1985 energy conservation program are less than those incurred in connection with the 1984 energy conservation program; and

WHEREAS the Commission has and will continue to encourage and support the development of effective conservation programs; and

WHEREAS, the Commission hereby approves the proposed 1985 energy conservation program; it is hereby

ORDERED, that Concord Natural Gas Corporation file the data and information resulting from said program with the Commission within six months

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after the program's completion; and it is

FURTHER ORDERED, that representatives of Concord Natural Gas Corporation meet with the Commission Staff to determine the scope of data and information to be submitted to the

Commission; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation be, and hereby is, authorized to recover the cost of the 1985 energy conservation program by continuing that portion of the above-described Second Step Adjustment increase attributable to the 1984 energy conservation program after said 1984 costs are recovered.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1985.

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NH.PUC*07/03/85*[61127]*70 NH PUC 608*Lakeport Hydroelectric Corporation

[Go to End of 61127]

70 NH PUC 608

Re Lakeport Hydroelectric Corporation

DR 85-156, Order No. 17,713

New Hampshire Public Utilities Commission

July 3, 1985

ORDER nisi approving interconnection agreement and long term rates for small power production project.

By the COMMISSION:

ORDER

WHEREAS, on May 17, 1985 Lakeport Hydroelectric Corporation (LHC) filed a long term rate filing for the Lakeport Dam Project; and

WHEREAS, LHC filed an amendment to its filing on June 20, 1985; and

WHEREAS, the Petition requested inter alia a thirty-year rate order levelized for the first twenty (20) years and tracking the avoided costs thereafter; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) rate orders for terms in excess of 20 years require, inter alia, that the Petitioner provide a surety bond or a junior lien on the project to cover the "buy out" value at the site; and

WHEREAS, LHC requests a waiver from the requirement to offer Public Service Company of New Hampshire (PSNH) a surety bond or junior lien on the Lakeport Dam Project; and

WHEREAS, the "front loading risk" to PSNH and its ratepayers is the same as would exist with a twenty year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire the opportunity to respond to LHC's Petition for Thirty Year Rate Order; and

WHEREAS, LHC's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra; it is therefore

ORDERED NISI, that LHC's Petition for Thirty Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet for the Lakeport Dam Project without a surety bond or junior lien are approved; and it is

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FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of July, 1985.

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NH.PUC*07/03/85*[61132]*70 NH PUC 617*Public Service Company of New Hampshire

[Go to End of 61132]

70 NH PUC 617

Re Public Service Company of New Hampshire

Intervenor: Community Action Program and Office of Consumer Advocate

DR 85-174, Order No. 17,726

New Hampshire Public Utilities Commission

July 3, 1985

ORDER approving request by an electric utility for a change in its energy cost recovery mechanism.

Automatic Adjustment Clauses, § 52 — Energy cost clauses — Estimates and forecasts — Oil price forecasts.

An oil price forecast submitted by an electric utility in support of its request for a change in its energy cost recovery mechanism was accepted; however, the utility was required to provide monthly updates of its actual cost of oil to assure the commission of the accuracy of its forecast. [1] p.618.

Cogeneration, § 31 — Rates — Short term — Method of computation — Marginal costs.

An electric utility's calculation of qualified facilities short term rate was approved as consistent with commission requirements that the short term rate be calculated from marginal energy cost data using the same assumptions and the same PROSIM scenario used to calculate the energy cost recovery mechanism rate. [2] p.619.

Automatic Adjustment Clauses, § 52 — Energy cost clauses — Estimates and forecasts — Fossil fuel costs — Plant conversion.

An electric utility's calculation of the effect of the conversion of one of its plants from oil to coal generation on its energy cost recovery mechanism was accepted subject to final reconciliation and audit by the commission staff. [3] p.620.

Automatic Adjustment Clauses, § 52 — Estimates — Sales forecasts.

A sales forecast submitted in support of an electric utility's request for a change in its energy cost recovery mechanism was accepted subject to commission adjustments should the forecast prove inaccurate. [4] p.620.

APPEARANCES: For the Company, Eaton W. Tarbell, Jr., Esquire; Michael W. Holmes, Esquire, Consumer Advocate; for the Community Action Program (CAP), Gerald Eaton, Esquire.

By the COMMISSION:

REPORT

This docket was initiated by a petition filed on May 27, 1985 by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the January through June, 1985 rate of \$3.238/100 KWH to a rate of \$2.954/100 KWH for July through December, 1985.

A duly noticed public hearing at the

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Commission's offices in Concord was held on June 24, 1985, at which time PSNH revised the proposed rate to \$2.980/100 KWH.

On May 27, 1985 PSNH prefiled thirteen exhibits and requested an ECRM rate of \$2.954/100 KWH for July through December, 1985. On June 24, 1985, PSNH updated a number of those exhibits due to inclusion of actual May, 1985 results, and inclusion of Schiller Conversion costs pursuant to a proposed stipulation agreement between parties who have entered appearances in DR 84-354.

During the course of the hearings, thirty exhibits and revisions were submitted into evidence, and numerous witnesses testified on behalf of the Company. In addition, post-hearing information was provided as required during the proceedings.

Prior to the hearings, the Commission's staff submitted twenty-one data requests. The Company's responses were submitted in writing on June 17, 1985 and were marked as Exhibit

25.

During the course of the hearing, several aspects of the filing were explored, some of which were:

1. Oil price estimates, trends, contracts payments status;
2. Coal price estimates, contracts, inventory policy;
3. Natural Gas purchases;
4. Historic unavailability;
5. Sales growth estimate of 5.7% for the second half of 1985;
6. Schiller conversion agreement;
7. A Schiller Station Coal inventory adjustment;
8. Secondary power sales and purchases;
9. The computations used to determine the short term small power producer rates; and
10. The trigger mechanism.

Several of the items merit additional discussion:

I. Oil price estimates, trends, contracts

[1] PSNH's projected oil prices for the ECRM period ending December 1985 show a decrease in the price of oil from the May 1985 price of approximately \$26.00 a barrel to approximately \$21.00 a barrel by July 1985. From July through December PSNH estimates a steady increase to approximately \$23.00 a barrel by the end of December 1985. In calculating their oil prices, PSNH examined a Department of Energy short term oil forecast, a forecast from Data Resources, Inc. (DRI) and conducted a survey in which PSNH talked to eight industry oil buyers and sellers. The Department of Energy's (DOE) short term forecast for residual oil projects the prices to be constant through the second half of 1985. The DRI forecast showed a decrease in the price per barrel of oil by \$.50 from June through December, 1985.

The Company took all the information from DOE, DRI, the survey of industry buyers and suppliers, a historical PSNH price trend analysis, as well as various periodicals to arrive at its forecast of a slight but steady increase in oil cost through December 1985. Although we are uncertain that this forecast will be any more or less accurate than those from DOE and DRI, the Commission believes that it is reasonable to accept the Company's estimates based on the evidence provided.

The evidence provided by PSNH's

witness on the forecast of oil pricing states that the current price of oil on the spot market is already over \$22.00 a barrel. This is consistent with PSNH's forecast in the instant docket (based on a FIFO method of pricing inventory. However, we are mindful of the January through June 1985 oil price estimate which was adjusted by the Commission in Report and Order No. 17,388 (70 NH PUC 14). It is clear that the Commission estimate was more accurate (Exhibit 25), than

PSNH's estimate. To be assured that PSNH's estimate in this filing is within reasonable accuracy we will require a monthly update on the actual versus estimated cost of oil to monitor PSNH's estimate to determine that it remains in a reasonable band of accuracy.

II. The Trigger Mechanism on ECRM

In accordance with Commission Report and Order No. 16,029, a well defined "trigger mechanism" was established¹⁽²⁷²⁾ whereby deferred fuel costs less than (\$4,000,000) (an undercollection) or greater than \$4,000,000 (an overcollection) may expose the ECRM component to a interim review if any person petitions the Commission for a hearing on such. In any event once the deferred fuel costs exceed \$10,000,000, over or under collection, the trigger mechanism requires an automatic hearing to determine whether there should be a change in the component.

In prefiled testimony PSNH witness, Stephen R. Hall, requested a general ruling concerning this trigger. The request is intended to protect PSNH's "management incentives" which are built into the ECRM component. In particular, the witness noted savings from short term purchases and sales, and rewards or penalties from the availability incentive which he felt should not be considered by the Commission in an interim change of the component.

The Commission believes that this issue is properly addressed on a case by case basis. This will allow specific evidence and circumstances to be presented on which to judge the appropriateness of the issue. Thus, the Commission will not provide a "blanket" ruling based on hypothetical situations.

III. Calculation of Qualified Facilities (QF) Short Term Rate

[2] During the hearing CAP questioned the computation of the QF short term rate. CAP's concern was that the marginal cost used in determining the rate is based on PSNH's "own load" forecast, which is not New England Power Pool's (NEPOOL) economic dispatch.²⁽²⁷³⁾ In addition, PSNH does not reconcile the estimated marginal cost used in the ECRM filing to actual marginal cost at the end of the period.

In Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), the Commission adopted the method of calculation of QF short term rate used in this filing. The report explicitly states "The energy component for the short term rate will be calculated from marginal energy cost data using the same assumptions and the same PROSIM scenario used to

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calculate the ECRM rate. The rate will therefore be calculated for the two periods January to June and July to December. The rates will be forward looking and will not be subject to reconciliation." (69 NH PUC at p. 362, 61 PUR4th at pp. 141, 142.)

The above clearly sets forth the intent of the parties and the Commission when approval of the rate was fixed. Based on testimony presented, the rate is calculated in the approved manner.

IV. The Schiller Agreement

[3] In accordance with the settlement agreement entered into between the parties to the Schiller Conversion case (Dockets DE 79-141 and DR 84-131), the Company submitted revised

ECRM calculations which include adjustments that are related to the conversion of the Schiller plant from oil to coal generation. There are three adjustments which affect the ECRM rate for the upcoming period. They are as follows:

1. Schiller Recoupment - The Company has estimated that the total fixed adder for the period from December 1984 to June 1985 is approximately \$3,397,000. The retail portion of that adjustment is \$2,769,005, which has been included in the total costs subject to reconciliation. This adjustment would return plant conversion costs to the Company for the past period based upon fuel cost savings from burning coal during said period.

2. Fixed Adder - An amount of \$3,446,922 has been included for the retail portion of the conversion costs related to fuel savings. This amount would be reconciled at the end of each ECRM period.

3. Late Conversion Penalty - As part of the reconciling adjustment the Company has included a late conversion penalty of \$2,367,530. The late payment penalty is equal to one half of the New Hampshire retail portion of the fuel savings foregone if the units would have been converted on schedule and the costs of the conversion had not occurred. The Company has included this amount in the filing without prejudice and without waiver of its rights to seek rehearing or appeal.

All of the adjustments related to Schiller are subject to final reconciliation and audit by the Staff of the Commission. The audit is now in process. Once the audit is complete, any outstanding issues will be submitted to the Commission for resolution. The treatment of the Schiller adjustments will require special accounting adjustments for the recovery of the costs included in the fixed adder. The Company will be required to file proposed accounting treatment for those costs to the Finance Department of the Commission so that the proper accounting methodology will be included at the time that the books are closed for the month of July.

The inclusion of the Schiller Conversion adjustments results in an ECRM rate of \$2.98 per 100 KWH, as compared to the initially filed rate of \$2.954 per 100 KWH.

V. Sales Forecast

[4] PSNH witness, Wyatt W. Brown, testified to a 5.7 percent forecasted

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increase in sales during the second half of 1985. According to his technical statement, this forecast is based on PSNH's 1985 Edition Load Forecast, and is consistent with recent experience of a 6.1% sales increase in 1984.

The staff expressed concern over this forecast. The first issue discussed was the current (1985 to date) growth in sales. The response to Staff data request No. V.1 (Exh. 25) shows a growth in retail sales of 3.98 percent through May 1985. The Commission believes that unless there is a substantial growth in the last half of 1985 over the first half of 1985, the forecasted growth rate may be overstated.

Second, the Staff indicated that Granite State Electric Company (GSEC) had recently forecasted levelized sales for the second half of 1985. According to GSEC, this is because of a

slow down in the economy from the previous two years. The PSNH witness provided information that displayed a strong growth in sales in 1983 and 1984 after a slow growth period in 1982. The Commission is concerned that these two New Hampshire utilities can develop such substantially different forecasts for the same time period.

The Commission has recently directed the Company to file monthly updates evaluating the over or under collection of ECRM. In the most recent update (May 25, 1985), the Company reported that the largest contributing factor to the previous period's (first half of 1985) overcollection was lower than estimated sales for the period. The Commission will continue to monitor this with concern.

The Commission recognizes the difficulty in making short run sales forecasts. However, we expect the Company to be flexible enough to make adjustments when appropriate. If this ECRM period forecasted sales are substantially more than actual, we hereby provide notice that the Commission will make appropriate adjustments in the first half of 1986 ECRM proceedings.

Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of \$2.98/100 KWH for July through December, 1985; and it is

FURTHER ORDERED that the Small Power Producer rates for the hourly period categories of: "On-Peak" at \$0.0579/KWH; "Off-Peak" at \$0.0428/ KWH; and "All" at \$0.0494/KWH for July through December 1985, be, and hereby are, approved.

By Order of the Public Utilities Commission of New Hampshire this third day of July, 1985.

FOOTNOTES

¹This trigger mechanism was approved in Report and Order No. 16,499 (68 NH PUC 437).

²As a practical procedure, PSNH forecasts ECRM based on economic dispatch within it's own system. However, the actual dispatch is controlled by NEPOOL which is determined on an economic basis taking into account generating facilities throughout New England. PSNH cannot forecast NEPOOL's dispatch.

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NH.PUC*07/05/85*[61133]*70 NH PUC 622*Public Service Company of New Hampshire

[Go to End of 61133]

70 NH PUC 622

Re Public Service Company of New Hampshire

DR 79-141 et al.,
Order No. 17,728

New Hampshire Public Utilities Commission

July 5, 1985

ORDER adopting a stipulation agreement governing the cost recovery of an electric generating plant conversion project.

Automatic Adjustment Clauses, § 6 — Cost recovery clauses — Recovery of plant conversion costs.

The commission adopted a stipulation agreement whereby the costs of an electric generating plant conversion project are to be recovered through a fixed adder to the electric utility's energy cost recovery mechanism; the agreement established the revenue requirement of the fixed adder and settled other issues involving the timely and economic completion of the conversion project.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On March 1, 1982, the Commission initiated a negotiation and mediation process to resolve issues involving the timely and economic completion of the conversion of Schiller Units 4, 5 and 6 from oil to coal. That process resulted in a Settlement Agreement (DR 79-141, Exh. M) which was presented to and accepted by the Commission. Re Conversion of Schiller Stations, 67 NH PUC 741 (1982). The Settlement Agreement provided, inter alia, for the recovery of the cost of conversion through certain adjustments to Public Service Company of New Hampshire (PSNH or Company) Energy Cost Recovery Mechanism (ECRM). Re Public Service Co. of New Hampshire, 67 NH PUC 157 (1982). Pursuant to the Settlement Agreement, the Company has engaged in the conversion of the Schiller Units and those Units either are or soon will be in commercial operation. In anticipation of the completion of the conversion, the parties to these proceedings have engaged in continued negotiation to resolve the issues pertinent to the implementation of the Settlement Agreement. As a result, the parties were able to agree to a stipulation which implements the Schiller Settlement Agreement and resolves certain conversion issues. See Exh. A-1. The Stipulation was presented to the Commission at a duly noticed hearing on June 20, 1985. At that hearing, testimony and argument supporting the Stipulation were made a part of the record.

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The stipulation includes, inter alia, the following provisions:

- 1) The recovery of the cost of the Schiller conversion will be through a Fixed Adder to the ECRM in accordance with the terms of the Settlement Agreement;
- 2) The revenue requirement of the Fixed Adder will be calculated on the assumption that the conversion was financed totally with debt capital at a cost of 12.94%¹⁽²⁷⁴⁾ and that the useful

life of the conversion is 20 years;

- 3) The carrying cost of the Deferred Cost Recovery will be 12.94%²⁽²⁷⁵⁾ ;
- 4) As a starting point, the parties are assuming the cost of conversion is \$52.07 million plus lease expenses;
- 5) The cost of conversion is subject to adjustment based on determinations made as a result of the Staff audit now underway, after notice and an opportunity for all parties to be heard;
- 6) The Company has agreed to forego requesting that increased capital costs resulting from delay in the amount of approximately \$6.1 million be included in the cost of conversion, so long as the agreement is without prejudice to the Company's ability to request appropriate recovery at a later time; and
- 7) Test generation will be treated in accordance with Federal Energy Regulatory Commission regulations and practices.

After review and consideration, we conclude that the recommendations in the Stipulation (Exh. A-1) are consistent with the public good and will result in rates which are just and reasonable. Accordingly, we will accept and adopt the stipulation.

The Commission's conclusions are based, inter alia, on the following factors:

- 1) The history of the conversion and the negotiations reinforce the reasonableness of implementing the Settlement Agreement.
- 2) The assumptions utilized by the parties are reasonable and based on rational criteria. This includes, inter alia, the assumption of a 20 year useful life which is supported by Mr. Stasowski's testimony in this docket (DR 84-131) as well as Re Public Service Co. of New Hampshire, 84-200; the assumption of a cost of debt of 12.94% which is based on Moody's average public utility debt yields in May, 1985; the assumption that the conversion was financed with 100% debt which is based on the financing mechanisms contemplated in the Settlement Agreement along with the lower risk associated with a recovery through ECRM.
- 3) The opportunity for further adjustments based on the detailed information developed in the course of the Staff audit.
- 4) The opportunity of the parties to request that the terms of the stipulation be modified, abandoned or

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deleted if conditions change materially and the intent of the Stipulation can no longer be carried out or that the Stipulation is working a substantial inequity.

Although we herein accept and adopt the Stipulation, all parties should be on notice that the Commission will monitor the implementation and operation of the Settlement Agreement as refined in the Stipulation. The Commission, as always, retains the flexibility to modify or abandon the rate mechanism adopted herein, after notice and an opportunity for hearing, if circumstances warrant such an action.

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 of the parties as set forth in Exhibit A-1 is found to be just and reasonable as to all of its aspects under current circumstances; and it is

FURTHER ORDERED, that the stipulation agreement of the parties as set forth in Exhibit A-1 is accepted and adopted by the Commission.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1985.

FOOTNOTES

¹The 12.94% was calculated on the basis of Moody's average public utility yields for debt for May, 1985.

²Id.

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NH.PUC*07/08/85*[61128]*70 NH PUC 609*Lloyd D. Barrington d/b/a EMCA

[Go to End of 61128]

70 NH PUC 609

Re Lloyd D. Barrington d/b/a EMCA

DE 85-231, Order No. 17,716

New Hampshire Public Utilities Commission

July 8, 1985

ORDER granting interim license for the operation a customerowned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Lloyd D. Barrington, dba EMCA, 24 Old Bolton Road, Hudson, Massachusetts, 01749, on June 21, 1985 filed with this Commission a Petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at LEDA Lanes, Inc., 340 Amherst Street, Nashua, New Hampshire, 03063; and

WHEREAS, Mr. Barrington assured the Commission that the instrument to be installed and

operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ-6CH-14382CX-E; and

WHEREAS, Mr. Barrington assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Lloyd D. Barrington for the operation of one COCOT to be located at the address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules

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regarding the operation of COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1985.

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NH.PUC*07/08/85*[61129]*70 NH PUC 610*David Gulezian d/b/a Funworld

[Go to End of 61129]

70 NH PUC 610

Re David Gulezian d/b/a Funworld

DE 85-232, Order No. 17,717

New Hampshire Public Utilities Commission

July 8, 1985

ORDER granting interim license for the operation of customer-owned, coin-operated telephones.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOTs) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, David Gulezian, dba FUNWORLD, 200 Daniel Webster Highway, Nashua, New Hampshire, 03060, on June 21, 1985 filed with this Commission a petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at 200 Daniel

Webster Highway, Nashua, New Hampshire, 03060; and

WHEREAS, Mr. Gulezian assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596 and bears FCC registration number EEQ-6CH-14382CX-E; and

WHEREAS, Mr. Gulezian also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to David Gulezian for the operation of two COCOTs to be located at the address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules

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regarding the operation of COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOTs specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1985.

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NH.PUC*07/08/85*[61130]*70 NH PUC 611*Louis Nolin d/b/a Louie's Country Store

[Go to End of 61130]

70 NH PUC 611

Re Louis Nolin d/b/a Louie's Country Store

DE 85-233, Order No. 17,718

New Hampshire Public Utilities Commission

July 8, 1985

ORDER granting interim license for the operation of a customer-owned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Louis Nolin, dba Louie's Country Store, 71 Dracut Road, Hudson, New Hampshire, 03051, on June 21, 1985 filed with this Commission a petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at 71 Dracut Road, Hudson, New Hampshire, 03051; and

WHEREAS, Mr. Nolin assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ-6CH-14382-CX-E; and

WHEREAS, Mr. Nolin also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Louis Nolin for the operation of one COCOT to be located at the address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules regarding the operation of COCOTs in

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the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1985.

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NH.PUC*07/09/85*[61134]*70 NH PUC 624*New England Telephone and Telegraph Company

[Go to End of 61134]

70 NH PUC 624

Re New England Telephone and Telegraph Company

DE 85-134, Order No. 17,737

New Hampshire Public Utilities Commission

July 9, 1985

ORDER granting request by a local exchange telephone carrier to install, maintain and operate buried cable plant.

Page 624

APPEARANCES: For the New England Telephone and Telegraph Company: Samuel M. Smith, Outside Plant Supervisor, Right-of-Way.

By the COMMISSION:

REPORT

On May 6, 1985, the New England Telephone and Telegraph Company, Inc. (NET or Company) filed with this Commission its petition seeking license under RSA 371:17 for the crossing of state-owned property with its buried cable facilities in the area of Old Meredith Center Road in Laconia, New Hampshire. An Order of Notice was issued on May 23, 1985 setting the matter for public hearing at the Commission's Concord offices at 2:00 p.m. on June 27, 1985. Notices were sent to the petitioner for publication as well as to the Director of Safety Services, the Commissioner of Public Works and Highways and the Attorney General.

The published notice appeared in The Union Leader on June 10, 1985 and an affidavit attesting to same was filed on June 20, 1985.

The duly noticed hearing was convened as scheduled with no intervenors present. Samuel M. Smith, Outside Plant Supervisor, Right-of-Way, appeared for the petitioner. Mr. Smith described the crossing as buried telephone cable plant comprised of two manholes and 1930 feet of 300-pair telephone cable. The cable extends from manhole 400/90 on the easterly side of the cited road for 1435 feet, then crossing said road and continuing another 495 feet along the westerly side of that road. The cable supplies telephone service to residents and businesses in that part of the Laconia exchange.

Mr. Smith explained that the construction had been completed in 1980. At the time NET thought the road was a functioning state highway and sought license for its cable from the Department of Public Works and Highways. It was subsequently advised by PW&H that the state highway was being relocated and that the existing Meredith Center Road would become Old Meredith Center Road, a property of the Laconia State School. Through an oversight, pursuit of a license through this Commission was delayed until the instant petition. The Company asserts that no harm was done through such oversight.

Marked as Exhibit No. 1 was the NET letter transmitting the petition. Exhibit No. 2 was the petition itself, while Exhibit No. 3 was assigned to the NET Petition Plan No. 218859, dated April 19, 1985. A map of the area was designated Exhibit No. 4.

All work was accomplished according to applicable codes. No intervention was recorded either at the hearing or by mail.

Considering the need for the extension of this 300-pair cable to meet the telephone needs of the Laconia Exchange and having no objections from any party, the Commission has determined the crossing of State-owned property in the public interest. Our Order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted license for the

installation, maintenance, and operation of buried cable plant in Laconia, New Hampshire, extending from Manhole 400/90 northerly approximately 1435 feet, thence crossing Old Meredith Center Road from its east side to its west side, and continuing northerly another 495 feet; to Pole 400/105.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1985.

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NH.PUC*07/09/85*[61135]*70 NH PUC 626*New England Telephone and Telegraph Company

[Go to End of 61135]

70 NH PUC 626

Re New England Telephone and Telegraph Company

DR 85-249, Order No. 17,738

New Hampshire Public Utilities Commission

July 9, 1985

ORDER approving revisions to a local exchange telephone utility's measured service tariff.

By the COMMISSION:

ORDER

WHEREAS, earlier orders of this Commission in docket DR82-70 directed that measured service be available in all exchanges of New England Telephone and Telegraph Co. no later than December 31, 1985; and

WHEREAS, New England Telephone and Telegraph Co. has now filed certain revisions to its Tariff No. 75 documenting the addition of such service to various exchanges during the third quarter of 1985; and

WHEREAS, this Commission finds that such revisions comply with its earlier order regarding expansion of such measured service and is in the public interest; it is

ORDERED, that Original Pages 20.9, 20.10 and 20.11

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

1st Revised Page 9.1
2nd Revised Pages 20.1, 20.2, 20.3,
and 20.8
4th Revised Pages 20.4, 20.5, 20.6,
29.1, 29.2 and 29.3
5th Revised Pages 8 and 20.7
6th Revised Pages 19 and 20; and
7th Revised Page 21

of New England Telephone and Telegraph Company tariff, NHPUC No. 75, be, and hereby are, approved for effect July 28, 1985,

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1985.

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NH.PUC*07/09/85*[61136]*70 NH PUC 627*Northern Utilities, Inc.

[Go to End of 61136]

70 NH PUC 627

Re Northern Utilities, Inc.

DR 85-92, Supplemental
Order No. 17,739

New Hampshire Public Utilities Commission

July 9, 1985

ORDER approving conversion of the billing system of a natural gas distribution company from volumetric to thermal billing.

Rates, § 379 — Gas — Therm rates — Billing.

A natural gas distribution company was authorized to convert its billing system from volumetric to therm billing; the company was required to inform its customers of the new billing system via a one-time comprehensive bill insert.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Northern Utilities, Inc. filed with this Commission on April 1, 1985, certain revisions to its Tariff No. 6 by which it proposed to convert its billing of gas from the current volumetric system to a thermal basis; and

WHEREAS, said Company claimed such conversion would result in fairer billing which more accurately reflects the energy consumed by each customer; and

WHEREAS, said filing was suspended by this Commission by its Order No. 17,530 on April 5, 1985 pending investigation and decision thereon; and

WHEREAS, said investigation is now complete and facts presented by the Company and those gathered from the gas industry both within New Hampshire and without, showing that conversion to therm billing is in the best interest of New Hampshire's gas consumers; and

WHEREAS, the proposed tariff pages are defective in that the proposed effective date is May 1, 1985; it is

ORDERED, that the following tariff pages of the Northern Utilities, Inc. Tariff No. 6, be, and

hereby are, rejected:

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

Twenty-Fourth Revised Page 23
Twenty-Third Revised Page 25
Twenty-First Revised Page 27
Eighteenth Revised Page 30
Eleventh Revised Page 31
Nineteenth Revised Page 32
Fifth Revised Page 33

and it is

FURTHER ORDERED, that

Page 627

Northern Utilities, Inc. file with this Commission revised pages in lieu of those rejected herein, said pages to become effective with service rendered on and after the date of this order; and it is

FURTHER ORDERED, that Northern provide public notice via one-time comprehensive bill insert explaining the new billing system.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 1985.

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NH.PUC*07/09/85*[61137]*70 NH PUC 628*Northern Utilities, Inc.

[Go to End of 61137]

70 NH PUC 628

Re Northern Utilities, Inc.

DR 85-87, Second Supplemental
Order No. 17,741

New Hampshire Public Utilities Commission

July 9, 1985

ORDER approving revision to a cost of gas adjustment credit.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,581 (70 NH PUC 349) approved Northern Utilities, Inc.'s Cost of Gas Adjustment, 53th Revised page 22A of NHPUC Tariff No. 6 — Gas, providing for a cost of gas adjustment credit of \$(0.585) per therm for the period May 1, 1985 through October 31, 1985; and

WHEREAS, a significant decrease in rates from Granite State Transmission, supplier of

natural gas to Northern Utilities, Inc., is anticipated to be effective July 1, 1985; and

WHEREAS, on June 28, 1985, Northern Utilities, Inc. filed 54th Revised page 22A of NHPUC Tariff No. 6 — Gas, providing for a cost of gas adjustment credit of \$(0.1086) per therm for the period July 1, 1985 through October 31, 1985; it is hereby

ORDERED, that 54th Revised page 22A of NHPUC Tariff No. 6 — Gas, providing for a cost of gas adjustment credit of \$(0.1086) per therm for the period July 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this Order become effective with all billings issued on or after July 1, 1985.

The above rate is to be adjusted by a factor of approximately 1% as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this ninth day of July, 1985.

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NH.PUC*07/12/85*[61138]*70 NH PUC 629*Concord Natural Gas Company

[Go to End of 61138]

70 NH PUC 629

Re Concord Natural Gas Company

DR 85-90, Second Supplemental
Order No. 17,743

New Hampshire Public Utilities Commission

July 12, 1985

ORDER approving revision to a cost of gas adjustment.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in Report and Order No. 17,586 (70 NH PUC 354) approved Concord Natural Gas's Cost of Gas Adjustment, 44th Revised page 21 of NHPUC Tariff No. 13 — Gas, providing for a cost of gas adjustment of \$0.0261 per therm for the period May 1, 1985 through October 31, 1985; and

WHEREAS, a significant decrease in rates from Tennessee Gas Pipeline, supplier of natural gas to Concord Natural Gas, is anticipated to be effective July 1, 1985; and

WHEREAS, on July 1, 1985, Concord Natural Gas filed 46th Revised page 21, in lieu of 45th Revised page 21, of NHPUC Tariff No. 13 — Gas, providing for a cost of gas adjustment of \$0.0068 per therm for the period July 1, 1985 through October 31, 1985; it is hereby

ORDERED, that 46th Revised page 21, in lieu of 45th Revised page 21, of NHPUC Tariff

No. 13 — Gas, providing for a cost of gas adjustment of \$0.0068 per therm for the period July 1, 1985 through October 31, 1985, be, and hereby is, accepted; and it is

FURTHER ORDERED, that revised tariff pages approved by this Order become effective with all billings issued on or after July 1, 1985; and it is

FURTHER ORDERED, that the 12th Revised Page 1, in lieu of 11th Revised Page 1 of supplement No. 6 to NHPUC No. 13 — Gas be, and hereby is, accepted as provided in the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of July, 1985.

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NH.PUC*07/12/85*[61139]*70 NH PUC 630*New England Telephone and Telegraph Company

[Go to End of 61139]

70 NH PUC 630

Re New England Telephone and Telegraph Company

DR 84-12, Order No. 17,744

New Hampshire Public Utilities Commission

July 12, 1985

ORDER closing docket and requiring a local exchange telephone utility to keep the commission informed about its contracts with affiliates.

Intercorporate Relations, § 12 — Jurisdiction and powers — Utility dealings with affiliated interests — Contracts — Reporting requirements — Telephone.

A local exchange telephone utility was directed to provide the commission with ongoing updated information concerning the terms and conditions of its contracts with affiliates.

APPEARANCES: Bruce P. Beausejour, Esquire for New England Telephone and Telegraph Company; Larry M. Smukler, Esquire for the Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On January 6, 1984 New England Telephone and Telegraph Company (NET or Company) filed four contracts between itself and various NYNEX subsidiaries pursuant to RSA 366:3. An Order of Notice was issued scheduling a hearing for February 15, 1984 with publication. A revised Order of Notice was issued on January 27, 1984 rescheduling the hearing for March 14,

1984. Due to inclement weather, the March 14, 1984 hearing was postponed and, on March 15, 1984, the Commission issued an Order of Notice rescheduling the hearing for April 10, 1984 with publication.

The four filed agreements were as follows:

1) An agreement between NET and NYNEX Service Company for the provision of needed services such as technical services, regulatory and government relations and marketing. (Exh. 2).

2) An agreement between NET and NYNEX Service Company for accounting services. (Exh. 3).

3) An agreement between NET and NYNEX Material Enterprises Company for the procurement of materials and the rendering of other

Page 630

essential services on a centralized basis. (Exh. 4).

4) An agreement between NET and NYNEX Information Resources Company for the publishing of telephone directories. (Exh. 5).

At the hearing, NET presented the testimony of John H. Hann, the Company's Division Manager — Affiliated Company Services. Mr. Hann described the terms and conditions of each of the filed agreements and provided information about the assumptions underlying those terms and conditions.

Subsequent to the hearing, the Commission has had further occasion to consider the above described agreements in the course of its rate investigation in Re New England Teleph. & Teleg. Co., DR 84-95. The costs associated with the above agreements were incorporated into the Company's revenue requirement and since those costs were found to be appropriate, the Commission allowed those costs to be included in rates. Re New England Teleph. & Teleg. Co., 70 NH PUC 496 (1985).

The costs associated with the above described contracts were allowed to be included in rates because, on the basis of the record developed, they appeared to be reasonable. However, as with many of the mechanisms developed as a result of divestiture, the contract arrangements are new; there is little experience to predict how they will operate in practice or whether the underlying assumptions are in fact accurate. Since the record supported a finding of reasonableness given the current experience, we allowed costs to be included in rates. *Id.* Additional experience or other information developed in the course of future proceedings may warrant different findings and conclusions.

Since the costs of the contracts have been included in rates, we believe that it is appropriate to close the instant docket. Under RSA Chapter 366, no further Commission Order is necessary. However, we will direct the Company to provide ongoing updated information about changes in the terms and conditions of the contracts and the experience of the Company under the contracts.¹⁽²⁷⁶⁾ We will continue to monitor the relationship between NET and its affiliates. If information comes to our attention that warrants further regulatory action, we retain the flexibility to initiate an investigation pursuant to, inter alia, RSA 366:5 and, after notice and

opportunity for hearing, to take such actions as are appropriate pursuant to, inter alia, RSA 366:6 and 7.

Our Order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company provide the Commission with information pertinent to any changes in the terms and conditions of its agreements with affiliates and the experience of the Company with those agreements in accordance with the foregoing Report; and it is

FURTHER ORDERED, that this docket be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire his twelfth day of July, 1985.

FOOTNOTE

¹An example of relevant updated information would be income derived from yellow pages. If that income has been significantly underestimated, it would be appropriate to consider further regulatory measures.

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NH.PUC*07/15/85*[61140]*70 NH PUC 632*Concord Natural Gas Corporation

[Go to End of 61140]

70 NH PUC 632

Re Concord Natural Gas Corporation

Additional petitioner: EnergyNorth, Inc.

DF 84-345, Order No. 17,745

New Hampshire Public Utilities Commission

July 15, 1985

ORDER approving the affiliation of a natural gas distribution company and a public utility holding company through a statutory share exchange.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Approval of affiliation — Public benefit — Gas.

The proposed affiliation of a natural gas distribution company and a public utility holding company was approved as in the public good; the approval was based on the following findings: 1) the companies' parallel operations provide them with an opportunity to save costs through combining resources and economies of scale; 2) the gas operating expertise of the holding

company will provide the distribution company with additional resources without expanding its number of employees or obtaining expensive consultation; and 3) the distribution company will remain effectively intact after the affiliation thereby assuring continuity of service to ratepayers on its system. [1] p.637.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Conditions on approval of affiliation — Gas.

The proposed affiliation of a natural gas distribution company and a public utility holding company was approved subject to the following conditions: 1) the holding company shall conduct through corporate subsidiaries separate from its utility operating companies, all non-utility activities that are not functionally or operationally related to utility activities; 2) the holding company shall submit to the commission for review under state statute RSA 336 all services, materials or other contracts between its utility operating companies and itself or any of its non-utility subsidiaries; 3) the holding company shall make no use of the funds or credit of its utility operating companies for unrelated non-utility business; and 4) the holding company's investment in related and unrelated non-utility business, on an aggregate basis, shall not exceed 15% of its total assets without commission approval. [2] p.638.

Expenses, § 19 — Treatment of particular expenses — Corporate reorganization — Amortization — Cost sharing.

A proposal to amortize, over a ten-year period, reorganization expenses associated with effecting an affiliation between a holding company and a natural gas distribution company was given interim approval; the companies were required to allocate an appropriate amount of the reorganization expense to non-utility operations and were put on notice that 100% of the prudently incurred costs may not be automatically recoverable from ratepayers in a rate proceeding; the commission found that because the affiliation benefits both ratepayers and shareholders some sharing of prudently incurred expenses would be appropriate. [3] p.638.

Intercorporate Relations, § 12 —

Page 632

Jurisdiction and powers — Utility dealings with affiliates — Transfer of assets.

The transfer of assets that are used and useful for utility operations or are included in a utility's cost of service, even where that transfer is between affiliates, must be authorized by the commission pursuant to state statute RSA 374:30. [4] p.639.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Conditions on approval of affiliation — Commission access to corporate records — Pooling of interest accounting.

Acceptance of a proposed affiliation between a holding company and a natural gas distribution company was conditioned upon commission access to all records of the holding company and the distribution company before and after the affiliation; in the interests of consistency with prior commission orders the holding company was allowed to use pooling of interest accounting for recording its investment in the distribution company. [5] p.640.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Grounds for approval of affiliation — Capital structure.

Statement, in an order approving an affiliation between a holding company and a natural gas distribution company, that the companies' decision to retain the distribution company's present capital structure was a significant factor in the commission's decision to approve the affiliation. p. 640.

Return, § 41 — Factors affecting reasonableness — Intercorporate relations — Investor risk.

Statement, in an order approving an affiliation between a holding company and a natural gas distribution company, that the commission will look for a decrease in the rate of return on common equity in the future rate proceedings of the utility due to a decrease in investor risk. p.641.

APPEARANCES: Orr and Reno by Charles H. Toll, Jr., Esquire and Thomas C. Platt, III, Esquire for the Petitioners; Larry M. Smukler, Esquire for the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

Concord Natural Gas Corporation (CNGC) and EnergyNorth, Inc. (ENI) (hereinafter collectively referred to as "Petitioners") filed a Petition with this Commission on December 12, 1984 for approval of their affiliation pursuant to a statutory share exchange (the Affiliation) in accordance with an Agreement and Plan of Exchange (the Plan).

I. BACKGROUND

A. The Parties

CNGC is a gas utility subject to the jurisdiction of this Commission and operating entirely within the State of New Hampshire. ENI is a New Hampshire corporation operating as a holding company. It owns, among other things, all of the issued and outstanding shares of (i) the common stock, \$25 par value, of Gas Service, Inc. (GSI) and (ii) the common stock, \$5 par value, of Manchester Gas Company (MGC). GSI and MGC are each regulated gas utilities primarily engaged in the purchase, distribution and sale of natural gas for residential, commercial and industrial use in South Central New Hampshire, including Nashua, Manchester, Franklin and Laconia.

B. Procedure

At a procedural hearing on the Petition on December 18, 1984, the Commission ordered that a public hearing

be held at the office of the Commission on February 5, 1985 at 10:00 a.m. The Petitioners published notice of such hearing in a newspaper of general circulation and posted notice in

certain public places in their respective franchise areas, as evidenced by affidavits filed with the Commission. On January 9, 1985, and subsequently, the Petitioners submitted prefiled testimony and exhibits in support of their Petition. On January 25, 1985, and subsequently, the Petitioners submitted answers to the Staff Data Requests. Hearings were held by this Commission on February 5, 1985 and March 12, 13 and 14, 1985.

II. THE AFFILIATION

A. Terms

The proposed Affiliation contemplates that ENI will acquire control of CNGC by acquiring, in exchange solely for shares of ENI Common Stock, all of the issued and outstanding shares of CNGC Common Stock and CNGC Preferred Stock pursuant to New Hampshire Revised Statutes Annotated, Chapter 293-A (the Share Exchange). CNGC common stockholders would receive 8.2 shares of ENI Common Stock for each of their shares of CNGC Common Stock. CNGC Preferred stockholders would receive 6.3 shares of ENI Common Stock for each of their shares of CNGC Preferred Stock. Other terms of the Affiliation are set forth in the Plan.

B. Regulatory Approvals

Consummation of the Affiliation is subject to a number of regulatory approvals. In addition to submitting a petition seeking the Commission's approval, ENI has obtained the approval by the Securities and Exchange Commission (SEC) of its application under Section 10 of the Public Utility Holding Company Act of 1935 (PUHCA) for acquisition of the common and preferred stock of CNGC, subject to the receipt of required approvals, if any, from this Commission.

ENI is currently entitled to an exemption under PUHCA Rule 2 from the registration requirements of that Act because, given the operations of ENI and its utility subsidiaries, ENI's holding company system is predominantly intrastate in character. The Parties expect that ENI will continue to be entitled to this intrastate exemption after the Affiliation.

A Registration Statement on Form S-14 has been filed with the SEC, which became effective on February 13, 1985 prior to the mailing of the Prospectus/Proxy Statement to the CNGC stockholders. The CNGC stockholders overwhelmingly approved the proposed Affiliation at a special meeting held on March 26, 1985.

Finally, it is a condition of the Plan that the Petitioners obtain a ruling from the Internal Revenue Service that the Share Exchange will be tax free. This has been provided.

III. PETITIONERS' POSITION

A. Affiliation Benefits

The Petitioners have testified that the Affiliation is in the public good. In their opinion, the affiliation of CNGC with ENI has positive implications from both an operational and economical prospective. The economies which they purport will flow from the expansion

of ENI's holding company system in the next three to five years will result in substantial cost savings to the gas consumer. The proposed cost savings will be, to some extent, a benefit to the consumer. The following were specifically cited as examples of these benefits by the Petitioners:

1. Operations

The Affiliation will combine CNGC's relatively small gas distribution company with ENI's larger enterprise. It would fill out ENI's franchise area which is now separated geographically between the Nashua-Manchester area and the Laconia area. The operations of CNGC and ENI's utility subsidiaries are similar in many respects. Their employees are familiar with each other so that integration of personnel should not be difficult. As the result of the Affiliation, ENI and CNGC will be able to utilize each other's strengths. For example, CNGC will benefit from ENI's computer and related software programs for administrative services and from the specialized expertise of ENI's personnel. On the other hand, CNGC will bring qualified employees to ENI's benefit as their experience will further strengthen the management of ENI.

Furthermore, the Petitioners aver, long-range operational benefits will accrue through the integration of gas supply and supplemental gas production facilities. In gas supply, CNGC's customers should benefit from a more diverse supply of pipeline, underground storage and supplemental gases. At present, however, ENI and CNGC purchase pipeline gas from Tennessee Gas Pipeline Company on different contracts for different rates. Witnesses for the Petitioners testified that, assuming current volumes and conditions, ENI and CNGC should maintain separate contracts.

The Petitioners also represented that, in the foreseeable future, CNGC's customers will continue to deal with the same company that provided service prior to the Affiliation. Therefore, it will not inconvenience the utility's customers.

2. Economies

The Petitioners believe that economies will be derived in three areas.

First, the addition of CNGC and ENI's holding company system should produce direct savings in the cost of insurance and in accounting, billing and tax services. In the areas of accounting and data processing, integration of CNGC's staff into ENI will permit CNGC to achieve substantial cost savings by utilizing one sophisticated computer system, along with related system software, thereby avoiding costs of two separate systems. The integration of these functions will eliminate the need for CNGC to hire a computer manager to oversee these services and delay the need for hiring additional personnel, with probable future savings in salary and overhead expense. In the insurance area, the Affiliation may be expected to generate annual savings of at least \$20,000. After the Affiliation, ENI will have only one deductible; the companies' spread of risk will be improved; coverage at the upper end of the limit will be less expensive; and the burden associated with the payment of minimum premiums will be avoided. The Petitioners also expect to achieve annual savings in excess of \$8,000 through bulk purchases of office equipment and supplies,

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meters, pipe and other construction materials. Other probable but unquantifiable areas in which the Petitioners expect to benefit from the economies of scale include savings from (i) the utilization of existing and future propane storage contracts, (ii) lower unit costs resulting from higher volume purchasing contracts, (iii) ultimate consolidation of CNGC's meter testing and

repair facility with that of ENI, and (iv) reduction of materials' inventory levels at CNGC.

Second, the petitioners state that the Affiliation will enhance CNGC's ability to attract equity and debt capital. ENI has, and will continue to have after the Affiliation, greater financial strength than CNGC alone. ENI's issuance of 150,000 shares of common stock in January 1984 demonstrates that the holding company can effectively access the equity markets. The Petitioners' witnesses testified that CNGC standing alone probably would be barred from the equity markets because of the magnitude of issuance costs in relation to the probable size of the issuance. Mr. Hodakowski also testified that CNGC's cost of capital probably would decrease between 2.05 and 2.4% as a result of the Affiliation. The Petitioners also stated that CNGC could more readily issue debt and preferred stock to institutional purchasers at more favorable terms as a member of a financially stronger holding company system.

Third, both ENI and CNGC have testified that the Affiliation will effect savings in salaries and other related staff costs, as well as in certain operational areas. As noted above, the eventual elimination of duplicated functions in accounting and data processing will result in significant savings. In addition, the Petitioners expect to reduce duplicated costs of gas supply personnel, including salaries and conference expenses, and in meter testing and repair shops. Moreover, the Petitioners' plan to provide for increased personnel specialization should result in indirect savings through increased efficiency. In this regard, Mr. Giordano testified as to the increased efficiency with which ENI has served its franchise area since the combination of MGC and GSI. The number of customers served per employee of ENI (or its affiliates) since September 30, 1982 has increased from 189.1 to 198.8. Mr. Giordano also stated that part of this increased productivity may be attributable to factors other than the internal management and structure of ENI and its affiliates.

B. Benefits to Petitioners

The Petitioners believe that the Affiliation will also serve the needs of their stockholders and employees. The Boards of Directors of ENI and CNGC agreed upon the exchange ratios as part of an arms-length transaction after extensive negotiation. The public benefits, as enumerated by the Petitioners will result in economies which will be reflected in the net earnings of each of CNGC and ENI. The Affiliation will give the current holders of CNGC common and preferred stock an interest in a substantially larger enterprise with longterm growth potential.

The Petitioners expert financial witness supporting the Affiliation believes this affiliation is desirable from an investor's perspective because it will increase the financial strength of both ENI and CNGC and have a favorable effect on prospective financings (Exhibit #8, Data Response #8). Also, the exchange transaction also will provide CNGC Preferred Stock holders with stock that offers a higher return plus

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voting rights¹⁽²⁷⁷⁾ while leaving CNGC's capital structure "substantially unchanged" (Exhibit #11, page 2 of 13) for rate making purposes.

In Addition, the Petitioners state that ENI stockholders will gain control of a growing utility franchise area which will fill out its own utilities' franchise area, while CNGC's financial

position will be strengthened through affiliation with a larger corporation with stock actively traded in Over-the-Counter transactions. This also gives CNGC's stockholders ready access to buying or selling stock in the Company, which they did not have in the past. Overall, the Petitioners' investors have a mutual gain as a result of the Affiliation.

The witnesses for the Petitioner further stated that ENI will have the potential to engage in non-utility business to the extent permitted by the conditions outlined in Petitioner's Exhibit 5. It is their belief that the prospects for the Petitioners in this area are good based on ENI's successful track record with Rent-A-Space of New England, Inc.. CNGC will compliment the nonutility business with its subsidiary Concord Gas Service Corporation, which has been engaged in propane sales similar to the "below-the-line" operations of MGC and GSI.²⁽²⁷⁸⁾

Furthermore, the employees of CNGC will benefit from the Affiliation. There will be no immediate reductions in total staff occasioned by the Affiliation. Instead, employees of CNGC will be able to specialize in areas of expertise, enabling long term growth and additional career opportunities than would otherwise be the case.

C. Pooling of Interest Accounting

According to the Petitioner, CNGC will require no accounting changes; the Affiliation will leave its assets, liabilities and equity unchanged for rate making and accounting purposes.

ENI will use the Pooling of Interests accounting method for its investment in CNGC. The Pooling of Interests method is generally recognized as an appropriate basis in business combinations of this nature, and was used by ENI in the acquisition of MGC and GSI in DF 82-140. Re Gas Service, Inc., 67 NH PUC 730 (1982).

IV. COMMISSION ANALYSIS

[1] Based on the evidence provided, the Commission concludes that the Affiliation of ENI and CNGC is in the public good and therefore will conditionally approve the petition as filed. Our conclusion is based on the following findings. First, the companies' parallel operations provides them with an opportunity to save costs through combining resources and economies of scale. Second, the gas operating expertise of ENI will provide CNGC with additional resources without expanding its number of employees or expensive consultation. Third, CNGC will remain effectively intact after the affiliation; this will assure continuity in service to ratepayers of the system.

As noted above, our approval is conditional. We will initially address the conditions to be imposed in this Order. We will then address additional Commission concerns which warrant further analysis and discussion.

A. Conditions

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[2] The affiliation is approved subject to the strict adherence, by ENI, to the conditions provided by the Petitioners as Exhibit 5 in these proceedings:

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 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; and (4) ENI's investment in unrelated nonutility business, both individually and on an aggregate basis, shall not exceed 15% of its total assets determined on a consolidated basis, except with the prior approval of this Commission.

The Petitioners accepted that these conditions strike a reasonable balance between the interests of the public and those of the investor, and that they tend to assure the proper functioning of the ENI holding company system.

We will accept the conditions as set forth above in part with one revision Section #4 will be as follows: ENI's investment in related and unrelated nonutility business, on an aggregate basis, shall not exceed 15% of its total assets, except with the prior approval of this Commission.³⁽²⁷⁹⁾

ENI is directed to file annual reports with the Commission providing the aggregate investment in both related and unrelated business as compared to the total assets in ENI's year end balance sheet. This is in conformance with the Petitioners' representation pertinent to the determination of the percentage of the aggregate investment to the whole.

4(280) (Tr. 4-64)

B. Reorganization Costs

[3] The Petitioners estimated that the cost of effecting the Affiliation will be \$150,000. CNGC's share of these expenses pursuant to the Plan is 20%, or \$30,000. In addition, CNGC itself incurred approximately \$36,000 in expenses in connection with the negotiation and review of the business and legal aspects of the Plan. The Petitioners propose to amortize the cost of the Affiliation over ten years as an operating expense.

Although the Commission has

accepted a ten-year amortization period for reorganization expenses in the past, recently we have had cause to review this practice.

In the instant docket, it appears appropriate to weigh the risks and benefits of the Affiliation

among investors and ratepayers. It is not just and reasonable to allocate 100 percent of the costs of reorganization to ratepayers alone (Tr 3-8 through 3-17), nor is it appropriate to require investors to bear 100 percent of the burden.

The difficulty in establishing such an allocation at the present time is that the decision requires more than an assessment of whether the costs of reorganization were prudently incurred and whether they are reasonable. The record indicates that many of the benefits to the Companies and their investors will occur rather quickly. However, the benefit to ratepayers will occur over time. Even if this was not the case, the fact that the Affiliation benefits both investors and ratepayers leads us to conclude that some sharing of costs - even reasonable prudently incurred expenses⁵⁽²⁸¹⁾ -is appropriate.

Thus, although the Affiliation will be approved herein, we believe it is necessary to put the Companies on notice that 100% of the prudently incurred costs of reorganization may not automatically be recoverable from ratepayers. Since ratemaking treatment for those costs is not being sought at the present time, no further Commission comment is necessary or appropriate. At the time that any ENI company seeks to include the costs of reorganization in its revenue requirement for ratemaking purposes, we will develop the appropriate record so that those costs can be fairly allocated. In the interim, ENI utility subsidiaries shall book the cost of reorganization allocable to utility operations in NHPUC account number 1301 to be amortized over a ten year period. An appropriate amount should be allocated to non-utility operations. The amortization of the total cost is to begin as of the effective date of this Order. Such allocation must be documented and filed with the Commission prior to the time said entries are made. In addition, we will direct that the unamortized portion of the reorganization expense would not become part of the utilities' working capital in accordance with the testimony of the Financial Vice President of GSI and MGC. (Tr. 3-17).

C. Transferring Assets

[4] The Petitioners indicated that when, and if, they wish to transfer assets which may be considered nonutility (propane facilities), it will not be necessary to seek Commission approval. (Tr 3-38). The Petitioners also stated that Exhibit 5 in this docket proposes that the companies will file paper work with the Commission providing notification of transfers of assets even though it is their contention that no such filing is required.

The Commission understands the Petitioners' position concerning this issue; however, our interpretation of the statute differs. Transfer of Assets which in part or whole are used and useful for utility operations or are included in a utility's cost of service (e.g., propane facilities) must be authorized by this Commission. RSA 374:30.

The Petitioners offer to file the paper work for such transactions is accepted. We will direct the companies to file for requisite Commission authority to transfer assets (when and if it occurs)

pursuant to the Commission filings requirements. We will then issue an order either approving or disallowing the transaction. Determination of such will be based on the evidence provided and the circumstances involved in each individual transaction.

D. Capital Structure of CNGC

The Petitioners have testified that they do not propose to change CNGC's capital structure after the Affiliation. Currently this capital structure includes a Preferred Stock issuance of 5.5%.

Leaving this stock in CNGC's capital structure and exchanging it for ENI stock benefits both the ratepayers, by retaining a lower overall cost of capital, and owners of the Preferred Stock, by exchanging such for a higher yielding marketable security.

The decision to retain the present CNGC capital structure was a significant factor in our decision to accept the Affiliation.

E. Pooling of Interest Accounting

[5] The Commission accepted Pooling of Interest Accounting in the approval of ENI (DF 82-140), Re GSI, supra. Therefore, to remain consistent we will allow ENI to use the Pooling of Interest Accounting for recording its investment in CNGC.

The Petitioners expressed a willingness to allow the Commission staff to review the books and records of ENI and all subsidiaries (Tr. 4 64). The Commission has accepted the Affiliation on the express requirement that it have access to all records of ENI before and after the Affiliation. Our need to verify correct allocations among utility and non-utility subsidiaries (Exh. 24) and to assure compliance with the instant decision mandates the access to these records. Further, the Company should be on notice that the Commission will exercise its statutory right to review and exclude, if appropriate, additions to the cost of service of any ENI utility subsidiary, if our review of Company records reveals costs which are not acceptable to the Commission. See also, Transferring of Assets above; RSA 366:5, RSA 374:5, and RSA 378:7.

F. Reporting by the Affiliation

The Commission will require additional reporting from the affiliated companies. Our concern throughout the proceedings has been the lack of documentation on purported savings. This stems from the commitments made by ENI in DF 82-140, which had not been satisfactorily fulfilled following the ratification of the Holding Company. The cost savings reported during the proceedings by ENI among GSI and MGC were not timely nor were some of the savings actuals (savings from the computer).

The Commission will require the new affiliation to report annually on the actual cost savings realized as a result of the Affiliation. Additionally, ENI will continue to be required to update the Commission on the avoided costs resulting from the creation of ENI, and the Commission anticipates these savings will be explicitly reflected in future rate filings.

G. Return on Common Equity

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During the hearings the Petitioners gave various statements indicating that the Affiliation will increase the strength of CNGC and the utility subsidiaries of ENI (MGC and GSI), thereby decreasing investor risk and required return. The Petitioners' expert financial witness provided a response to a staff data request (Exh. 25) which states this effect on all three utilities after the Affiliation.

The Commission believes that the Affiliation will have a favorable impact on investor perception of ENI's utility operations. This is especially true for CNGC. However, GSI and MGC will benefit from the incorporation of CNGC's franchise area within the ENI group. ENI overall will benefit from CNGC's strong equity to debt ratio providing more value to the ENI stock.

The Commission will look for a decrease in the return requirement in future rate proceedings of these utilities.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the affiliation of Concord Natural Gas Corporation with EnergyNorth, Inc. through a statutory share exchange from which EnergyNorth, Inc. will acquire control of Concord Natural Gas Corporation be, and hereby is, approved; and it is

FURTHER ORDERED, that the acquisition by EnergyNorth, Inc. of control of Concord Natural Gas Corporation and the exchange of ENI common stock for common and preferred stock of Concord Natural Gas Corporation to consummate said affiliation be, and hereby is, approved, subject 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 nonutility 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 its utility operating companies and either ENI or any of ENI's nonutility subsidiaries;

(3) ENI shall make no use of the funds or credit of its utility operating companies for unrelated non-utility business purposes; and

(4) ENI's investment in related and unrelated non-utility business, on an aggregate basis, shall not exceed 15% of its total assets, except with the prior approval of this Commission; and it is

FURTHER ORDERED, that for EnergyNorth's accounting purposes, the pooling of interests method is hereby approved; and it is

FURTHER ORDERED, that

EnergyNorth file copies of annual reports and other documentation specified in the foregoing Report with the Commission as required; and it is

FURTHER ORDERED, that the reorganization expenses, allocated in accordance with the report included herewith, be submitted to the Commission Finance Department for review.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1985.

FOOTNOTES

¹CNGC's Preferred Stock yields 5 1/2%.

²As an unregulated enterprise, a non-utility affiliate will have the opportunity to earn a return which would exceed that allowed by the Commission.

³As is apparent, we have also deleted the calculation of ENI's investment in related and unrelated non-utility business on an individual basis. This is based on the assumption that the aggregate calculation will fully reflect any business which individually exceeds 15% of ENI's total assets.

4

[Equation below may extend beyond size of screen or contain distortions.]

(Total unrelated & related nonutility investment)

----- < 15%

(Total ENI assets from balance sheet)

⁵Of course, if after investigation in a properly noticed proceeding, the Commission finds that all or a portion of the reorganization costs were imprudently incurred, those imprudently incurred costs will be allocated entirely to the Companies' investors.

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NH.PUC*07/18/85*[61141]*70 NH PUC 642*Manchester Gas Company

[Go to End of 61141]

70 NH PUC 642

Re Manchester Gas Company

DF 85-206, Order No. 17,747

New Hampshire Public Utilities Commission

July 18, 1985

ORDER authorizing a natural gas distribution company to continue with the issuance of a five year revolving note.

By the COMMISSION:

ORDER

WHEREAS, Manchester Gas Company, a public utility operating under the jurisdiction of this Commission as a gas utility in Manchester, Bedford, Goffstown and Hooksett, seeks approval of its five year revolving note from the Bank of New England in an aggregate amount not to exceed \$2,000,000, issued March 1, 1984 and due February 28, 1989; and

WHEREAS, Manchester Gas Company states that this line of credit allows them the flexibility to finance construction projects without the requirement to bring the line to a zero balance; and

WHEREAS, the issuance of such note for the aforesaid purpose is consistent with the public good; it is

ORDERED, that Manchester Gas Company be, and hereby is, authorized to continue with the issuance of the five year revolving note, payable to the Bank of New England, in an aggregate amount not to exceed \$2,000,000; and it is

FURTHER ORDERED, that Manchester Gas Company should seek approval, ratification

and authorization of any further short-term indebtedness in excess of current approvals or longterm indebtedness or capital stock issuances or any other evidences of indebtedness in accordance with Revised Statutes Annotated, Chapter 369; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, the Manchester Gas Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said note.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61142]*70 NH PUC 643*Fuel Adjustment Clause

[Go to End of 61142]

70 NH PUC 643

Re Fuel Adjustment Clause

Intervenors: New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter and Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-175, Supplemental Order No. 17,748

New Hampshire Public Utilities Commission

July 18, 1985

ORDER authorizing revision to an electric utility's fuel adjustment clause rate without a formal hearing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified the New Hampshire Electric Cooperative, Inc., Granite State Electric Company, Connecticut Valley Electric Company, Inc., Exeter & Hampton Electric Company, Municipal Electric Department of Wolfeboro, Concord Electric Company, Woodsville Power and Light Department, and Littleton Water & Light Department that FAC hearings will not be automatically scheduled unless it is the

third month of a quarter for those utilities which have a quarterly FAC rate, or upon request of any utility maintaining a monthly FAC; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; it is

ORDERED, that 139th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$1.26 per 100 KWH for the month of July, 1985, be, and hereby is, permitted to become effective July 10, 1985.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61143]*70 NH PUC 644*White Oak Hydroelectric Associates

[Go to End of 61143]

70 NH PUC 644

Re White Oak Hydroelectric Associates

DR 85-160, Order No. 17,752

New Hampshire Public Utilities Commission

July 18, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Licensing requirements — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, as premature where the petitioner did not yet have a license to develop the project and the owner of the project site had expressed his intention to file a competing license application.

By the COMMISSION:

ORDER

WHEREAS, on May 20, 1985, White Oak Hydroelectric Associates (WOHA) filed a petition

for a long term rate for the White Oak Hydroelectric Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, WOHA does not yet have a license to develop White Oak and the owner of the site has indicated his intention to file a competing license application; and

WHEREAS, until WOHA obtains a license to develop White Oak from the Federal Energy Regulatory Commission in an order denying all competing applications, WOHA cannot represent that it will have output to sell from this project and the long-term rate filing for White Oak is therefore premature; it is therefore

ORDERED, that the long-term rate filing for White Oak be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. 85-160 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61144]*70 NH PUC 645*Northeast Hydrodevelopment Corporation

[Go to End of 61144]

70 NH PUC 645

Re Northeast Hydrodevelopment Corporation

DR 85-185, Order No. 17,753

New Hampshire Public Utilities Commission

July 18, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Licensing requirements — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, as premature where the petitioner had not yet received a license to develop the project from the Federal Energy Regulatory Commission.

By the COMMISSION:

ORDER

WHEREAS, on May 31, 1985, Northeast Hydrodevelopment Corporation (NHC) filed a petition for a long term rate for the Buck Street Dam Hydro Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, NHC does not yet have a license to develop Buck Street and a preliminary permit application to develop Buck Street has been filed by Jason Hines; and

WHEREAS, until NHC obtains a license to develop Buck Street from the Federal Energy Regulatory Commission in an order denying all competing applications, NHC cannot represent that it will have output to sell from this project and the long-term rate filing for Buck Street is therefore premature; it is therefore

ORDERED, that the long-term rate filing for Buck Street be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. 85-185 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61146]*70 NH PUC 647*Salmon Hole Brook Hydro

[Go to End of 61146]

70 NH PUC 647

Re Salmon Hole Brook Hydro

DR 85-222, Order No. 17,755

New Hampshire Public Utilities Commission

July 18, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Interconnection study — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, where the petitioner failed to contact the proposed interconnecting utility for an interconnection study at least 45 days prior to filing for the long term rate.

By the COMMISSION:

ORDER

WHEREAS, on June 19, 1985, Salmon Hole Brook Hydro filed a petition for a long term rate filing for the Salmon Hole Brook Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, pursuant to said Order all Small Power Producers and Cogenerators are required to contact the Public Service Company of New Hampshire (PSNH) for an interconnection study at least 45 days prior to filing for a long-term rate; and

WHEREAS, the purpose of the 45 day period was to allow the staff of PSNH ample time to familiarize itself with the small power project; and

WHEREAS, Salmon Hole Brook Hydro has not complied with the 45 day requirement; it is therefore

ORDERED, that the long-term rate filing for Salmon Hole Brook Project be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-222 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61147]*70 NH PUC 648*Concord Regional Waste-Energy Company

[Go to End of 61147]

70 NH PUC 648

Re Concord Regional Waste-Energy Company

DR 85-223, Order No. 17,756

New Hampshire Public Utilities Commission

July 18, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Interconnection study — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, where the petitioner failed to contact the proposed interconnecting utility for an interconnection study at least 45 days prior to filing for the long term rate.

By the COMMISSION:

ORDER

WHEREAS, on June 19, 1985, Concord Regional Waste-Energy Company filed a petition for a long term rate filing for the Concord Regional WasteEnergy Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, pursuant to said Order all Small Power Producers and Cogenerators are required to contact the Public Service Company of New Hampshire (PSNH) for an interconnection study at least 45 days prior to filing for a long-term rate; and

WHEREAS, the purpose of the 45 day period was to allow the staff of PSNH ample time to familiarize itself with the small power project; and

WHEREAS, Concord Regional WasteEnergy Company has not complied with the 45 day requirement; it is therefore

ORDERED, that the long-term rate filing for Concord Regional Waste Energy Project be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-223 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/18/85*[61148]*70 NH PUC 649*Maine Energy Partners

[Go to End of 61148]

70 NH PUC 649

Re Maine Energy Partners

DR 85-225, Order No. 17,757

New Hampshire Public Utilities Commission

July 18, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 20, 1985, Maine Energy Partners filed a petition for a long term rate filing for the Hampden Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, pursuant to said Order all Small Power Producers and Cogenerators are required to contact the Public Service Company of New Hampshire (PSNH) for an interconnection study at least 45 days prior to filing for a long-term rate; and

WHEREAS, the purpose of the 45 day period was to allow the staff of PSNH ample time to familiarize itself with the small power project; and

WHEREAS, Maine Energy Partners has not complied with the 45 day requirement; it is therefore

ORDERED, that the long-term rate filing for Hampden be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-225 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1985.

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NH.PUC*07/19/85*[61149]*70 NH PUC 650*Maine Energy Partners

[Go to End of 61149]

70 NH PUC 650

Re Maine Energy Partners

DR 85-226, Order No. 17,758

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 20, 1985, Maine Energy Partners filed a petition for a long term rate filing for the Moosehead Lake Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, pursuant to said Order all Small Power Producers and Cogenerators are required to contact the Public Service Company of New Hampshire (PSNH) for an interconnection study at least 45 days prior to filing for a long-term rate; and

WHEREAS, the purpose of the 45 day period was to allow the staff of PSNH ample time to familiarize itself with the small power project; and

WHEREAS, Maine Energy Partners has not complied with the 45 day requirement; it is therefore

ORDERED, that the long-term rate filing for Moosehead Lake Project be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-226 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61150]*70 NH PUC 651*Maine Energy Partners

[Go to End of 61150]

70 NH PUC 651

Re Maine Energy Partners

DR 85-227, Order No. 17,759

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 20, 1985, Maine Energy Partners filed a petition for a long term rate filing for the Brownville Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, pursuant to said Order all Small Power Producers and Cogenerators are required to contact the Public Service Company of New Hampshire (PSNH) for an interconnection study at least 45 days prior to filing for a long-term rate; and

WHEREAS, the purpose of the 45 day period was to allow the staff of PSNH ample time to familiarize itself with the small power project; and

WHEREAS, Maine Energy Partners has not complied with the 45 day requirement; it is therefore

ORDERED, that the long-term rate filing for Brownville Project be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-227 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61151]*70 NH PUC 652*Thermo-Electron Energy Systems

[Go to End of 61151]

70 NH PUC 652

Re Thermo-Electron Energy Systems

DR 85-236, Order No. 17,760

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, pending completion of a commission investigation of long term avoided cost rates.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985, Thermo-Electron Energy Systems filed a petition for a long term rate for the Fitzwilliam Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984);

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Fitzwilliam after June 20, 1985; it is therefore

ORDERED, that the long-term rate filing for Fitzwilliam be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-236 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61152]*70 NH PUC 653*Thermo-Electron Energy Systems

[Go to End of 61152]

70 NH PUC 653

Re Thermo-Electron Energy Systems

DR 85-237, Order No. 17,761

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

Cogeneration, § 5 — Qualifying status — Small power production.

A petition for a long term rate for a small power production project was denied, without prejudice, pending completion of a commission investigation of long term avoided cost rates.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985, Thermo-Electron Energy Systems filed a petition for a long term rate for the Antrim Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Antrim after June 20, 1985; it is therefore

ORDERED, that the long-term rate filing for Antrim be, and hereby is, rejected without

prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-237 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61153]*70 NH PUC 654*Thermo-Electron Energy Systems

[Go to End of 61153]

70 NH PUC 654

Re Thermo-Electron Energy Systems

DR 85-238, Order No. 17,762

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985, Thermo-Electron Energy Systems filed a petition for a long term rate for the Troy Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Troy after June 20, 1985; it is therefore

ORDERED, that the long-term rate filing for Troy be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-238 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61154]*70 NH PUC 655*Thermo-Electron Energy Systems

[Go to End of 61154]

70 NH PUC 655

Re Thermo-Electron Energy Systems

DR 85-239, Order No. 17,763

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985, Thermo-Electron Energy Systems filed a petition for a long term rate for the Campton Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Campton after June 20,

1985; it is therefore

ORDERED, that the long-term rate filing for Campton be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-239 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61155]*70 NH PUC 656*Thermo-Electron Energy Systems

[Go to End of 61155]

70 NH PUC 656

Re Thermo-Electron Energy Systems

DR 85-240, Order No. 17,764

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985 Thermo-Electron Energy Systems filed a petition for a long term rate for the Conway Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Conway after June 20, 1985; it is therefore

ORDERED, that the long-term rate filing for Conway be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-240 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61156]*70 NH PUC 657*Thermo-Electron Energy Systems

[Go to End of 61156]

70 NH PUC 657

Re Thermo-Electron Energy Systems

DR 85-241, Order No. 17,765

New Hampshire Public Utilities Commission

July 19, 1985

ORDER denying, without prejudice, petition for a long term rate for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on June 21, 1985, Thermo-Electron Energy Systems filed a petition for a long term rate for the Bethlehem Project pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, on June 14, 1985 Public Service Company of New Hampshire (PSNH), filed a Petition for Avoided Cost Rate Update in accordance with said order; and

WHEREAS, on June 20, 1985 the Commission opened Re: Small Energy Producers and Cogenerators Docket No. DR 85-215, for the purpose of investigating the proposed long-term avoided cost rates and by its Order of Notice, inter alia, ordered that "pending completion of this investigation, no long-term rate filings filed after the date of this Order of Notice based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the

Commission"; and

WHEREAS, Thermo-Electron Energy Systems filed its petition for Bethlehem after June 20, 1985; it is therefore

ORDERED, that the long-term rate filing for Bethlehem be, and hereby is, rejected without prejudice; and it is

FURTHER ORDERED, that Docket No. DR 85-241 be, and hereby is closed.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1985.

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NH.PUC*07/19/85*[61157]*70 NH PUC 658*Public Service Company of New Hampshire

[Go to End of 61157]

70 NH PUC 658

Re Public Service Company of New Hampshire

Intervenor: Office of Consumer Advocate

DF 85-234, Order No. 17,766

New Hampshire Public Utilities Commission

July 19, 1985

PETITION by an electric utility for authority to refinance certain existing financial obligations; granted, as modified.

Security Issues, § 49 — Factors affecting authorization — Financial conditions — Refinancing — Electric utility.

An electric utility's petition for authority to refinance certain existing financial obligations was granted subject to the deletion of a provision contained in a proposed financing agreement with an engineering and construction company that would have required the utility to default on the loan in the event of the termination or material reduction of the company's services at the Seabrook nuclear project without the company's consent; the commission noted that it had approved such a provision in a prior financing proceeding but found that the extreme financial exigencies that had prompted the commission to approve such a provision no longer existed.

APPEARANCES: D. Pierre G. Cameron, Jr., Esquire and Sulloway Hollis and Soden by R. Carl Anderson, Esquire and Martin L. Gross, Esquire for Public Service Company of New Hampshire; Michael W. Holmes, Esquire, Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On June 21, 1985, Public Service Company of New Hampshire (PSNH or Company) filed a Petition for authorization to refinance certain existing financial obligations by issuing: 1) up to \$112,500,000 of long term indebtedness, collateralized by general and refunding (G&R) mortgage bonds and up to \$10,080,000 first mortgage bonds; and 2) up to \$18,436,728.31 of long-term unsecured indebtedness. On June 26, 1985, the Commission issued an Order of Notice which, inter alia, scheduled a hearing on July 18, 1985. A Motion to Intervene was filed by the Consumer Advocate and granted at the July 18, 1985 evidentiary hearing.

In this proceeding, PSNH is seeking the authority pursuant to RSA 369:1-4 to issue, sell and pledge the following instruments.

1) "New Term Agreements" between PSNH and its domestic bank lenders, the Eurodollar lenders and

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PruLease (collectively the "Institutional Lenders");

2) One or more series of bonds up to \$112,500,000 in aggregate principal amount under the Company's G&R Mortgage Indenture dated as of August 15, 1978, as security for the New Term Agreements with the same interest payment terms as the New Term Agreements, but with payment thereof to be forgiven when and to the extent that interest is paid on the same;

3) An additional series of First Mortgage Bonds under the Company's First Mortgage dated as of January 1, 1943, in principal amount of \$10,080,000 to be issued and pledged to the Trustee of the G&R Mortgage Indenture, bearing the same interest rate and having the same maturity date as the G&R bonds to be issued, as additional security for all bonds to be outstanding under the G&R Mortgage Indenture; and

4) An agreement with United Engineers and Constructors, Inc. (UE&C) characterized as the "UE&C Term Agreement".

As described in the Company's Petition at paragraph 7, the terms of the New Term Agreements are as follows:

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

(a) Principal Amount: Up to \$112,500,000 in the aggregate (\$106,250,000 at the time of closing; an additional \$6,250,000, if advanced on a subsequent date as described below).

(b) Term: May 31, 1991 (6 years from May 31, 1985).

(c) Amortization: None, except that 50% of the unpaid balance under the Prulease Agreement (\$21,250,000 plus an additional \$1,250,000 if \$2,500,000 is advanced by PruLease on a subsequent date as described below) shall be amortized at a rate equal to the rate of fuel burn but in no event later than May 31, 1991.

(d) Interest Rate: (i) until May 31, 1988, at either the Base Rate (of the Bank of Boston), or London Interbank Borrowing Rate (LIBOR) plus 150 basis points, and (ii) from June 1, 1988, until May 31, 1991, at either the Base Rate plus 25 basis points or LIBOR plus 175 basis points. Interest will be payable monthly. The default interest rate will be an additional 1%. LIBOR will be based on consecutive three-month periods. Each Institutional Lender will have the right to elect either Base Rate or LIBOR at the beginning of every three months.

(e) Security: G&R Mortgage Bonds securing payment of \$112,500,000 aggregate principal amount and bearing interest equal to that payable on the New Term Agreements (but with a maximum rate of 25% per annum), with payment thereof to be forgiven when and to the extent interest is paid on the New Term Agreements. Existing PruLease security to continue with PruLease to receive the above-mentioned G&R Bonds in an amount equal to its unpaid balance.

(f) Subsequent

Cash Advance: The Institutional Lenders will be obligated to advance to PSNH the above-mentioned aggregate amount of \$6,250,000 (said amount in turn to be repaid on the same terms and conditions as the other principal amounts covered by the New Term Agreements), if: (i) the Commission issues an order approving the New Term Agreements on or before August 16, 1985; (ii) by September 23, 1985 a rehearing has not been requested or, if requested, has been acted upon so as to approve the New Term Agreements; and (iii) on the date of the advance no default has occurred and is continuing under the New Term Agreements. Said advance then will be made upon the later of (1) 91 days after the date on which the grant of the G&R Bonds is perfected or (b) the date on which either the appeal period with respect to an order approving the New Term Agreements expires or, if any appeals are taken, their final disposition is to uphold the validity of the New Term Agreements, including the granting of the security interests in the G&R Bonds.

(g) Contingent

Interest Rate: If an adverse final regulatory or judicial determination with respect to the validity of the granting or perfection of the G&R Bonds occurs, or if PSNH shall be the subject of a bankruptcy petition filed within 90 days after the grant of the G&R Bonds is perfected, the interest rate shall be increased as of the date of such event, both from that date forward and retroactively to the time of closing, to be the rate each Institutional Lender was entitled to receive under its respective Interim Extension Agreement, and PSNH shall agree to make prompt payment

of the aggregate amounts required to equal the difference between the amount of interest which would have been paid pursuant to such retroactively applied rate and the amounts of interest in fact paid.

As noted, the terms include a provision for security in the form of G&R bonds, which, in turn, will be secured by additional First Mortgage Bonds in the amount of \$10,080,000 to be issued and pledged to the G&R Trustee. Those securities have been adequately described supra.

The terms of the UE&C Term Agreement were described in the PSNH Petition at paragraph 10 as follows:

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

(a) Principal Amount: Up to \$18,436,728.31 (\$17,412,465.63 at the time of closing; an additional \$1,024,262.68 advanced on a subsequent date as described below).

(b) Term: April 1, 1987, maturity date.

(c) Amortization: None.

(d) Interest Rate: 116% of Base Rate (Bank of Boston) plus 25 basis points.

(e) Security: None.

(f) Subsequent Cash

Advance: UE&C will be obligated to advance an additional \$1,024,262.68 if and when the Institutional Lenders are obligated to make the subsequent cash advance under the New Term Agreement.

In addition, the UE&C Term Agreement provides that termination or material reduction of UE&C's services at the Seabrook project without UE&C's

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consent shall constitute an event of default.

In support of its Petition, PSNH filed the appropriate resolutions of its Board of Directors and proffered the testimony and exhibits of Charles E. Bayless, the Company's Financial VicePresident.

Mr. Bayless' testimony provided the background of the proposed financing, a description of the proposed notes, securities and other evidences of indebtedness to be issued, sold and pledged by the Company, a description of the use of the proceeds of the financing and a statement of why the Company believes that the proposed financing is consistent with the public good.

After review and consideration, we find that the financing as proposed, with one exception, is consistent with the public good. We will therefore grant the Company's Petition in part and deny the Company's Petition in part. As discussed in greater detail infra, all of the requested authority will be approved; however, we shall condition our approval of the UE&C Term Agreement on the deletion of the provision in the agreement that the termination or material reduction of UE&C's services at the Seabrook project without UE&C's consent shall constitute an event of default.

As described in Mr. Bayless' testimony, the instant financing represents a long-term rollover of the Company's Term Loan Agreement, Eurodollar Loan Agreement, PruLease Agreement and UE&C Agreement.¹⁽²⁸²⁾ See, Re Public Service Co. of New Hampshire, 69 NH PUC 415

(1984).

Those restructured agreements provided for an interest rate of 116% of Base Rate (Bank of Boston) plus 25 basis points or, in the case of the Eurodollar Loan Agreement, LIBOR plus 250 basis points. The restructured agreements matured on May 31, 1985. The Company negotiated Interim Agreements ("Interim Extension Agreements" and "UE&C Extension Agreement") with its Term Loan Lenders, its Eurodollar Lenders and UE&C which, in essence, provided that PSNH continue to pay the same rate of interest and that PSNH pay down 15% of the loans. The Interim Extension Agreements and the UE&C Extension Agreement expire on the earlier of September 23, 1985 or the closing date for the new longterm agreements. In addition, PSNH and its lenders negotiated the proposed New Term Agreement and UE&C Term Agreement which are the subject of the instant Petition.

As is apparent from the above description, the cost of the New Term Agreements is lower than the cost of the pre-existing restructured agreements. PSNH estimates that the interest savings will be \$1,907,825 on an annual basis. Such savings amount to a daily amount of \$5,227. Exh. 1, Attachment 2. In addition, the proposed financings are long-term arrangements; it will not be necessary to renegotiate the loans annually. This will result in

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additional savings in time and cost.²⁽²⁸³⁾

The proceeds of the proposed financing will be used to refinance the aggregate principal outstanding under the Interim Extension Agreement and UE&C Extension Agreement except that the subsequent advance of \$6,250,000 under the New Term Agreements and the subsequent advance of \$1,024,262.68 under the UE&C Term Agreement will be used for general corporate purposes. The Company represented that "general corporate purposes" as applied to the instant financing does not include either direct or indirect expenditures related to Seabrook Units I and II.

It is the above described factors — the background of the proposed financing, the low cost of the proposed financing relative to the cost of the previous notes and to the cost of other PSNH debt, and the purpose to which the proceeds will be devoted — that leads us to the finding that the proposed financing is consistent with the public good. However, there are elements of the proposed financing which we cannot approve. We shall now address those elements.

As described above, the UE&C Term Agreement provides that the termination or material reduction of UE&C's services at the Seabrook project without UE&C's consent shall constitute an event of default. The Commission reluctantly approved an identical provision in Re PSNH, DF 84-168, supra based on its acceptance of management's judgment that, given the financial exigencies then confronting PSNH, the increased financial flexibility offered by the proceeds of the UE&C note outweighed the decrease in the Company's flexibility to manage the construction at Seabrook.³⁽²⁸⁴⁾ The circumstances as they currently exist are substantially different from those confronting the Company one year ago.

Since the decision in Re PSNH, DF 84-168, supra, PSNH was able to market \$425 million of long-term securities in its Units financing approved by this Commission. Re Public Service of

New Hampshire, 69 NH PUC 558 (1984), aff'd, Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984). This financing was intended to provide the cash necessary to carry company operations until Seabrook Unit I is completed. The Commission also approved an additional financing of \$525 million for the purpose of completing Seabrook Unit I construction based, in part, on its finding that the completion of Seabrook Unit I is consistent with the public good. Re Public Service Co. of New Hampshire, 70 NH PUC p.

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164, 66 PUR4th 349 (1985).⁴⁽²⁸⁵⁾ Additionally, we have approved the formation of the New Hampshire Yankee Electric Corporation (NH Yankee) for the purpose of managing the construction and operation of the Seabrook plant. Re New Hampshire Yankee Electric Corp., 70 NH PUC 570 (1985); Re New Hampshire Yankee Electric Corp., 69 NH PUC 590 (1984), New Hampshire Yankee was formed to insulate the construction and operation of Seabrook from the financial difficulties confronting PSNH. Id. The record reflects that NH Yankee management will not accept the assignment of the instant default provision in the UE&C Term Agreement.

The above listed events substantially alter the balance between financial flexibility and management flexibility by requiring less of a need to assign weight to financial flexibility and more of a need to assign weight to management's flexibility in controlling Seabrook construction. The refusal of NH Yankee management to accept the instant default provision is further evidence that it is inconsistent with management's ability to manage appropriately the construction of Seabrook I.⁵⁽²⁸⁶⁾ We note further that the UE&C Term Agreement bears the highest cost of all the Notes before us in this proceeding. Thus, PSNH has, to some extent, been able to negotiate arrangements that are not precisely uniform among the Lenders. Since only the most extreme financial exigencies justified our approval of the instant default provisions in Re PSNH, DF 84-168, supra and since those extreme financial exigencies no longer exist, we cannot find that the instant default provision is consistent with the public good. Accordingly, it will be rejected.

It is noteworthy that our rejection of the instant default provision in the UE&C Term Agreement means also that we have assigned no weight whatsoever to the provision in all the agreements that failure to obtain regulatory approval of the entire package by August 16, 1985 constitutes an event of default. We note that such a provision is a departure from the term included and reviewed in past financing instruments that failure to obtain regulatory approvals may, in some instances, excuse a default. In any event, adherence to such a provision is contrary to our public responsibilities. Thus, we cannot consider ourselves bound by such a provision.

As has become customary in financing approvals under RSA Chapter 369, we will state that our conclusion that the financing is consistent with the public good does not carry with it a finding that the cost of the financing is reasonable for ratemaking purposes. Re PSNH, DF 84-168, supra.⁶⁽²⁸⁷⁾

Our Order will issue accordingly.

ORDER

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

ORDERED, that pursuant to RSA Chapter 369:1-4 and subject to the condition set forth herein, the Commission finds that the proposed financing, upon the terms proposed is consistent with the public good; and it is

FURTHER ORDERED, that pursuant to RSA 369:1, 3 and 4, PSNH be, and hereby is, granted the authority to issue up to \$112,500,000 aggregate principal amount of notes or other evidences of indebtedness payable more than 12 months after the date thereof with the terms of the New Term Agreements set forth in the foregoing Report; and it is

FURTHER ORDERED, that pursuant to RSA 369:1-4, PSNH be, and hereby is, granted the authority to issue and pledge one or more series of bonds up to \$112,500,000 in aggregate principal amount under the Company's General and Refunding Mortgage Indenture dated as of August 15, 1978, as security for the notes or other evidences of indebtedness referred to in the foregoing Report, with the same interest payment terms as said notes or other evidences of indebtedness, but with payment thereof to be forgiven when and to the extent that interest is paid on the same, and to issue and pledge to the Trustee of the General and Refunding Mortgage Indenture an additional series of First Mortgage Indenture an additional series of First Mortgage Bonds under the Company's First Mortgage dated as of January 1, 1943, in the principal amount of \$10,080,000, bearing the same interest rate and having the same maturity date as the G&R Bonds to be issued, as additional security for all bonds to be outstanding under the General and Refunding Mortgage Indenture: and it is

FURTHER ORDERED, that pursuant to RSA 369:1, 3 and 4, PSNH be, and hereby is, conditionally granted the authority to issue up to \$18,436,728.31 aggregate principal amount of notes payable more than 12 months after the date thereof with the terms of the UE&C Term Agreement set forth in the foregoing Report for the purposes set forth in the foregoing Report; and it is

FURTHER ORDERED, that the foregoing approval of the UE&C Term Agreement be, and hereby is, conditioned on the deletion of the term which provides that the termination or material reduction of UE&C's services at the Seabrook Project without UE&C's consent shall constitute an event of default; and it is

FURTHER ORDERED, that PSNH file with this Commission a detailed statement showing the expenses incurred in accomplishing this financing; and it is

FURTHER ORDERED, that on January 1st and July 1st, in each year, PSNH shall file with this Commission a detailed statement, duly sworn to by its treasurer or an assistant treasurer, showing the disposition of proceeds of the instant financing until the expenditure of the whole of said proceeds have been fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this Nineteenth day of July, 1985.

FOOTNOTES

¹See Re Public Service Co. of New Hampshire, 69 NH PUC 415 (1984) (Restructured Term Loan, Eurodollar and PruLease Agreements and new UE&C Agreement); Re Public Service Co. of New Hampshire, 68 NH PUC 179 (1983) (PruLease Agreement); Re Public Service Co. of New Hampshire, 66 NH PUC 553 (1981) (Eurodollar Loan Agreement); Re Public Service Co. of New Hampshire, 66 NH PUC 151 (1981) (short term borrowing authority covering UE&C Agreement of June 20, 1984); Re Public Service Co. of New Hampshire, 62 NH PUC 336 (1977) (Term Loan Agreement).

²The cost of the instant financing is estimated to be \$445,000, with legal services representing a \$400,000 share of that cost. Long-term arrangements would, presumably, eliminate the need to incur these costs on an annual basis.

³"The concern with the UE&C Note is not sufficient to cause us to deny the requested approval. We believe that the Company should retain maximum flexibility to manage appropriately the construction of the Seabrook facility. Thus, the UE&C Note balances financial flexibility against construction management flexibility. On the basis of the instant record, we believe that it is appropriate to allow PSNH management to make the initial decision about where the need for flexibility is greatest. However, we also adopt CAP's [Community Action Program] recommendation that we encourage PSNH to take advantage of the Note's prepayment terms, if appropriate, so as to attain maximum flexibility in construction management." Re PSNH, DF 84168, supra, 69 NH PUC at p. 418. Commissioner Aeschliman's dissent in that Order was based on the instant provision.

⁴The \$525 million securities have not yet been marketed due, in part, to our condition that PSNH demonstrate that the "joint owners have received regulatory authorization to finance their respective ownership shares of Seabrook 1 and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs. ..." (70 NH PUC at p. 269, 66 PUR4th at p. 441.

⁵We recognize that New Hampshire Yankee will at some point be an entity separate from PSNH. However, we cannot ignore the fact that PSNH, as a 35.56942% owner of New Hampshire Yankee, will have a substantial voice in New Hampshire Yankee management.

⁶A failure to make the above statement in this or other financing Orders cannot lead to the inference that the cost of the financing will be deemed just and reasonable for ratemaking purposes.

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NH.PUC*07/25/85*[61158]*70 NH PUC 665*Concord Electric Company

[Go to End of 61158]

70 NH PUC 665

Re Concord Electric Company

Intervenors: Community Action Program and Office of Consumer Advocate

DR 84-239, Supplemental
Order No. 17,767

New Hampshire Public Utilities Commission

July 25, 1985

ORDER authorizing increase in electric rates pursuant to a settlement agreement.

Rates, § 124 — Factors affecting reasonableness — Return on equity — Cost of service — Rate base — Electricity.

The commission adopted a settlement agreement that reduced an electric utility's requested rate increase to account for: 1) the performance of the utility's parent in the stock market, which allowed the utility to lower its requested rate of return on common equity; 2) a decrease in the utility's cost of service; and 3) rate base adjustments caused by a reduction in the net lag of purchased power from 8 to 7 days. [1] p.666.

Rates, § 143 — Factors affecting reasonableness — Rate design — Cost of service — Marginal costs — Residential rates.

Based on the results of marginal cost studies, an electric utility modified its residential rate so that the tailblock rate is greater than the initial lifeline block rate; the tailblock rate was set approximately equal to the value of what a flat rate would be for the residential class. [2] p.667.

Rates, § 326 — Electric — Time of use rates.

An electric utility agreed to implement time of use rates for all general service customers, to the extent such rates are cost effective. [3] p.667.

Discrimination, § 55 — Rates — Domestic employee rate — Electricity.

An electric utility's domestic employee rate was found to give improper price signals; accordingly, the utility was required to eliminate the rate when its present union contract expires. [4] p.668.

Rates, § 247 — Recoupment of rates uncollected — Electric utility.

An electric utility was permitted to surcharge its customers for the difference between previously granted temporary rates and the permanent rates authorized in its rate case. [5] p.668.

APPEARANCES: For the Petitioner, Ransmeier and Spellman by Dom D'Ambruoso, Esquire and Joseph Ransmeier, Esquire; Gerald Eaton, Esquire for the Community Action Program; Michael W. Holmes, Esquire, for the Consumer Advocate; Eugene Sullivan and Dr. Sarah Voll for the Commission Staff.

By the COMMISSION:

REPORT

Proceedings were initiated on October 1, 1984 when Concord Electric

Company ("Company"), filed with this Commission its proposed Tariff NHPUC No. 9 which provided for an increase in annual revenues of \$1,265,845 or 4.84 percent.

On October 16, 1984 the Commission issued its Order of Notice establishing a hearing on the issue of temporary rates and establishing a procedural schedule.

On November 20, 1984 the Commission issued its Report and Order No. 17,323 (69 NH PUC 662) setting existing rates as temporary rates effective November 1, 1984.

In compliance with the Commission order, Staff and intervenors filed data requests to which the Company responded. During this period of time the Commission's Finance Staff performed an audit of the Company's records for the test year.

[1] On April 4, 1985 the Company filed certain revisions to its requested rate increase thereby reducing its requested increase to \$986,371, a reduction of \$279,474. The reasons given for this decrease were twofold. First, the decrease was due to the performance of the newly listed UNITIL (the Company's parent company) stock on the American Stock Exchange. This allowed the Company to lower its requested cost of common equity from 17% to 15.5% due to its performance on that exchange. This change accounted for approximately 60% of the decrease in the Company's requested rate increase. The remaining 40% was due to a decrease in the Company's cost of service (i.e. property taxes and health insurance cost which were noted during the Staff audit).

The Company, intervenors and Commission Staff held several meetings to narrow the issues in this case. As a result of these meetings the parties were able to reach agreement on all issues including rate structure.

The Commission on July 22, 1985 held a hearing at which time it received the proposed settlement which was marked as Exhibit 1. The Commission Staff introduced two additional exhibits which supported the settlement agreement.

The settlement agreement embodies a further reduction in the requested rate increase. The parties agreed to an increase in annual revenues of \$712,609 or 2.72 percent. The major features of the settlement agreement which allow for an additional reduction are:

- 1) a reduction in the rate of return from the Company's requested rate of return of 12.20% to 11.67% due to the further reduction in the cost of common equity from 15.50 to 14.25;
- 2) a reduction in the net lag of purchased power from 8 to 7 days. This has an effect on rate base which is used to calculate the required increase in rates. Other adjustments to rate base were customer advances for construction and accrued state franchise tax; and
- 3) a reduction of certain expenses to the Company's cost of service for those items which either were nonrecurring, or for items which the parties agreed were appropriate to adjust.

In accordance with the settlement agreement the calculation of the revenue requirement, cost of capital and rate base is as follows:

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

Rate Base

1. Plant in Service	\$18,881,379
2. Completed Construction Not Classified	41,801
3. Total Utility Plant	18,923,180
4. Less: Accumulated Depreciation	4,720,598
5. Net Utility Plant	14,202,582
Plus: Cash Working Capital	
6. Purchased power (net customer lag)	385,863
7. Other O & M expense (line 34)	383,253
8. Materials and Supplies	340,940
9. Prepayments	8,595
Average of monthly tax accruals:	
10. Local property taxes	(248,429)
11. Federal income tax	(20,502)
12. State franchise tax	(24,600)
13. Total Working Capital	825,120
14. Less: Customer Deposits	110,076
15. Deferred Tax Reserve	877,305
16. Customer Construction Advances	31,189
17. Total Rate Base	\$14,009,132

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

Cost of Capital

	Component Ratio	Component Cost Rate	Weighted Ave. Cost Rate
1. Common Stock	42.28%	14.25%	6.02%
2. Preferred Stock	6.42%	9.38%	0.60%
3. Short-Term Debt	0.00%	0.00%	0.00%
4. Long-Term Debt	51.30%	9.84%	5.05%
5. Total	100.00%		11.67%

Revenue Requirement

1. Rate Base	\$14,009,132
2. Rate of Return	11.67%
3. Income Required	\$1,634,866
4. Adjusted Net Operating Income	\$1,250,057
5. Deficiency	\$384,809
6. Tax Effect (46%)	327,800
7. Revenue Deficiency (Line 5 divided by 54%)	\$712,609

Rate Design

[2,3] The settlement agreement includes a summary of rates which were a result of numerous discussions by the parties.

The parties have recognized that the accounting cost and the marginal cost studies provided by the Company can be useful in indicating the inter- and intra-class allocation of costs. Thus, the allocation of costs set forth in the

settlement agreement is in general based on the cost studies as well as sound regulatory principles.

Certain Staff recommendations were accepted by the Company. The Company accepted Staff's suggestion to modify the Residential Rate so that the tailblock rate is greater than the initial lifeline block rate. In addition, the tailblock is approximately equal to the value of what a flat rate would be for the Residential class.

The discussions also led to certain compromises. Staff proposed that the Domestic Employee Rate be eliminated because it gives improper price signals. The Company argued that this would entail complications in terms of its union contract. The parties decided to restrict the discount to the first 1000 kwh of use in an attempt to improve the price signals.

The parties have recognized that the Company's cost studies contain several flaws which result from a lack of valid, up-to-date Company-specific load research data. Thus the parties have agreed that the Company will complete the gathering of such data and subsequently analyse and propose a specific restructuring of its general service rates in accordance with the approach set forth in Exhibit 5, pg. 23-24. The parties have also agreed (on Staff's recommendation) that the Company will propose the implementation of time of use rates for all general service customers, both large and small, to the extent such rates are cost effective.

Commission Findings

[4] The Commission finds that the settlement agreement is accepted. We note that the Commission has concerns with the Domestic Employee Rate. We are not requiring the Company to change this rate at this time because of the present union contract and because the Staff suggested and the Company agreed to set the tailblock of the Domestic Employee Rate equal to the tailblock of the Domestic Rate. We are requiring however, that when the present contract expires, the Company eliminate the Domestic Employee Rate.

[5] 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 with all service rendered on or after November 1, 1984) vs. the permanent rates allowed in this Order. In addition, the Company will submit a detailed reconciliation of the amounts to be recouped and the amounts actually recouped on a monthly basis for both the rate case expense and the revenue deficiency.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the settlement agreement offered to this Commission in this proceeding is hereby approved; and it is

FURTHER ORDERED, that the Company's Tariff NHPUC No. 9 — Electricity be and hereby is rejected; and it is

FURTHER ORDERED, that the Company's Tariff NHPUC No. 10 — Electricity Supplement No. 1 for effect with all bills rendered on or after August 1, 1985; and it is

FURTHER ORDERED, that the Company file a monthly detailed reconciliation of its surcharge for

revenue recoupment as well as rate case expense; and it is

FURTHER ORDERED, that when the Company's present union contract expires, the Company eliminate the Domestic Employee Rate.

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NH.PUC*07/30/85*[61159]*70 NH PUC 669*Errol Hydroelectric Limited Partnership

[Go to End of 61159]

70 NH PUC 669

Re Errol Hydroelectric Limited Partnership

DR 85-198, Order No. 17,775

New Hampshire Public Utilities Commission

July 30, 1985

ORDER scheduling hearing on whether a small power production facility is eligible for a commission established rate.

Cogeneration, § 5 — Qualifying status — Small power production.

Where circumstances indicated that a small power production facility was owned by a person primarily engaged in the generation of electricity, the commission scheduled a hearing to determine whether the facility was eligible for a commission established long term rate; Federal Energy Regulatory Commission regulations provide that a small power production facility may not be owned by a person primarily engaged in the generation or sale of electricity.

By the COMMISSION:

ORDER

WHEREAS, on June 4, 1985 Errol Hydroelectric Limited Partnership (Errol Hydro) submitted to the Commission a long term rate filing for the Errol dam pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); and

WHEREAS, Re Small Energy Producers and Cogenerators, supra provides that "Eligible facilities are qualifying small power producers and qualifying cogenerators as defined in [the Limited Electrical Energy Producers Act, RSA Chapter 362-A] LEEPA and [the Public Utility Regulatory Policies Act of 1978, 92 Stat. 3117 (1978)] PURPA. Until such time as the Commission establishes differing requirements with respect to ...ownership for qualifying small power producers the [Federal Energy Regulatory Commission] FERC rules and regulations

implementing PURPA which govern these matters will continue to apply." (69 NH PUC at p. 361, 61 PUR4th at p. 141) (Footnote omitted); and

WHEREAS, to date the Commission has not established differing requirements with respect to ownership for qualifying small power producers; and

WHEREAS, the FERC regulations provide that a small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power and that a person will be considered to be primarily engaged in the generation or sale of electric power if more than a 50 percent equity interest is held by an electric utility or utilities, or by a public

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utility holding company, or companies, or any combination thereof (18 C.F.R. §§292.203, 292.205); and

WHEREAS, a FERC license for the Errol dam has been issued jointly to Public Service Company of New Hampshire and Union Water Power Company; and

WHEREAS, Errol Hydro's filing states that Union Water Power Company is the owner of the site; and

WHEREAS, Union Water Power Company is a wholly-owned subsidiary of Central Maine Power Company; and

WHEREAS, the above facts indicate that the Errol dam is owned by a person primarily engaged in the generation or sale of electric power; and

WHEREAS, there is a need for additional evidence and argument to determine whether Errol Hydro is eligible for a Commission established longterm rate; it is

ORDERED, that a hearing be scheduled for August 26, 1985 at 10:00 o'clock in the forenoon at the Commission's offices, 8 Old Suncook Road in Concord.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1985.

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NH.PUC*07/30/85*[61160]*70 NH PUC 670*New Hampshire Electric Cooperative, Inc.

[Go to End of 61160]

70 NH PUC 670

Re New Hampshire Electric Cooperative, Inc.

Intervenor: New Hampshire Department of Public Works and Highways

DE 85-163, Order No. 17,776

New Hampshire Public Utilities Commission

July 30, 1985

PETITION for authority to install, operate and maintain a power cable under state-owned railroad property; granted.

APPEARANCES: For the New Hampshire Electric Cooperative, Earl Hansen, Plant Manager; for the Department of Public Works and Highways, Railroad Division, John Clements.

By the COMMISSION:

REPORT

On May 21, 1985, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a petition with this Commission by which it sought license to cross property owned by the State-owned railroad in Thornton, New Hampshire. The purpose of this crossing was to provide electrical service to James and Karen Ingram. An Order of Notice was issued by the Commission on May 18, 1985 setting the matter for public hearing at the Commission's Concord

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offices on July 15, 1985 at 2:00 p.m. Notices were sent to Earl Hansen, NHEC, for publication; John Chandler, Commissioner of the Department of Public Works and Highways; Thomas A. Power, Director of the Division of Motor Vehicles; Kelton E. Garfield, Supervisor of Public Records, Department of Public Works and Highways; John McAuliffe, Railroad Administrator, Department of Public Works and Highways; Jim Carter, Chief of Land Management, DRED; Robert X. Danos, Director of Safety Services; and the Office of the Attorney General. An affidavit of publication was filed on July 15, 1985 attesting to public notice being printed in The Union Leader on June 28, 1985.

The duly noticed hearing was convened as scheduled. No opposition was expressed either by writing or verbally at the hearing. Mr. Hansen described the crossing, indicating that it would be an extension of an existing underground power-line, originating at Pole 54/106-4 and proceeding easterly under cited railroad bed, thence continuing to the residence of the Ingrams. Mr. Hansen introduced two exhibits ...the first being the NHEC petition. The second was the plan of the area depicting current NHEC power lines, the rail bed as well as the proposed construction.

Mr. Clements testified for the Railroad Division indicating that all plans had been coordinated with his agency and it found no problem with the proposal. Mr. Clements entered as Exhibit No. 3 the Railroad Division's standard form for the Licensing of a Power Line Crossing. This further described the crossing, indicating that its location was approximately located at Valuation Station 69412v1912v, Map V30/14 in Thornton, New Hampshire. Mr. Clements and his Exhibit 3 also indicated the NHEC would be liable for an administrative fee of \$570.00 and must coordinate construction with the New England Southern Railroad Company, Inc. Once granted authority by this Commission, the Railroad Division and the New Hampshire Electric Cooperative, Inc. would execute the license agreement and process it through the Office of the Attorney General and the Governor and Executive Council.

Based upon testimony and exhibits provided, the Commission finds this crossing in the public good and will grant the license. Our Order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative, Inc., be, and hereby is, granted authority for the installation, operation and maintenance of underground electrical plant located in the vicinity of Valuation Station 69412v1912v, Map V30/14, in Thornton, New Hampshire, said plant to consist of underground cable extending from Pole 54/106-4 easterly beneath tracks of the state-owned railroad property and continuing to provide electrical power to the residence of James and Karen Ingram.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1985.

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NH.PUC*07/30/85*[61161]*70 NH PUC 672*W.M. Lord Excelsior

[Go to End of 61161]

70 NH PUC 672

Re W.M. Lord Excelsior

DR 85-177, Order No. 17,777

New Hampshire Public Utilities Commission

July 30, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1985, W.M. Lord Excelsior (WMLE) filed a long term rate filing; and

WHEREAS, the Petition requested inter alia a twenty-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to WMLE's Petition for a Twenty-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that WMLE's Petition for a Twenty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it

is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1985.

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NH.PUC*07/30/85*[61162]*70 NH PUC 673*Public Service Company of New Hampshire

[Go to End of 61162]

70 NH PUC 673

Re Public Service Company of New Hampshire

DE 85-202, Order No. 17,778

New Hampshire Public Utilities Commission

July 30, 1985

PETITION for license to construct, operate and maintain electric lines; granted.

APPEARANCES: For the Public Service Company of New Hampshire, Pierre O. Caron, Esquire.

By the COMMISSION:

REPORT

On June 5, 1985, the Public Service Company of New Hampshire (PSNH) filed with this Commission a petition seeking authority for the construction, operation and maintenance of one 4.16/2.4 kV and one 34.5/19.9 kV electric lines over and across the Winnepesaukee River in Franklin, New Hampshire. The purpose of these lines is to serve not only the PSNH customers in that area, but also to connect Riverbend Hydro to the system.

On Order of Notice was issued by the Commission on June 18, 1985 setting the matter for public hearing at the Commission's Concord offices at 10:00 a.m. on July 15, 1985. Copies of the Order of Notice were sent to Pierre O. Caron, PSNH, for publication; the New Hampshire Aeronautics Commission, Department of Resources and Economic Development, Division of Safety Services and the Office of the Attorney General. Notice appeared in the June 26, 1985 edition of The Union Leader and an appropriate affidavit of publication was filed with the Commission on July 2, 1985.

At the scheduled hearing no intervenors appeared. Attorney Caron described the crossing indicating that easements from property owners were in hand and PSNH was seeking its license to cross the public waters. He indicated that the lines would be extended between pole 234/2 and pole 234/1, a distance of 300 feet, approximately 237 of which would be over the river. The

lower voltage line would serve PSNH customers in the area, while the higher voltage line would connect Riverbend Hydro to the PSNH system. Marked as Exhibit 1 was the transmittal letter of PSNH, dated June 5, 1985, to which was attached the Company petition, a locating map, and engineering drawing #D-7649-274. Attorney Caron said clearances were a minimum of 40 feet over the water, providing ample boat clearance, but conditions of the

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river at that point indicated such boat traffic would be minimal, if any. All construction would conform to the National Electrical Safety Code and other applicable codes.

Caron indicated costs for this crossing would be \$3991, all of which would be paid by Riverbend Hydro to gain access to the PSNH system.

No party voiced objection to this crossing through intervention nor was any complaint received by mail. Interconnection of a small power producer and availability of adequate lines to meet customers' need appear in the public good. Consequently, the Commission will grant license for the crossing. Our order will issue accordingly.

ORDER

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

ORDERED, that the Public Service Company of New Hampshire be, and hereby is, granted license for an aerial crossing of the Winnepesaukee River in Franklin, New Hampshire, such crossing described as extending southerly from the vicinity of West Bow Street at Pole 234/1 traversing the Winnepesaukee River to Pole 234/2; and it is

FURTHER ORDERED, that said crossing comprise one 4.16/2.4 kV and one 34.5/19.9 kV lines which basically replace and supplement the existing 4.16/2.4 kV crossing.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1985.

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NH.PUC*07/30/85*[61163]*70 NH PUC 674*Gas Service, Inc.

[Go to End of 61163]

70 NH PUC 674

Re Gas Service, Inc.

DF 85-22, Supplemental
Order No. 17,779

New Hampshire Public Utilities Commission

July 30, 1985

ORDER authorizing gas utility to incur short term debt.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on September 15, 1983 the Commission issued its Order No. 16,672 in DF 83-281 (68 NH PUC 242) approving a short term debt maximum of \$5,000,000 for Gas Service, Inc.; and

WHEREAS, on April 19, 1985 the Commission issued its Report and Order No. 17,560 (70 NH PUC 312) approving a note for \$2,500,000, due 1990, issued by Gas Service, Inc. the proceeds from which, in part, would be used to retire the outstanding short term debt owed by Gas Service, Inc.; and

WHEREAS, in said order the Commission mandated that Gas Service, Inc., seek approval for an appropriate level of short term debt subsequent to the issuance of the aforementioned note, clarified in Supplemental Order No. 17,598 (70 NH PUC 362) and

WHEREAS, the Company now petitions this Commission for authority to maintain its previously approved short term debt maximum level of \$5,000,000; and

WHEREAS, the borrowing needs are directly related to Gas Service, Inc. increasing construction costs due to growing demands for service and to carry on its normal activities pending additional permanent financing; and

WHEREAS upon investigation this Commission finds that the proposed financing is in the public interest; it is

ORDERED, that Gas Service, Inc. be, and hereby is, authorized from the date of this Order to obtain up to, but not exceeding \$5,000,000 until permanent financing can be arranged; and it is

FURTHER ORDERED, that upon approval of said permanent financing the short term debt maximum approved by this Order will be reviewed for its appropriateness; and it is

FURTHER ORDERED, that on or before January 1, Gas Service, Inc. shall file with this Commission a detailed statement, duly sworn to by its treasurer, showing the disposition of the proceeds of the issuances herein authorized.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1985.

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NH.PUC*08/01/85*[61164]*70 NH PUC 676*Gas Service, Inc.

[Go to End of 61164]

70 NH PUC 676

Re Gas Service, Inc.

Intervenors: Community Action Program and Office of Consumer Advocate
Dn DR 83-345, Third Supplemental Order No. 17,782

New Hampshire Public Utilities Commission

August 1, 1985

ORDER granting increase in gas rates pursuant to a rate step adjustment mechanism.

Automatic Adjustment Clauses, § 65 — Procedure — Scope of review — Gas rate step adjustment mechanism.

A motion by a gas utility to limit the scope of a commission inquiry into the reasonableness of a step adjustment mechanism to the individual rate elements previously identified as part of the step adjustment in a stipulation agreement was granted; the motion was granted because the evidence and argument supported a finding that the utility's rate of return would not be unduly excessive if the step adjustment were granted; the commission held that if the facts had warranted a conclusion that the step adjustment would have resulted in an excessive rate of return, it would not have limited the scope of the inquiry and would have been required to take appropriate regulatory action, including ordering a rate reduction. [1] p. 678.

Automatic Adjustment Clauses, § 5 — Factors affecting reasonableness — Rate step adjustment mechanism — Commission review.

To determine the reasonableness of rate step adjustments the commission must: 1) calculate on the basis of the utility's financial reports whether the rate of return produced by the step adjustment is excessive when compared with the return allowed in the utility's last rate case; 2) make a judgmental evaluation of whether the changes allowed in particular step adjustment elements approximate the reality of the changes in cost on which they are based; and 3) base the step adjustment on clearly defined, narrowly construed rate elements that cannot be influenced by the judgment of utility management. [2] p. 679.

Automatic Adjustment Clauses, § 42 — Cost recovery clauses — Gas rate step adjustment mechanism — Employee wages — Scope of application.

The commission determined that the union employee wage element of a gas rate step adjustment mechanism was intended to reflect changes in payroll costs, but not changes in the number and allocation of employees. [3] p. 681.

Automatic Adjustment Clauses, § 5 — Cost recovery clauses — Gas rate step adjustment mechanism — Cost of capital element — Scope of application.

The commission determined that the cost of capital element of a gas rate step adjustment mechanism was intended to allow for particular infusions of debt or equity capital and any related corresponding decrease in short term debt or equity capital, but was not intended to allow for adjustments caused by sinking fund payments or changes in retained earnings. [4] p. 682.

Automatic Adjustment Clauses, § 5 — Cost recovery clauses — Gas rate step adjustment mechanism — Scope of application — Effect of tax savings associated with long term debt.

The commission determined that a gas rate step adjustment mechanism required that the utility include tax savings associated with long term debt in its calculation of capital structure. [5] p. 685.

APPEARANCES: Orr & Reno by Charles H. Toll, Jr., Esquire for Gas Service, Inc.; Gerald Eaton, Esquire for the Community Action Program; Michael W. Holmes, Esquire, Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On January 24, 1985, Gas Service, Inc. (Gas Service or Company) filed a request to increase rates to yield additional gross revenues of \$258,788. The request was filed pursuant to a step adjustment mechanism established in the Commission's Report and Supplemental Order No. 17,061 (69 NH PUC 291); an Order which accepted a Stipulation Agreement dated May 9, 1984. Gas Service's January 24, 1985 filing was suspended by Second Supplemental Order No. 17,463 (February 22, 1985) and, on June 7, 1985, the Commission issued an Order of Notice which, inter alia, scheduled a hearing for July 30, 1985.¹⁽²⁸⁸⁾ The Order of Notice also provided that the Commission would consider the issues of whether the step adjustment will result in a rate of return higher than that allowed in Report and Supplemental Order No. 17,061 (June 4, 1984) and whether the rates produced by the proposed step adjustment will be just and reasonable. In response, the Company, on June 26, 1985, filed a Motion for Limitation of Issues. Additionally, on July 17, 1985, Gas Service submitted an amended filing (Exh. A) which increased the step adjustment by \$3,001. Thus, in this proceeding, Gas Service is requesting additional gross revenues of \$261,789. On July 31, 1985, subsequent to the hearing, the Company filed a Memorandum of Law supporting its position in this proceeding.

At the hearing, Gas Service supported its request through the testimony and exhibits of Michael J. Mancini, Jr., the Company's Treasurer, and Robert Giordano, the Company's Senior Vice-President — Finance. Mr. Mancini stated that the proposed step adjustment results from the following cost changes:

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

Operation and Maintenance	
Expense	\$ 99,834
Depreciation Expense	6,665
Property and Payroll Taxes	53,003
Cost of Capital and Rate Base	102,287
	\$261,789

(Exh. A at Exh.1).

Mr. Mancini then identified the areas of disagreement between the Company and the Staff. Those areas are: 1) Payroll expense for union employees; 2) Supervisory payroll adjustment; 3)

Payroll taxes and uncollectibles; 4) Cost of capital; and 5) Inclusion of interest tax deduction. Mr. Giordano provided certain rebuttal testimony to the Staff's evidence.

The Staff's recommendation was that the Company be permitted a Step Adjustment of approximately \$53,000. This was based on Staff's position with respect to all the issues articulated by Mr. Mancini and set forth above with

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the exception of "2) Supervisory payroll deduction". In support of its recommendation, the Staff presented the testimony of Dr. Sarah Voll, the Commission's Chief Economist, Eugene Sullivan, the Commission's Finance Director and Mary Jean Newell, a Public Utilities Commission Examiner.²⁽²⁸⁹⁾ Dr. Voll stated that her interpretation of the Stipulation Agreement of May 9, 1984 required an adjustment to cost of capital for specifically identified infusions of debt or equity capital; it did not contemplate the ongoing adjustments to cost of capital based on fluctuations in retained earnings or sinking fund payments. Ms. Newell provided testimony on her audit findings pertinent to the payroll expense for union employees and payroll taxes and uncollectibles. Mr. Sullivan supported the Staff position on whether the interest on new debt should be tax affected. He also incorporated Dr. Voll's analysis into a Staff calculated step adjustment of \$29,904. Since Mr. Sullivan agreed that the Company's proposed supervisory payroll adjustment of \$23,000 is appropriate, his final recommendation was that Gas Service be permitted a step adjustment of approximately \$53,000.

After review and consideration, we will accept the Staff's recommendation. Accordingly, we will in this Order, approve a step adjustment of \$54,790³⁽²⁹⁰⁾. We shall initially address the Company's Motion for Limitation of Issues. We will then provide our analysis of the revenue requirement issues.

MOTION FOR LIMITATION OF ISSUES

[1] In our June 7, 1985 Order of Notice, we provided notice that the Commission wished to address the issues of, *inter alia*, whether the granting of the step adjustment would result in allowing the Company to earn an excessive rate of return and whether the granting of the step adjustment would result in rates which are just and reasonable. In its written Motion and in oral argument during the hearing, the Company contended that the scope of the proceeding should be limited to the individual rate elements identified as a part of the step adjustment in the Stipulation Agreement. The Company went on to argue that the Commission would not be justified in reducing or denying the step increase even if substantial evidence supported a conclusion that the Company's return is excessive. According to the Company, the Commission may only make such an adjustment if it first opens a new rate case docket and undertakes a full rate investigation.

The Staff and the Intervenors supported the granting of the Company's Motion because their investigation supported a finding of fact that the Company's return would not be excessive even if the proposed step adjustment was granted. However, the Staff and Intervenors vigorously contested the Company's assertion that the Commission could not deny or reduce the step adjustment in this proceeding if it found that the rate of return produced therefrom would be excessive.

At the July 24, 1985 hearing, the Commission granted the Company's Motion. However, it deferred a ruling

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on its reasoning. That reasoning is provided here.

After review and consideration, we decided to grant the Company's Motion because the evidence and argument supported a finding that the Company's rate of return would not be unduly excessive if the step adjustment was granted. Thus, our ruling is based solely on our analysis of the facts. We believe it is necessary here to provide explicitly that we are rejecting the Company's assertion that we may not in this docket undertake a review of whether the rates produced by the step adjustment are just and reasonable. The Company was unable to submit any credible support for its assertion and our independent review reveals that existing authority is contrary to that assertion. This Commission has an affirmative responsibility to ensure that public utility rates are just and reasonable. See, e.g., RSA 374:2, 3 and 4. So long as we adhere to certain procedural requirements, we may at any time in any docket undertake a review of the rates of a public utility. See e.g., RSA Chapter 541-A; Re Public Service Co. of New Hampshire, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982); Re Lathrop, 122 N.H. 262, — A.2d — (1982). In this proceeding, the Company was given adequate notice that the Commission proposed to undertake a review of its rates. The Company also was provided with an opportunity to be heard. *Id.* Thus, if the facts had warranted a conclusion that Gas Service's return is excessive, we would be required to take appropriate regulatory action including, *inter alia*, reducing the rates. Given that the facts do not warrant such a conclusion, we are, in this instance, granting the Company's Motion to limit the scope of this proceeding.

PROPOSED STEP ADJUSTMENT

Introduction

[2] As noted above, there was disagreement between the Company, the Staff and the Intervenor about the appropriate level of this step adjustment. Part of that disagreement stems from differing interpretations of the Stipulation Agreement which forms the basis of the step adjustment. However, the issues presented to us in this proceeding also highlight the inherent deficiencies of the step adjustment process; a process that attempts to reconcile the need for periodic rate adjustments with the need for abbreviated and expedited proceedings.⁴⁽²⁹¹⁾ It is therefore useful to provide here our view of the general rationale that should be applied to the resolution of the several disputed rate elements.

Several of the parties and the Staff included in argument a recognition of the inherent tension in any step adjustment. That tension arises from an analysis which recognizes changes in some cost elements and ignores changes in other cost elements. Thus, by definition, a step adjustment is a departure from reality. In order to reconcile a process which does not reflect reality with our obligation to approve rates only if they are just and reasonable, we must subject a step adjustment to certain tests so that we can assure ourselves that any departure from reality, to the extent it occurs, falls within a

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range of reasonableness. The first test has already been identified above; we must calculate on the basis of the Company's financial reports whether the rate of return produced by the step adjustment is excessive when compared with the return allowed in the Company's last rate case. The second test involves a judgmental evaluation of whether the changes allowed in particular step adjustment elements approximate the reality of the changes in cost on which they are based. Thus, we will examine the latest information available consistent with our application of the third test defined below. That third test is to base the step adjustment on clearly defined, narrowly construed rate elements that cannot be influenced by management judgment.⁵⁽²⁹²⁾

The third test warrants close scrutiny by the Commission. The purpose of a step adjustment is to allow a utility to adjust rates based on certain known and measurable changes in cost occurring after the effective date of a Commission rate order. In approving a step adjustment mechanism, we anticipate that a Company will be able to extend significantly the intervals between rate cases. However, it is not our intent to by-pass the type of review of management discretion that is an inherent and vital part of the rate case process. Thus, the rate elements that may be subject to a step adjustment must be carefully defined to reflect only those costs which management cannot control. To the extent that management can influence costs in a step adjustment, we will construe any ambiguities in the light least favorable to management. This contrasts sharply with a rate case review where the prudence of management judgments must be an issue subject to Commission scrutiny. Since prudence should not be an issue in a step adjustment, management discretion must be filtered out.

In the instant proceeding, most of the rate elements of the step adjustment do not involve management discretion. For example, the step adjustment pertains to changes in the cost of liability insurance based on the same level of protection as that approved in the rate case (Stipulation Agreement at 5.1.c.); premiums for medical, dental, life and disability insurance for employees based on the same level of protection and the same number of employees approved in the rate case (Stipulation Agreement at 5.1.d.); property taxes based on the same property approved in the rate case (Stipulation Agreement at 5.1.e.); and changes in the cost of electricity based on the level of electrical usage approved in the rate case (Stipulation Agreement at 5.1.h.). Those issues not involving management discretion have, for the most part, not been disputed and, after review, we will allow those non-disputed changes in cost to be included in the step adjustment as proposed. Many of the remaining disputed changes in cost do involve some degree of management discretion and we will adjudicate those issues in accordance with the tests defined herein.

Payroll Expense for Union Employees

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[3] The Stipulation Agreement provided at 5.1.a. that the Company is entitled to a step adjustment for changes in cost resulting from:

Wages, salaries and Company pension contributions excluding adjustments attributable to changes in the number of employees from that number used for purposes of calculating the net utility operating income...herein.

Pursuant to its reading of the Stipulation Agreement, the Company included an adjustment of \$121,384 in union payroll expense (Exh. A at Exh. 3). The Staff disputed this adjustment and asserted that an adjustment of \$105,970 is more appropriate (Exh. F at Exh. 3). The difference of \$15,414 is attributable to a difference in interpretation of the Stipulation Agreement. Subsequent to the effective date of the rates approved in Order No. 17,061 (69 NH PUC 291), the Company lowered the number of employees in the clerical union and increased the number of employees in the Production and Maintenance Union. As noted by Staff, the payroll expense associated with each union differs. The Company's position is based on holding constant the aggregate total of all union employees. The Staff's position is based on holding constant the number of employees within each of the two individual unions.

After review, we conclude that the Staff's position is more consistent with the step adjustment approved by the Commission in Order No. 17,061. Management's decision as to the proper level of employees within each union was reviewed and approved in the rate case. It is inappropriate in a step adjustment to review management's decision to reallocate employee resources subsequent to the effective date of the rates approved in Order No. 17,061. Thus, we will assume that the number of employees within each individual union is held constant. The approved step adjustment will accordingly reflect only changes in payroll cost; not changes in the number or allocation of employees.

Supervisory Payroll Adjustment

As noted previously, the Stipulation Agreement provides for a step adjustment based on changes in payroll cost. In its updated filing, the Company proposed to increase revenues by approximately \$23,000 to reflect an increase in supervisory payroll costs effective March 1, 1985. This is to be contrasted with the Company's original filing (Exh. B) which annualized supervisory payroll expense as of January 1, 1985. The Staff did not object to the Company's proposed adjustment. After review, we will approve the supervisory payroll adjustment because it better reflects reality in accordance with the second test set forth above.

Payroll Taxes and Uncollectibles

Although the specific dollar amounts of changes in the cost of payroll taxes and uncollectibles were disputed, the Staff and the parties were in agreement about the formula to be used to determine those dollar amounts. The difference between the Staff and the parties is caused by the other disputed items which are the inputs to that formula. Once those other disputes are resolved, the Staff and the parties agree on how they affect payroll taxes and

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uncollectibles. After review, we will continue to accept the formula to determine payroll taxes and uncollectibles. We will provide as inputs to that formula those costs we determine to be just and reasonable for the purpose of this step adjustment.

Cost of Capital

[4] In its proposed step adjustment, the Company requested \$102,287 as a return on rate base (Exh. A at Exhs. 1 and 13). This was based on an assumed overall rate of return of 13.72% (Exh. A at Exh. 13). The Staff disagreed with the Company's proposal and, instead, testified that an

adjustment of \$16,218 is appropriate as a return on rate base (Exh. F at Exhs. 1 and 13, Scenario 2). This is based on an assumed overall rate of return of 13.39%.

The dispute arises over a difference in interpretation of the Stipulation Agreement at 5.3 which provides:

The parties agree that the step adjustment shall be calculated on the basis of the Company's cost of capital as of September 30, 1984 adjusted for any increase in long term debt and/or contributions to equity and related corresponding decrease in short term debt accruing after said date and prior to March 1, 1985, except that the allowed return on common equity shall be taken as 15.5% for the purposes of the step increase.⁶⁽²⁹³⁾

The Company reads the above language as intending to hold only the cost of equity constant. All other changes in the capital structure, including changes in the amount or cost of debt, changes in the amount of retained earnings or changes caused by sinking fund payments are to be reflected so long as those changes occurred prior to March 1, 1985. Since there were no infusions of long term debt or equity between the approval of the Company's rates in Order No. 17,061, the Company adjusted the 13.48% cost of capital approved in that Order by capital cost fluctuations caused by increased short term debt, sinking fund payments and changes in retained earnings. Compare, Exh. A at Exh. 13B with Exh. C at Schedule I, Page 1 of 4. This produced a cost of capital of 13.72%; a cost which is at the highest end of the range presented to the Commission in this proceeding.

The Staff reads the above language as intending to hold everything constant except specific infusions of debt or equity capital and corresponding adjustments to short term debt. The Staff's analysis thus yields a range of returns depending on the update period. Thus, if the cost of capital is updated to March 1, 1985 (the date in the stipulation), it would remain at 13.48% because there had been no infusions of debt or equity capital as of that date. See, Exh. C at Schedule I. The cost of capital drops to 13.39% if it is proformed to include the \$2.5 million of 12.5% long term debt marketed pursuant to the Commission's authorization in Re Gas Service, Inc., 70 NH PUC 312 (1985) (Order No. 17,650), with a corresponding reduction to short term debt. See, Exh. C at Schedule II. A further updating to reflect existing and projected average short term debt costs and levels would reduce the cost of

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capital to 12.75% [Exh. D; See also, Re Gas Service, Inc., 70 NH PUC 674 (1985)]; a cost that could result in a step adjustment which reduces the Company's revenue requirement. The Staff recommended that the Commission select the analysis which results in a cost of capital of 13.39%. That analysis reflects the long term debt authorization requested by the Company in January, 1985. The Staff submits that the debt would have been marketed prior to the March 1, 1985 date contained in the Stipulation Agreement if the Commission had issued its authorization Order in time for such a marketing.⁷⁽²⁹⁴⁾ The Staff's analysis is reinforced by the Company's decision to include the \$2.5 million of long term debt in its calculation of capital structure submitted in this step adjustment docket on January 24, 1985 (Exh. B at Exh. 13B); evidence that the Company intended to market the long term debt prior to March 1, 1985 if it had the ability to do so.

After review and consideration, we have decided to accept the Staff's recommendation of a 13.39% cost of capital despite the evidence that it is at the higher end of an acceptable range.

The Company's argument in favor of a 13.72% figure is not discounted lightly. The language of the Stipulation Agreement does imply that the retained earnings and sinking fund adjustments made by the Company were contemplated. In addition, the Commission had utilized the Company's approach in a past step adjustment. See *Re Gas Service, Inc.*, 68 NH PUC 113 (1983) (Order No. 16,214). However, while the existence of Order No. 16,214 supports a finding that the Company acted in good faith in proffering a figure as high as 13.72%, it cannot mandate the adoption of a similar mechanism in the instant proceeding. The step adjustment in Order No. 16,214 was directed by the Commission under a settlement agreement applicable to circumstances not necessarily applicable to the instant proceeding. See, *Re Gas Service, Inc.*, 67 NH PUC 193, 197-199, 47 PUR4th 262, 266-268 (1982). In examining the language of the Stipulation Agreement accepted in Order No. 17,061, we must look at our own interpretation of that language given the circumstances as they existed at the time and the second and third tests set forth *supra*.

The circumstances as they existed at the time were described in the testimony of Dr. Voll. According to Dr. Voll, the inclusion of cost of capital in the step adjustment was to accommodate the Company's intent at that time to issue new debt or equity in the Fall of 1984. Exh. C at 3-4. This is confirmed by the Company's own representations in support of the Stipulation Agreement during our hearing in this docket of May 15, 1984. There Mr. Mancini testified:

...The particular provision to include the increase in long-term debt and/or contributions was I believe earlier I alluded to the fact that the Company will be in the market for some more than likely debt financing, but some form of financing later in the year, and it may possibly be a bit after September 30th and we wanted to recognize that. Tr. at 44-45.

Thus, the representations of the Company both to the Staff and to the Commission lead to a conclusion that the language of the Stipulation Agreement was included and accepted to

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allow the cost of capital accurately to reflect changes caused by debt or equity infusions specifically contemplated at the time. While the \$2.5 million debt is not the precise amount of debt originally contemplated, the record establishes that it is consistent with the type of debt contemplated at the time of the Stipulation Agreement negotiations. See, Exh. B at Exh. 13 B; Transcript of July 24, 1985 at 36. (See also, 70 NH PUC 312.) Moreover, the representation of the Company of May 15, 1984 supports Dr. Voll's testimony that:

My understanding of the September 30, 1984 date was simply to recognize that other things went up to September `84 and so did this con- sideration of cost of capital. However, cost of capital changes could be recognized as late as March 1, 1985. Transcript of July 24, 1985 at 87; See also, Exh. C at 3-4.

Thus, our examination of the circumstances of the time leads us to conclude that the Stipulation Agreement language as it was accepted by the Commission was intended to allow for

adjustments for particular infusions of debt or equity capital and any related corresponding decrease in short term debt, but was not intended by the Staff or the Commission to allow for adjustments caused by sinking fund payments or changes in retained earnings.

It should be noted that our conclusion is the only conclusion which is consistent with the third test set forth above. It narrowly construes the step adjustment element in a manner that goes furthest in filtering out management discretion. For example, if we accepted the Company's adjustment, we would in effect be approving management's decisions with respect to dividend payouts as they affect retained earnings; an approval which is inappropriate given the nature of a step adjustment review. However, under our interpretation, we can be assured that changes caused by particular capital infusions are consistent with the public good because they would have been subjected to Commission review under RSA Chapter 369. See e.g., Order No. 17,560.⁸⁽²⁹⁵⁾

In this context, Dr. Voll's testimony on the type of analysis necessary to develop a full update is persuasive. That testimony demonstrated that a full update must look at all components of a capital structure, including the cost of equity as it is affected by, inter alia, the debt equity ratio of the capital structure. See e.g., Exh. C at Schedule III. A preliminary analysis along this path indicated that the Company's cost of equity would decline from 15.5% to 13.54% yielding an overall cost of capital of 12.33%. Id.; Exh. E. Just as a review of all of the factors inherent in a cost of equity determination are beyond the scope of a step adjustment proceeding, a review of management decisions affecting the capital structure should not be a part of the abbreviated step adjustment process. Thus, our decision here maintains our rationale of excluding rate elements which require a review of management discretion.

Having determined the meaning of the Stipulation Agreement, it remains to determine the extent to which the capital structure should be updated.

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Our adjudication of this issue is governed by the second test which requires a judgmental review of whether our findings approximate reality. As noted previously, the Company planned to issue its \$2.5 million debt prior to March 1, 1985, but was prevented from doing so because regulatory approval was not forthcoming until April 19, 1985. The Company has issued the debt and it is a part of the capital structure. Thus, the reality of the Company's capital costs is most closely approximated by including the debt in our cost of capital calculations. While it may also be appropriate to include the new levels of short term debt (See, Exh. D and 70 NH PUC 674), we decline to do so in this instance. The restoration of short term debt is pertinent to our evaluation of the inclusion of the interest deduction, *infra*; however, we recognize that for capital structure purposes, it was used to finance plant to be rate based, if at all, subsequent to the September 30, 1984 step adjustment test year. See e.g., Transcript of July 24, 1985 at 138. Thus, as a part of our judgmental balancing between the need to reflect reality versus the need for a narrow step adjustment examination, we have determined that it is not appropriate, in this instance, to include the short term debt in the capital structure. Accordingly, the cost of capital for the purposes of this step adjustment will be 13.39%.

Inclusion of Interest Tax Deduction

[5] The remaining area of controversy is whether the inclusion of the \$2.5 million long term debt in the capital structure should be tax affected. The Company's position is that such an adjustment is not appropriate because: 1) it was not specifically identified in the Stipulation Agreement; and 2) it is offset by a corresponding reduction to short-term debt. The Staff's position is that such an adjustment is implied in the Stipulation Agreement and accurately reflects the tax savings realized by the Company. After review and consideration, we will accept the Staff's recommendation and require that the \$2.5 million debt be tax affected.

The Company's argument that the adjustment is not specifically identified in the Stipulation Agreement is simply not credible. Gas Service's credibility was undermined by its concession that it had tax affected its own proposed upward revision to the capital structure and, further, that its tariff acts to tax affect the entire proposed increased revenue requirement to recover state franchise taxes — not because such a mechanism is identified in the Stipulation Agreement, but rather because such adjustments are always an implied part of the ratemaking process. See, Transcript of July 24, 1985 at 46-50, 60-61; Exh. A at Tariff NHPUC No. 6 — Gas, Supplement No. 1, 5th Revised Page 3; Exh. A at Exh. 13. The Company cannot have it both ways. We therefore accept Mr. Sullivan's recommendation that all such adjustments be treated consistently; i.e., that the tax effect of the \$2.5 million debt is just as implied in the Stipulation Agreement as the tax effect of the franchise tax and other portions of the capital structure. Transcript of July 24, 1985 at 136.

The Company's second argument that the tax effect of the \$2.5 million debt is offset by a corresponding reduction in short term debt must also be rejected because it is inconsistent with the evidence. The evidence in this

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case leads us to find that any reduction to short term debt resulting from the \$2.5 million long-term debt is to be considered as part of the day-to-day fluctuation in short term debt. The evidence further indicates that the Company's average level of short term debt will be \$2,615,000; an amount that exceeds the \$2.5 million long term obligation. Thus, the tax deduction for interest expense associated with the \$2.5 million long term debt has not been offset by reductions in the level of short term debt.

We note that we are arguably justified in ordering a further reduction in revenue requirement to reflect the approximate \$114,000 additional tax deduction generated by the interest expense associated with the \$2,615,000 short term debt. Transcript of July 24, 1985 at 138. This action will not be taken because this tax effect is offset, to some extent, by the \$800,000 short term debt in the capital structure approved in Order No. 17,061. (69 NH PUC 291). Exh. C at Schedule I. Additionally, as noted above, we have determined that it is not appropriate in this instance to include the average short term debt in the Company's capital structure.⁹⁽²⁹⁶⁾ Consistency therefore requires that we not make further adjustments for reductions in tax expense without making other corresponding adjustments. Such corresponding adjustments would carry us too far from what was contemplated to be part of the step adjustment and would be inconsistent with the second and third tests set forth above.

In sum, the Company's average short term debt of \$2,615,000 assures us that the tax affecting

of the \$2.5 million long term debt approximates the reality of the Company's costs, but does not warrant additional adjustments to tax expense in this instance.

Conclusion

The evidence in this proceeding warrants the establishment of a range of step adjustments that may produce just and reasonable rates. The high end of the range is a step adjustment of \$157,653. It is produced by cutting off all changes in Company cost occurring as of March 1, 1985. See, Exh. F at Exh. 1, Scenario 1. The low end of the range is a step adjustment which would reduce revenues by at least \$38,000. It is produced by updating the capital structure to reflect the average level of short term debt projected by the Company. See, Exh. D and Transcript of July 24, 1985 at 139-140. After review, we will approve here a step adjustment of \$54,790 based on the following elements:

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

Operation and Maintenance Expense	\$ 82,869
Depreciation Expense	6,665
Property and Payroll Taxes	52,124
Cost of Capital and Rate Base	16,124
Total Decrease in Federal Income	
Tax Expense Due to Increase	
In Interest Expense and	
Amortization of Debt Expense	(103,086)
	\$ 54,790

The \$54,790 is at the approximate mid-point of the range established above and it will result in just and reasonable rates because it is calculated on the basis of findings most consistent

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with the tests for a reasonable step adjustment set forth above.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the 5th Revised Pages 1, 2 and 3 to Supplement No. 1 to Gas Service Inc.'s Tariff No. 6 — Gas, designed to produce additional revenues of \$261,789, be, and hereby are, rejected; and it is

FURTHER ORDERED, that the Company may file new Tariff pages designed to produce additional revenues of \$54,790, effective with bills rendered on or after March 1, 1985 in accordance with Article V of the Stipulation Agreement of May 9, 1984 as accepted by the Commission in Report and Supplemental Order No. 17,061 (69 NH PUC 291) in this docket; and it is

FURTHER ORDERED, that the recoupment of the short fall in revenues between March 1, 1985 and the effective date of this Order shall be collected over a four month period, commencing with bills rendered on or after the effective date of this Order.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1985.

FOOTNOTES

¹The hearing was subsequently rescheduled for July 24, 1985 by a secretarial letter issued on July 8, 1985.

²Mr. Sullivan and Ms. Newell adopted the prefiled testimony and exhibits of Daniel D. Lanning, the Commission's Assistant Finance Director (Exh. F).

³The difference between the \$53,000 approximate figure proffered by the Staff and the \$54,790 figure adopted by the Commission is attributable to corresponding adjustments to payroll tax expense and uncollectibles. As discussed below, there is no dispute about the appropriateness of these types adjustments.

⁴Certainly, when the process gets overly complex as may have occurred in this case, we must question whether it is appropriate in the future to adopt this or other mechanisms to address assertions of attrition.

⁵In its July 31, 1985 Memorandum, the Company argued that a step adjustment is a substitute for attrition and, thus, the effects of attrition should be recognized in evaluating a proposed step adjustment. While we recognize that the step adjustment and attrition were tied together both in the Stipulation Agreement at 5-6 and in past orders, e.g., Re Gas Service, Inc., 67 NH PUC 193, 197-199, 47 PUR4th 262, 266-268 (1982), we believe that the tests set forth above adequately ensure that a step adjustment accurately reflects changes in cost and thereby minimizes the effect, if any, of attrition.

⁶The reference to a step increase is an obvious misnomer since the mechanism is elsewhere referred to as (and is intended to be) a step adjustment; a term that implies that rates could either go up or down depending on the changes to underlying costs.

⁷As noted above, the authorization Order was issued on April 19, 1985.

⁸We recognize that the EnergyNorth, Inc. corporate structure may foreclose Commission review pursuant to RSA Chapter 369 of new equity infusions into Gas Service. This circumstance is troubling and may warrant more restrictive language in future step adjustments, to the extent that such step adjustments are accepted.

⁹As noted previously, the inclusion of average short-term debt in the capital structure would reduce the cost of capital to 12.78% (Exh. D) and produce a negative step adjustment (Transcript of July 24, 1985 at 139-140).

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NH.PUC*08/02/85*[61165]*70 NH PUC 687*New Hampshire Electric Cooperative, Inc.

[Go to End of 61165]

70 NH PUC 687

Re New Hampshire Electric Cooperative, Inc.

Intervenor: Office of Consumer Advocate

DR 84-348, Second Supplemental
Order No. 17,783

New Hampshire Public Utilities Commission

August 2, 1985

PETITION for an increase in electric rates; granted.

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Rates, § 321 — Electric — Rate settlement — Reasonableness.

The commission adopted a stipulation agreement that provided for an increase in electric rates; the revenue requirement and rate design elements of the agreement were found to produce just and reasonable rates and to have a minimal impact on customer bills. [1] p.689.

Return, § 85.3 — Electric cooperative — Times interest earned rate.

Pursuant to a rate settlement, an electric cooperative was provided an opportunity to earn a 2.0 times interest earned rate (TIER) coverage on its non-Seabrook related debt. [2] p.689.

Return, § 85.3 — Electric cooperative — Return on rate base.

Pursuant to a rate settlement, an electric cooperative was allowed the opportunity to earn a 9.49% return on its rate base. [3] p.689.

Rates, § 326 — Electric — Demand and load related factors — Time of use — Electric space heating.

Pursuant to a rate settlement, an electric cooperative was required to perform a load research study, provided that the cost of such a study be reasonable, and to implement a mandatory time of day electric space heating rate if the load research study supports such a rate. [4] p.690.

Rates, § 326 — Electric — Time of day tariff — Allocation of increase.

Pursuant to a rate settlement, an electric cooperative was required to apply all increases to its time of day tariff to the onpeak portion of the charges. [5] p.690.

APPEARANCES: Hall, Morse, Gallagher and Anderson by Mayland H. Morse, Jr., Esquire and Jeffrey Zellers, Esquire for the New Hampshire Electric Cooperative, Inc.; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. INTRODUCTION

The proceedings were initiated on December 31, 1984 when the New Hampshire Electric Cooperative, Inc., (Cooperative or Company), a public utility supplying electrical service in the state of New Hampshire filed with the Commission its proposed Tariff NH PUC No. 12 Electricity, providing for an increase in annual revenue in the amount of \$1,316,305. The Cooperative also requested a reduction in its base fuel cost from \$.02822 per kwh to \$.02706 per kwh. The Commission on February 9, 1985 issued an Order of Notice opening DR 85-38 to consider the fuel adjustment clause (FAC) and changed the FAC by its Order No. 17,516 (70 NH PUC 131). Also on May 14, 1985 the Commission by Report and Order No. 17,609 (70 NH PUC 393) issued its procedural schedule for the remainder of this case.

In compliance with that order, the Staff of the Commission filed data requests and the Company duly filed its responses. The Commission Staff also filed testimony relating to revenue requirement and rate design matters.

The Company, Intervenors and Staff also engaged in several meetings to narrow the issues in this case.

At the duly noticed hearing held on July 23, 1985, the Company, Intervenors and Staff requested a postponement of the hearing until July 26, 1985 in order to finalize a stipulation resolving the issues in this case. The Commission granted this request.

At the hearing held on July 26, 1985, the parties presented to the Commission a proposed Stipulation (Exh. 1). The proposed Stipulation resolves

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all issues in this case related to revenue requirement, allocation of revenues to class and rate design. The Company and the Staff presented exhibits and testimony in support of the stipulation.

On July 31, 1985 the Company filed Tariff NHPUC No. 13 - Electricity, which implemented the terms of the Stipulation.

II. REVENUE REQUIREMENT

[1-3] The Stipulation provides for an increase in rates of \$1,204,599. Additionally, it proposes a further reduction in the base fuel cost from \$.0276 to \$.0240. The reduction in fuel is based on the Company's actual fuel experience for the first 6 months of 1985, during which period the Commission has seen a decrease in all fuel cost. The net effect of the rate increase and reduction in fuel cost is an increase in rates of approximately \$20,000; an amount which will have a minimal effect on customer bills.

The main features of the stipulation are as follows:

1) Providing the Cooperative an opportunity to earn a 2.0 times interest earned rate (TIER) coverage on its non-Seabrook related debt.

2) Staff's changes in certain expenses in the Cooperative's filed pro forma cost of service.

Increase in Revenues due to:

a) growth in customers contributing to depreciation expense (\$38,525); and

b) joint facilities rent (\$32,795)

Decrease in Expenses due to:

a) adjustment to payroll and fringe benefits due to former employees (\$24,840); and

b) removal of a portion of dues which were lobbying expenses (\$2,432)

3) The Cooperative is allowed an opportunity to earn 9.49% on its rate base.

The calculation of the revenue increase and rate base is as follows:

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

REVENUE REQUIREMENT

Test Year Operating Income	\$4,388,730
Normalization Adjustments	(290,180)
Cooperative Pro Forma Adjustments	(281,211)
Staff Pro Forma Adjustments	98,592
Adjusted Operating Income	3,915,931
Non-Seabrook Interest Expense	\$2,560,240
TIER Coverage	2,560,240
Revenue Increase	\$1,204,549

RATE BASE

Proformed
Test Year

Gross Electric Plant in Service	\$60,779,848
Less: Reserve for Depreciation	(14,759,120)
Less: Plant Held for Future Use	(25,803)
Net Average Plant in Service	45,994,925

Working Capital	
Prepayments	245,986
Materials & Supplies	1,146,377

Inv. in Associated Companies	1,463,457
Operation & Maintenance (45 Days)	595,044
Customer Deposits	(145,371)
Customer Advances for Const	(194,151)
Manager's Deferred Compensation	(74,000)

Total Working Capital	3,037,342
Average Rate Base	\$49,032,267

Net Operating Income \$ 4,616,283

Rate of Return 9.50%

III. RATE DESIGN

[4,5] The Company submitted the Testimony of Richard LaCapra (Exh. 4) in support of the proposed Tariff No. 12. Mr. LaCapra's testimony includes, inter alia, a discussion of objectives, an embedded cost of service study, and the rationale behind the proposed inter- and intra-class allocations.

In response to the LaCapra Testimony, Staff engaged in both informal and formal discovery (See e.g., Exh. 6, Requests 28-50). After careful review of all the relevant information, Staff then submitted the Pre-filed Direct Testimony of Melinda Butler (Exh. 7). In response to that testimony, the Company initiated discussions to narrow the issues. The result of this exchange

was Exhibit 5, Rebuttal Testimony of Richard LaCapra. After further review by Staff, a letter (Exh. 8) was sent to John Pillsbury, General Manager, to update Staff's position. A final meeting was held by the parties and Exh. 1, the Stipulation, is the result of that last exchange.

The Stipulation represents an agreement by the parties as to the appropriate cost allocations and rate design. Highlights of the areas of agreement are as follows:

1. The maintenance of a revenue code for customers owning electric space heating;
2. The application of all increases to the Time of Day (TOD) Tariff to the on-peak portion of the charges;
3. The removal of the Franchise Tax as a per kwh cost from the Tariff and the placement of said tax on to a separate Tariff page;
4. The elimination of the Residential Employee Rate;
5. The rewriting of page 28 of proposed Tariff No. 12 (General Service Rate) for the sole purpose of improving its understandability;
6. The undertaking on the part of the Company of a load research study provided that the cost of such a study shall be reasonable;
7. The necessity of a meeting on or before January 31, 1986 to determine the scope and further terms and conditions of the study;
8. The deadline of presenting a specific proposal for the load research study to the Commission by January 31, 1986;
9. The implementation of a mandatory TOD electric space heating rate if the load research study supports such a rate and provided that such a rate is cost effective.

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At the July 26, 1985 hearing, the Company and Staff proffered testimony and exhibits in support of the proposed rate design.

On behalf of the Company, Lee Smith, Chief Economist of LaCapra Associates, adopted the Testimony and Rebuttal Testimony of Richard LaCapra. Melinda Butler, Commission Economist, testified on behalf of Staff.

Witness Smith briefly summarized the Testimony and Rebuttal Testimony of Richard LaCapra emphasizing the objectives of fairness, rate continuity and the implementation of appropriate price signals. She pointed out that in order to meet these objectives the Company and LaCapra Associates consolidated rate schedules and sought to simplify the rate design.

Witness Butler's testimony explained the evolution of the Staff's position by relating Exhibit 7 (Pre-filed Direct Testimony of Melinda Butler) and Exhibit 8 (Letter to John Pillsbury) to Exhibit 1 (the Stipulation).

Witness Butler also explained the Staff's rationale for accepting the proposed inter-class allocation. She stated that even though the proposal is based on the cost of service study results which the Staff neither accepts nor rejects, the proposal is moderate enough to be acceptable. In addition, Witness Butler explained the Staff's acceptance of the proposed intra-class allocation.

She emphasized that the proposal is consistent with proper ratemaking principles.

Witness Butler further explained how the proposal is consistent with previous Commission policy. In this context, the Cooperative's last rate case, Re New Hampshire Electric Cooperative, Inc., Docket No. DR 81-340, was discussed.

After review and consideration, the Commission finds that the Stipulation including all of the sections pertaining to cost allocation and rate design will produce just and reasonable rates. The Commission agrees with the Staff's concerns about the cost of service study and the Staff's reasons for accepting the inter-class cost allocations.

The Commission also finds the intraclass allocations to be reasonable. In particular, the Commission commends the parties for volunteering to eliminate the Residential Employee Rate since it clearly gives improper price signals.

The Commission finds the proposal to be consistent with Commission policy. In the Company's previous rate case, DR 81-340, the Commission found, inter alia, that a minimum bill provision is a generic issue and any such proposal should be addressed accordingly. The Commission also found that it was not unalterably opposed to seasonal rates. See, Re New Hampshire Electric Co-op., Inc., 67 NH PUC 781, 783 (1982). The present proposal as embodied by Exhibit 1 violates neither previous finding.

We also recognize the concern of all parties with respect to the need to balance the propriety of the present rate structure against the anticipation of significant future changes in cost. See e.g., Re New Hampshire Electric Co-op., Inc., 70 NH PUC 422 (1985). In this context, the upcoming load research study will be especially valuable.

IV. CONCLUSION

On the basis of the foregoing analysis, we find that the rates produced by the Stipulation (Exh. 1) are just and reasonable. Accordingly, we will accept Tariff NHPUC No. 13 -Electricity.

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Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Tariff No. 12 - Electricity of the New Hampshire Electric Cooperative, Inc. be, and hereby is, rejected; and it is

FURTHER ORDERED, that Tariff No. 13 - Electricity, issued pursuant to the Stipulation accepted in this docket and in lieu of Tariff No. 12 - Electricity, herein rejected, be, and hereby is, approved for effect with all bills rendered on or after the date of this Order; and it is

FURTHER ORDERED, that public notice of the approved tariff be given to the customers of the New Hampshire Electric Cooperative, Inc. via a one-time bill insert summarizing the changes therein.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1985.

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NH.PUC*08/02/85*[61166]*70 NH PUC 692*New Hampshire Electric Cooperative, Inc.

[Go to End of 61166]

70 NH PUC 692

Re New Hampshire Electric Cooperative, Inc.

DR 85-38, Supplemental
Order No. 17,784

New Hampshire Public Utilities Commission

August 2, 1985

ORDER setting fuel adjustment rate for electric cooperative.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on August 2, 1985 the Commission issued Re New Hampshire Electric Co-op., Inc., 70 NH PUC 687 (1985) establishing, inter alia, a new revenue requirement for the New Hampshire Electric Cooperative, Inc.; and

WHEREAS, as part of that new revenue requirement, the Commission directed a yearly fuel adjustment rate of 2.40 per kwh which is a reduction from the present rate of 2.706 per kwh; it is

ORDERED, that the New Hampshire Electric Cooperative, Inc. fuel adjustment rate be set at 2.40 per 100 kwh effective for all bills issued on or after August 1, 1985.

By Order of the Public Utilities Commission of New Hampshire this second day of August, 1985.

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NH.PUC*08/02/85*[61167]*70 NH PUC 693*Granite State Gas Transmission, Inc.

[Go to End of 61167]

70 NH PUC 693

Re Granite State Gas Transmission, Inc.

DF 84-262, Order No. 17,788

New Hampshire Public Utilities Commission

August 2, 1985

ORDER denying request for a reduction in the utility assessment levied on a natural gas transmission company.

Commissions, § 58 — Assessments against utilities — Reasonableness — Natural gas transmission company.

The commission rejected a claim by a natural gas transmission company that the public utility assessment — i.e., a fee intended to recover the cost of utility regulation — levied upon it was improper; the company had argued that the assessment, (1) should not be applied to it because its rates are set by the Federal Energy Regulatory Commission (FERC), (2) was unfair because it was not levied on other natural gas transmission companies, and (3) was improperly based on revenues derived from interstate sales; the commission found that, (1) the time and effort spent by the commission in investigating the effect of the FERC set rates on New Hampshire ratepayers justified the assessment, (2) all natural gas transmission companies that qualify as a utility under state statute RSA 362:2 will be required to pay an assessment fee, and (3) it is reasonable to base a utility's assessment fee on all revenues related to the company's activities in New Hampshire.

APPEARANCES: Sulloway, Hollis & Soden by Margaret H. Nelson, Esquire on behalf of Granite State Gas Transmission, Inc.; Eugene F. Sullivan and Bruce B. Ellsworth, for the Staff.

By the COMMISSION:

REPORT

On September 13, 1984 Granite State Gas Transmission, Inc. (Complainant or Company), filed an objection to the Public Utility Assessment for the fiscal year ending June 30, 1985, pursuant to RSA 363-A:1 et seq. The objection takes the position that the 1985 Public Utility Assessment is excessive, erroneous, unlawful and invalid to the extent that it is calculated on sales other than New Hampshire retail sales. A duly noticed hearing was convened on January 21, 1985. The hearing was continued until February 21, 1985, at which time testimony was heard from Joseph A. Raffaele, Vice President of Granite State Gas Transmission and Eugene F. Sullivan, Finance Director of the New Hampshire Public Utilities Commission.

As a preliminary matter the complainant refers to the utility assessment as the Public Utility Tax Assessment.

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The New Hampshire Supreme Court has refused to characterize the assessment as a tax, and has characterized the utility assessment fee authorized by RSA Chapter 363-A as "a mere license fee having as its foundation the cost of regulating the utilities involved".¹⁽²⁹⁷⁾

The Complainant argues that the public utility assessment is improper because it is not related to the purposes of regulation. The Company further states that the assessment is unfair and inequitable because it is not levied on other natural gas companies. The Complainant asserts that federal authority preempts state authority over the Company and that a public utility assessment must be rationally related to the purposes of regulation. The Complainant concludes

that the Commission may not properly impose a public utility assessment based on its total revenues, including those derived from its sales to its parent, Northern Utilities. If an assessment is to be imposed at all, according to the Company it may only be imposed based on revenues derived from direct intrastate sales to Pease Air Force Base.

Staff witness Sullivan testified that the assessment was proper and listed several reasons that Granite State Gas Transmission should be included in the utility assessment. He included the following as reasons that the Complainant should be included:

1. Granite State Gas Transmission is a utility under RSA 362:2, RSA 363:22 and 23 and RSA Chapters 366 and 369.

2. The utility assessment is designed to determine the share of Commission expenses to be assessed against utilities by class; i.e., electric, gas, telephone, etc. and each utility within a class is assessed "in such proportion as the Commission shall determine to be fair and reasonable". The Commission has determined the costs applicable to each class of utility. The method does not calculate the amount of expense incurred by a utility in any given year because it will vary by utility from year to year.

Mr. Sullivan pointed out that the assessment is not a tax on revenues or income and the use of New Hampshire revenues is merely a basis that is used to spread Commission expenses to the various utilities and groups. He further testified that there are several utilities which have rates set on a wholesale basis by the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC) which are included in the assessment. They are included for the reason that they are utilities and require the time and effort of the Staff and the Commission to review regulatory matters which effect New Hampshire ratepayers. All of the utilities who engage in interstate matters forward copies of filings at the same time as they are filed with federal agencies. After review, a decision is made whether the Commission should participate by intervening or filing comments with the federal agency.

The Commission has reviewed the motions and testimony in this case. We have also reviewed the files in the previous case on this same subject. Re Granite State Gas Transmission, Inc., 68 NH PUC 25 (1983). The arguments in the previous case are identical to those presented in this case and we continue to

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find them unpersuasive. As was found in Docket DF 82-273, when the Complainant agrees to the propriety of any portion of the assessment, he implicably recognizes that the FERC is not the only regulatory body properly concerned with Complainant's affairs. The further argument that the fees assessed are duplicative was addressed previously and the Commission will abide by its previous decision. We agree with the staff witness that the methodology used in deriving the utility assessment is not a tax on revenue or income. It is a method used to spread Commission expenses to the various utilities and utility classes.

The list of matters pertaining to Granite State Gas Transmission in which this Commission participates are many and varied, as evidenced by a partial list furnished in Staff's testimony. In Order No. 16,165 (68 NH PUC 25), this Commission noted that there was no dispute that the Complainant is a utility pursuant to RSA 362:2, and that the Commission is provided statutory

authority to investigate interstate matters that affect New Hampshire (RSA 363:22 and 363:23). The Commission finds that the method of assessment does bear a reasonable relation to regulation provided by the Commission.

It should be noted that the Complainant claims that the assessment is unfair because it is not levied on other natural gas companies; in particular, Tennessee Gas Pipeline. As we stated in our previous order on this matter, the Commission believes it is necessary and proper to assess Tennessee and any other Company which qualifies as a utility under RSA 362:2. Action has been initiated to determine the proper level of assessment.

The Commission concludes that a utility's revenues related to New Hampshire are a reasonable basis to use in arriving at a proper level of assessment for each class of utilities. That method represents a reasonable indication of the amount of time and effort accorded that utility by the Commission. Nothing in this record convinces us otherwise.

Based on the foregoing, the Commission finds its current assessment for Complainant to be fair and reasonable.

Our Order will issue accordingly.

ORDER

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

ORDERED, that just cause not being shown, Complainant's prayer for relief requesting a reduction in the utility assessment levied on Complainant be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this second day of August, 1985.

FOOTNOTE

¹Opinion of Justices, 101 N.H. 549, 556, 137 A.2d 726, 731 (1958).

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NH.PUC*08/09/85*[61168]*70 NH PUC 696*Public Service Company of New Hampshire

[Go to End of 61168]

70 NH PUC 696

Re Public Service Company of New Hampshire

Additional petitioner: New England Power Company

DF 85-252, Order No. 17,789

New Hampshire Public Utilities Commission

August 9, 1985

ORDER authorizing electric utilities to issue guarantees of indebtedness.

Security Issues, § 111 — Financing practices — Guarantees of indebtedness.

Two electric utilities were authorized to issue guarantees of indebtedness relating to the payment of obligations incurred by the owner of a nuclear power plant in which they hold stock and from which they purchased power; the obligations related to the acquisition of nuclear fuel and related property.

APPEARANCES: for Public Service Company of New Hampshire, DebbieAnn Sklar, Esquire; and for New England Power, Kirk L. Ransauer, Esquire; and for the Staff, Eugene F. Sullivan, Finance Director.

By the COMMISSION:

REPORT

By this petition filed July 1, 1985, Public Service Company of New Hampshire ("PSNH"), a corporation duly organized and existing under the laws of the State of New Hampshire, and New England Power Company ("NEP"), a corporation duly organized under the laws of the Commonwealth of Massachusetts and qualified as a foreign corporation to do business in New Hampshire (but does not engage in local distribution therein), electric public utilities subject to the jurisdiction of this Commission, seek authority pursuant to the provisions of RSA 369 to issue their several, not joint, unconditional guarantees of certain payment obligations of Maine Yankee Atomic Power Company ("Maine Yankee"). A duly noticed hearing was held in Concord on August 2, 1985, at which the following witnesses testified: Richard A. Crabtree, Vice President and Treasurer of Maine Yankee; S. B. Wicker, Jr., Manager of Financial Projects for PSNH; and Robert H. McLaren, Assistant Treasurer of NEP.

Maine Yankee, a Maine corporation, is the owner and operator of a nuclear powered electric generating plant with a capacity of approximately 830 MW (net) located on Bailey Point in Wiscasset, Maine. Maine Yankee sells the entire output of its plant to ten sponsoring New England utilities (the

Page 696

"Sponsors"), including PSNH and NEP, based on the percentage of the outstanding stock of Maine Yankee owned by each Sponsor. The Sponsors are obligated under their separate Capital Funds Agreements with Maine Yankee to contribute Capital to Maine Yankee under certain defined circumstances based on each Sponsor's percentage of common stock ownership.

Maine Yankee is party to a Loan Agreement pursuant to which MYA Fuel Company has agreed to make available to Maine Yankee \$50,000,000 at any one time outstanding. As security for its borrowings, Maine Yankee has entered into a Security Agreement pursuant to which it has pledged to MYA Fuel Company its nuclear fuel inventory, its rights under its Power Contracts to be paid its fuel costs and certain of its rights under the Capital Funds Agreement. MYA Fuel Company, to fund its loans to Maine Yankee, is party to a Credit Agreement with Manufactures Hanover Trust Company (the "Bank"), pursuant to which the Bank has agreed to issue letters of

credit in favor of and provide revolving credit loans to MYA Fuel Company in an aggregate amount not exceeding \$50,000,000. In connection with its obligations under the Credit Agreement, MYA Fuel Company assigned its rights in the Loan Agreement and the Security Agreement to the Bank. The Credit Agreement expires August 26, 1985.

The cash flow assured by the Power Contracts represents the underlying basis for the repayment of funds borrowed by Maine Yankee under the Loan Agreement. The Power Contracts, however, contain certain cancellation provisions under specific contingencies. According to Mr. Crabtree, because of the potential, albeit remote, for such cancellations, the Bank will not extend the Credit Agreement unless the Sponsors issue their several guarantees. Mr. Crabtree further explained that Maine Yankee was unable to find an alternative satisfactory financing arrangement.

If the guarantees are issued, the term of the Credit Agreement will be extended to two years from its execution date with provisions for six month extensions thereafter and the current .95% annum fee charged on the average principal amount committed by the Bank under its outstanding letters of credit will be reduced to .85%.

Each of the Sponsors, including PSNH and NEP, proposes to enter into a Guarantee Agreement (the "Guarantee Agreement") in favor of MYA Fuel Company. Under each Guarantee Agreement, a Sponsor will guarantee severally, not jointly, its percentage share of the payment obligations of Maine Yankee under the Loan Agreement and the notes in proportion to its stock ownership in Maine Yankee. The Guarantee Agreement will be assigned by MYA Fuel Company to the Bank. The percentage shares and the maximum amount to be guaranteed are as follows:

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

Ownership

Company	Percent	Amount
Central Maine Power Company	38.0%	\$19,000,000
New England Power Company	20.0%	10,000,000
The Connecticut Light and Power Company	12.0%	6,000,000
Bangor Hydro-Electric Company	7.0%	3,500,000
Maine Public Service Company	5.0%	2,500,000
Public Service Company of New Hampshire	5.0%	2,500,000
Cambridge Electric Light Company	4.0%	2,000,000
Montaup Electric Company	4.0%	2,000,000
Western Massachusetts Electric Company	3.0%	1,500,000
Central Vermont Public Service Corporation	2.0%	1,000,000
100.0%		\$50,000,000

Accordingly to Mr. Wicker and Mr. McLaren, without Sponsor guarantees as proposed, it is their understanding, confirmed by Mr. Crabtree, that Maine Yankee would most likely be forced to raise the amount needed (\$50,000,000) with stock purchases, capital contributions or loans from the Sponsors. This would require actual cash outlays by PSNH and NEP of \$2,500,000 and \$10,000,000, respectively. It is the opinion of PSNH and NEP that it is in the best interests of their ratepayers and stockholders to enter into the proposed Guarantee Agreements rather than making such cash outlays.

Copies of the draft documents relating to the financing were submitted, as were the balance

sheets of PSNH and NEP and resolutions of the Board of Directors of PSNH and NEP approving the execution and delivery of the proposed Guarantee Agreements.

Based upon all the evidence, the Commission finds (1) that the terms and conditions in the draft Guarantee Agreements relating to the payment obligations of Maine Yankee to MYA Fuel Company are reasonable to enable Maine Yankee to finance its need for additional funds to pay for the acquisition of nuclear fuel and related property and for other lawful corporate purposes, (2) that it is in the best interests of the stockholders and ratepayers of PSNH and NEP that they execute such Guarantee Agreements rather than being required to make stock purchases, capital contributions or loans at this time, and (3) that the issuance by PSNH and NEP of their guarantees as proposed and for the purposes described will be consistent with the public good. Our Order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof, it is

ORDERED, that Public Service Company of New Hampshire and New England Power Company, be, and hereby are, authorized to issue their guarantees of their respective percentage shares of the obligation of Maine Yankee Atomic Power Company with respect to the Loan Agreement and Notes as described in the foregoing Report; and it is

FURTHER ORDERED, that the terms and conditions in the executed guarantee agreements shall be substantially as stated in the latest draft copies submitted in this proceeding and that no further written or oral supplements to or modifications of those proposed terms and conditions shall be executed without prior approval of this Commission.

By Order of the Public Utilities Commission of New Hampshire this ninth day of August, 1985.

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NH.PUC*08/09/85*[61169]*70 NH PUC 699*New England Telephone and Telegraph Company

[Go to End of 61169]

70 NH PUC 699

Re New England Telephone and Telegraph Company

Additional petitioner: New Hampshire Electric Cooperative, Inc.

DE 85-133, Order No. 17,790

New Hampshire Public Utilities Commission

August 9, 1985

ORDER authorizing telephone company and electric cooperative to place and maintain plant crossing state property.

APPEARANCES: For the Petitioners, Earl Hansen, NHEC and Stephen Merrill, NET

By the COMMISSION:
REPORT

On May 6, 1985 the New Hampshire Electric Cooperative, Inc. and the New England Telephone and Telegraph Company filed a joint petition for authority to place and maintain aerial plant crossing the State of New Hampshire Division II property in Enfield, New Hampshire.

The Commission issued an Order of Notice on June 18, 1985 directing all interested parties to appear at public hearings at 10:00 a.m. on July 19, 1985 at the Commission's Concord offices. Notices were sent to Donald B. Reed, Vice President, NET (for publication); Earl F. Hansen, Plant Manager, NHEC; John Chandler, Commissioner, Department of Public Works and Highways; Thomas A. Power, Director, Division of Motor Vehicles; Kelton E. Garfield, Supervisor of Public Records, New Hampshire Department of Public Works and Highways; John McAuliffe, Railroad Administrator, Department of Public Works and Highways; Jim Carter, Chief of Land Management, DRED; Robert X. Danos, Director, Safety Services; and the Office of Attorney General. An affidavit of publication was received in the Commission's offices on July 18, 1985 confirming that publication was made in The Union Leader on June 27, 1985.

The Petitioners testified that AMCA International, a proposed new customer, is situated on the easterly side of Interstate Route 89 in Enfield, New Hampshire adjacent to state property on which is located the Division II offices of the New Hampshire Public Works and Highways. In order to supply electric power and telephone service a pole line is desired to extend from the Division II offices, adjacent to Interstate Route 89 and extending for approximately 1,097 feet southeasterly to AMCA's property. The line will consist of wires, cables, and necessary supporting structures located as shown on a plan submitted at the hearing

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entitled "NET easement survey through State of New Hampshire Division II Headquarters" I-89 near Exit 16, Enfield, New Hampshire, Project 125984, dated 9/5/84, by K. A. LeClair Associates, Hanover, New Hampshire.

Construction is proposed immediately, with power to be supplied during the fall of 1985 and telephone service of approximately 200 lines to be installed in spring 1986.

The crossing will be installed in accordance with the requirements of the National Electric Safety Code.

The Commission noted that no objections were filed or expressed at the hearing, in fact no intervenors or interested parties were in attendance.

The petition was properly publicized, and proper notification was given to the public as to the proposed installation.

The Commission finds this petition for a license to place and maintain aerial plant crossing the State of New Hampshire, Division II property in Enfield, New Hampshire, as specifically designated in Exhibits filed in this docket, to be in the public interest. Our Order will issue accordingly.

ORDER

Based upon the foregoing Report, which is made a part hereof; it is

ORDERED, that authority be granted to the New England Telephone and Telegraph Company and the New Hampshire Electric Cooperative, Inc. to place and maintain aerial plant crossing the State of New Hampshire Division II property in Enfield, New Hampshire at the location designated on Petitioners' Exhibits.

By Order of the Public Utilities Commission of New Hampshire this ninth day of August, 1985.

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NH.PUC*08/09/85*[61170]*70 NH PUC 700*Breakwater Condominium

[Go to End of 61170]

70 NH PUC 700

Re Breakwater Condominium

DE 85-218, Order No. 17,791

New Hampshire Public Utilities Commission

August 9, 1985

ORDER authorizing condominium developer to construct a sewer line on state-owned land.

Page 700

By the COMMISSION:

REPORT

On June 5, 1985 Breakwater A Condominium petitioned this Commission for authority to construct a sewer line on state-owned land in Laconia, New Hampshire.

On June 28, 1985 an Order of Notice was issued setting a hearing for August 1, 1985 at 10:00 a.m. at the Commission's Concord offices. Notices were sent to Steven Smith, Ronald Mitchell & Associates (for publication); Robert X. Danos, Director, Safety Services; John Chandler, Commissioner, Department of Public Works & Highways; Jim Carter, Chief of Land Management, DRED; and the Office of the Attorney General.

On July 26, 1985 an affidavit was received at the Commission confirming that publication was made in the Laconia Evening Citizen on June 18, 1985. At the hearing the petitioner testified that the date was erroneous, and the Commission was presented with a corrected affidavit attesting to the fact that the advertisement appeared on July 18, 1985.

Mr. Warner Plummer appeared on behalf of Ronald Mitchell & Associates. He testified that Breakwater is a condominium development which proposes to construct approximately 27

residential living units at North Street and VanBuren Road in Laconia, New Hampshire. In order to provide sewer service to the development, the petitioner proposes to connect a private sewer to the Winnepesaukee River Basin interceptor at an existing sewer manhole located on state-owned property at the easterly side of existing railroad tracks south of milepost C-30 in Laconia. Approximately 58 lineal feet of eight inch sewer line will be constructed northwesterly from the existing manhole. It will not be necessary to cross under the railroad tracks. Railroad traffic will not be interrupted.

The petitioner has received construction approvals from the Water Supply and Pollution Control Commission, the City of Laconia, and the State of New Hampshire Railroad Division.

The Commission noted that no objections were filed or expressed at the hearing. In fact no intervenors or interested parties were in attendance.

The petition was properly publicized and proper notification was given to the public as to the proposed location.

The Commission finds this petition for a license to construct and maintain a sewer line on state-owned land in Laconia, New Hampshire as specifically located in exhibits filed with this docket, to be in the public interest. Our Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to Breakwater, A Condominium to construct and maintain a sewer line on state-owned land in Laconia, New Hampshire at locations specifically identified in exhibits in this docket.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1985.

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NH.PUC*08/09/85*[61171]*70 NH PUC 702*New Hampshire Electric Cooperative, Inc.

[Go to End of 61171]

70 NH PUC 702

Re New Hampshire Electric Cooperative, Inc.

DE 85-209, Order No. 17,797

New Hampshire Public Utilities Commission

August 9, 1985

ORDER authorizing electric cooperative to install, operate and maintain submarine electrical cable.

Service, § 286 — Electric cable — Duty to install, own and maintain — Cost responsibility.

The approval of an electric cooperative utility's tariff for the provision of service to customers located on an island was conditioned on the utility's assuming responsibility for the installation, ownership and maintenance of the submarine electrical cable; the costs of the cable crossing and the cable termination shall be borne by the customers to be served.

APPEARANCES: For the New Hampshire Electric Cooperative, Inc., Earl F. Hansen, Plant Manager; pro se, Robert Ronci; for the Commission Staff, Arthur C. Johnson, P.E.

By the COMMISSION:

REPORT

On June 10, 1985 the New Hampshire Electric Cooperative, Inc. filed with this Commission, on behalf of itself and future customer, Robert Ronci, a petition seeking authority to install, operate and maintain submarine power cables beneath the waters of Lake Winnepesaukee in the Towns of Moultonboro and Tuftonboro, New Hampshire. An Order of Notice was issued on June 20, 1985 setting the matter for public hearing at the Commission's Concord Offices on July 31, 1985 at 2:00 p.m. Notices were sent to Earl F. Hansen of the Cooperative for publication; to the Director of Safety Services; to the Commissioner of the Department of Public Works and Highways; to the Chief of Land Management (DRED); and to the Office of the Attorney General. An affidavit attesting to the publication of the Order of Notice in The Union Leader was filed on July 31, 1985.

The duly noticed public hearing was convened as scheduled with no intervenors present. Mr. Hansen explained the construction comprised two submarine crossings, the first originating on Whortleberry Island proceeding beneath the lake to Dow Island, about 810 feet distant, where an aerial distribution system would provide electrical power to several homes. From Dow Island, the second submarine cable would

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continue beneath Lake Winnepesaukee to Pleasant Island where it would provide electrical power to the home of Robert Ronci. The second section would be approximately 535 feet.

The Cooperative's petition indicated electrical service would be provided to six homes on Dow Island, with possibilities of six to eight more.

As indicated in the petition and confirmed by Mr. Hansen, the Cooperative intends to install, own, operate and maintain the Whortleberry-to-Dow cable, but the Dow-to-Pleasant cable would be installed, owned, operated and maintained by Mr. Ronci. Mr. Hansen, in responding to questions of Staff Engineer Johnson, indicated the Cooperative prefers customer installation, ownership, operation and maintenance and, if the numbers of customers on Dow Island didn't make such ownership too cumbersome, that leg would also be customer-owned.

In taking administrative notice of its files, the Commission finds that approved Tariff No. 11 of the Cooperative cites such submarine construction on Original Page 9, incorporating by reference a bulletin requiring "All cable crossings shall be installed, owned and maintained by

the cooperative." It further requires that the total costs of the "cable crossing and the cable terminations...shall be contributed by the customers to be served." The bulletin requires one-half of the contribution be paid before the start of construction, with the balance in equal monthly installments over a 60-month period. Based upon this bulletin, the Commission will require the New Hampshire Electric Cooperative assume responsibility for the Dow Island to Pleasant Island leg. As specified in the bulletin, each customer must sign a Submarine Cable Service Agreement, copies of which will be filed with the Commission.

Since no opposition to these crossings was voiced, the Commission finds them in the public good and will grant licenses for both, subject to installation, ownership, and maintenance changes cited herein. Our Order will issue accordingly.

ORDER

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

ORDERED, that license be granted to the New Hampshire Electric Cooperative, Inc. for the installation, operation and maintenance of two submarine power cables beneath the waters of Lake Winnepesaukee such cables described as follows:

Beginning at Pole 14619/15 on Whortleberry Island and proceeding underground to the shoreline, thence submarine for a distance of approximately 810 feet to the shoreline of Dow Island, with further distribution via an aerial line to serve customers as necessary, continuing to Pole 14619.1/2.3 thence underground to the shoreline and continuing submarine approximately 535 feet to Pleasant Island and Pole 14619.1/2.4 from which Mr. Ronci's home would be served.

FURTHER ORDERED, that provisions of the New Hampshire Electric Cooperative's Rate Bulletin entitled Submarine Cable Crossings be met.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1985.

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NH.PUC*08/09/85*[61172]*70 NH PUC 704*New England Telephone and Telegraph Company

[Go to End of 61172]

70 NH PUC 704

Re New England Telephone and Telegraph Company

DE 85-217, Order No. 17,798

New Hampshire Public Utilities Commission

August 9, 1985

ORDER authorizing telephone utility to place and maintain submarine telephone cable.

APPEARANCES: Samuel M. Smith, Outside Plant Supervisor, Right-of-Way.

By the COMMISSION:

REPORT

On June 12, 1985, New England Telephone and Telegraph Company (NET) filed with this Commission its petition for authority to install and maintain submarine telephone cable beneath public waters of Lake Winnepesaukee in Laconia, New Hampshire. An Order of Notice was issued on June 20, 1985 setting the matter for hearing on July 31, 1985 at 10:00 a.m. Notice was sent to NET for publication, with copies also sent to the Director of Safety Services, the Department of Public Works and Highways, the Chief of Land Management (DRED), and the Office of the Attorney General. An affidavit of publication was filed on July 18, 1985.

The duly noticed hearing was held as scheduled in the Commission's Concord offices. No intervenors appeared. Mr. Samuel M. Smith introduced as Exhibit 1 the New England Telephone transmittal letter with its accompanying petition, a map of the area and Drawing 29-74 outlining details of the crossing. Also entered as Exhibits 2 and 3, respectively, were authorizations granted by the Wetlands Board and the Water Supply and Pollution Control Commission.

Mr. Smith described the crossing as beginning at Pole 3622/12 on Paugus Park Road, proceeding underground approximately 60 feet to the shoreline of Paugus Bay, thence submarine for 1364 feet to Big Island continuing buried for approximately 150 feet to the residence of George Steady. This cable would provide telephone service to the Steady residence on Big Island. Mr. Smith indicated all construction would comply with the National Electrical Safety Code and other applicable codes. He stated also that easement for that portion of the line on the mainland had been negotiated.

With no opposition to this crossing, the Commission finds it in the public interest and will grant its license. Our Order will issue accordingly.

ORDER

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

ORDERED, that New England Telephone and Telegraph Company be, and hereby is, granted authority for the installation and maintenance of submarine cable beneath the waters of Paugus Bay, Lake Winnepesaukee, in Laconia, New Hampshire, said crossing to begin at Pole 3622/12 on Paugus Park Road extending 60 feet underground to the shoreline hence submarine for a distance of approximately 1364 feet, continuing underground on Big Island approximately 150 feet to the residence of George Steady.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1985.

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NH.PUC*08/12/85*[61173]*70 NH PUC 705*Fuel Adjustment Clause

[Go to End of 61173]

Re Fuel Adjustment Clause

Intervenors: Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water and Light Department

DR 85-246, Order No. 17,799

New Hampshire Public Utilities Commission

August 12, 1985

ORDER authorizing electric fuel adjustment clause rate without a formal hearing.

By the COMMISSION:

ORDER

WHEREAS, the Commission in correspondence dated March 2, 1983, sent to the Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water & Light Department by the Commission's Executive Director and Secretary in relation to DR 82-59, notified the utilities that the Commission will not automatically schedule FAC hearings in the two off months for those utilities which have a quarterly FAC rate; and

WHEREAS, no utility maintaining a monthly or quarterly FAC requested a hearing; and

ORDERED, that 56th Revised Page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of \$2.53 per 100 KWH for the month of August, 1985, be, and hereby is, permitted to become effective August 1, 1985; and it is

FURTHER ORDERED, that 107th Revised Page 10B of Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of (\$1.11) per 100 KWH for the month of August, 1985, be, and hereby is, permitted to become effective August 1, 1985; and it is

FURTHER ORDERED, that 104th Revised Page 18 of Connecticut Valley Electric Company, Inc. tariff, NHPUC No. 4 — Electricity, providing for an energy surcharge credit of (\$0.56) per

Page 705

100 KWH for the month of August, 1985; be, and hereby is, permitted to become effective August 1, 1985.

The above noted rates may be 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 twelfth day of August, 1985.

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NH.PUC*08/12/85*[61174]*70 NH PUC 706*Northern Utilities, Inc.

[Go to End of 61174]

70 NH PUC 706

Re Northern Utilities, Inc.

DR 85-92, Supplemental
Order No. 17,802

New Hampshire Public Utilities Commission

August 12, 1985

ORDER granting a gas utility additional time to convert its billing system and revising therm rate tariffs.

Rates, § 379 — Gas — Therm rates — Application of tariffs to bills rendered.

The therm rate tariffs of a natural gas distribution company were revised so that they applied to bills rendered rather than service rendered; the commission found that the revision would result in substantial cost savings.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on July 9, 1985, this Commission issued Supplemental Order 17,739 (70 NH PUC 627) approving certain revision to Northern Utilities, Inc. Tariff No. 6 which converts its billing of gas from the current volumetric system to a thermal basis; and

WHEREAS, Order No. 17,739 required tariff pages to be filed to become effective with service rendered on and after the date of that order, July 9, 1985; and

WHEREAS, on July 17, 1985, Northern Utilities, Inc. filed a Motion for Reconsideration, Rehearing and Modification of Order No. 17,739 for the following reasons:

1. Additional lead time is necessary for the purchase, delivery and installation of three (3) calorimeters as well as customer communication and programming.

2. Administration to apply the new rates to service rendered, rather than bills rendered, will necessitate a cost burden on the company and confusion to customers; and

WHEREAS, upon investigation the Commission finds that the request for additional time to implement the conversion process is reasonable based on

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the need to purchase, deliver and install the new equipment; and

WHEREAS, further investigation reveals that the public interest is served equally well by applying the new tariffs to bills rendered rather than service rendered, and that substantial costs will be avoided by applying them to bills rendered; it is

ORDERED, that the portion of Supplemental Order No. 17,739 requiring revised pages to become effective with service rendered on or after the date of this order be, and hereby is, rescinded; and it is

FURTHER ORDERED, that Northern Utilities, Inc. file with this Commission revised pages in lieu of those rejected in Order No. 17,739, said pages to become effective with bills rendered on or after January 1, 1986.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1985.

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NH.PUC*08/13/85*[61176]*70 NH PUC 708*Northeast Hydrodevelopment Corporation

[Go to End of 61176]

70 NH PUC 708

Re Northeast Hydrodevelopment Corporation

DR 85-186, Order No. 17,809

New Hampshire Public Utilities Commission

August 13, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on May 31, 1985, Northeast Hydrodevelopment Corporation (NHC) filed a long term rate filing for the McLane Dam Project; and

WHEREAS, NHC filed amendments on June 17, 1985, July 8, 1985 and July 26, 1985; and

WHEREAS, the Petition requested inter alia a fifteen-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to NHC's Petition for a Fifteen-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that NHC's Petition for a Fifteen-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1985.

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NH.PUC*08/13/85*[61177]*70 NH PUC 709*Northeast Hydrodevelopment Corporation

[Go to End of 61177]

70 NH PUC 709

Re Northeast Hydrodevelopment Corporation

DR 85-176, Order No. 17,810

New Hampshire Public Utilities Commission

August 13, 1985

ORDER nisi granting petition by small power producer for approval of interconnection agreement and long term rates.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1985, Northeast Hydrodevelopment Corporation (NHC) filed a long term rate filing for the Weare Reservoir Project; and

WHEREAS, NHC filed amendments to its filing on July 8, 1985, and July 26, 1985; and

WHEREAS, the Petition requested inter alia a fifteen-year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to NHC's Petition for a FifteenYear Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984); it is therefore,

ORDERED NISI, that NHC's Petition for a Fifteen-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1985.

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NH.PUC*08/13/85*[61178]*70 NH PUC 710*Texas Eastern Corporation

[Go to End of 61178]

70 NH PUC 710

Re Texas Eastern Corporation

Additional petitioner: Petrolane-Southern New Hampshire Gas Company, Inc.

DE 85-260, Order No. 17,813

New Hampshire Public Utilities Commission

August 13, 1985

ORDER nisi authorizing the indirect acquisition of all the voting securities of retail gas utility.

Consolidation, Merger, and Sale, § 18 — Grounds for approval — Acquisition of retail gas utility.

The commission approved a petition for the indirect acquisition of all the voting securities of a retail gas utility where the petitioners contended that (1) the utility would continue to operate its retail gas utility business in substantially the same manner, (2) the control of day to day operations would remain with the utility, (3) no changes in the management of the utility were contemplated, and (4) the transaction would enable the utility to have improved access to natural gas supplies, transportation and storage.

ORDER

WHEREAS, on July 10, 1985, Texas Eastern Corporation and PetrolaneSouthern New Hampshire Gas Company, Inc. filed with this Commission a joint petition for approval of Texas Eastern's indirect acquisition of all the voting securities of Petrolane-Southern New Hampshire Gas Company, Inc.; and

WHEREAS, the petitioners aver that the petition results from an action on or about June 20, 1984 in which Texas Eastern entered into a merger agreement with Petrolane, and subsequent to which Texas Eastern acquired all shares of stock in Petrolane; and

WHEREAS, Petrolane-Southern is a wholly owned subsidiary of Petrolane; and

WHEREAS, the petitioners contend that Petrolane-Southern has and will continue to operate its retail gas utility business in substantially the same manner it has been operating since it was acquired by Petrolane, that the control of day to day operations will remain with Petrolane, and no change in Petrolane-Southern's management is contemplated; and

WHEREAS, petitioner further avers that the transaction will enable Petrolane-Southern to have improved access to Texas Eastern's natural gas suppliers transportation and storage abilities and to its liquid petroleum gas sales transportation and services and thereby be of benefit to the consumers of Petrolane-Southern gas supplies services; and

WHEREAS, upon investigation the

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Commission is satisfied that the acquisition will assure continued just and reasonable service to customers of Petrolane-Southern, and is in the public interest; it is hereby

ORDERED NISI, that pursuant to, inter alia, RSA 374:30, the petition of Texas Eastern Corporation and Petrolane-Southern New Hampshire Gas Company, Inc. for approval of Texas Eastern's indirect acquisition of all the voting securities of Petrolane-Southern Gas Company, Inc., be, and hereby is, approved; and it is

FURTHER ORDERED, that said petitioners notify all persons desiring to be heard or to submit comments or exceptions to this Order Nisi by causing an attested copy of this Order Nisi to be published once in a newspaper of general circulation in that portion of the State in which operations are proposed to be conducted, said publication to be designated in an affidavit to be made on a copy of this Order Nisi and filed with this office; and it is

FURTHER ORDERED, that any person may file with the Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire 03301 a request for a hearing or comments or exceptions to the Petition no later than 15 days after the date of publication; and it is

FURTHER ORDERED, that this Order Nisi shall become effective 20 days after the date of publication unless the Commission orders otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of August, 1985.

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NH.PUC*08/14/85*[61179]*70 NH PUC 712*New Hampshire Electric Cooperative, Inc.

[Go to End of 61179]

70 NH PUC 712

Re New Hampshire Electric Cooperative, Inc.

DF 83-360, 21st Supplemental
Order No. 17,819

New Hampshire Public Utilities Commission

August 14, 1985

ORDER granting motion to correct errors in prior order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 422) in this docket; and

WHEREAS, on June 29, 1985, Gary McCool, an Intervenor in this proceeding, filed a Motion to Correct Further Errata; and

WHEREAS, no objections to the Motion to Correct Further Errata were filed by any party; and

WHEREAS, the Commission has reviewed each and every error listed in the Motion to Correct Further Errata; it is

ORDERED, that the Motion to Correct Further Errata be, and hereby is, granted in part and denied in part as set forth in Appendix A of this Order* which is incorporated herein.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1985.

*EDITOR'S NOTE: These corrections have been incorporated in Order No. 17,638 printed beginning at p. 424, supra.

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NH.PUC*08/14/85*[61180]*70 NH PUC 713*Public Service Company of New Hampshire

[Go to End of 61180]

70 NH PUC 713

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate, Conservation Law Foundation of New England, Inc., and Seacoast Anti-Pollution League

DF 84-200, 12th Supplemental
Order No. 17,820

New Hampshire Public Utilities Commission

August 14, 1985

ORDER setting schedule and agenda for additional hearings upon motion filed by an electric utility for removal of conditions attached to additional financing for completion of Seabrook nuclear power plant Unit 1.

Procedure, § 20 — Notice — Due process — Hearings.

Although 17 days' notice of an upcoming hearing is required under N.H. Admin. Rules, PUC 201.05, it was held that a six day notice of an upcoming hearing was sufficient where the subject of the notice consisted in effect of a broadening of the scope of a current hearing (which concerned conditions attached to additional financing for the Seabrook nuclear unit 1), where an expeditious handling of the matter was in the public interest, and where three days of direct testimony and cross-examination had already taken place, so that the parties involved were notified constructively of the issues involved.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On April 18, 1985, the Commission issued Report and Ninth Supplemental Order No. 17,558 in this docket, (70 NH PUC 164,66 PUR4th 349) which, inter alia, granted a request of Public Service Company of New Hampshire (PSNH or Company) for financing authority to raise \$525,000,000 pursuant to RSA Chapter 369 subject to the following conditions:

1. "...that the approval of the issuance and sale of the proposed securities be, and hereby is, subject to the condition that all Seabrook 1 joint owners have received regulatory authorization to finance their respective ownership shares of Seabrook 1 and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs..." (70 NH PUC at p. 269, 66 PUR4th at p.441)¹⁽²⁹⁸⁾ (Condition 1); and

2. "...that until further order of the commission, PSNH's request that the Commission remove the conditions imposed in Re Public Service

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Co. of New Hampshire, 69 NH PUC 552 (1984), which prohibits the company from contributing cash for the purpose of Seabrook construction at a level exceeding its ownership share of \$5 million per week be, and hereby is, denied provided, however, that any amount of expenditures less than PSNH's 35.6942 per cent share of \$5 million per week since December, 1984, may be aggregated and spent for any increase in joint funding levels for Seabrook 1 construction, but in no event more than 10 per cent of the net proceeds of the \$425 million in Order No. 17,222...." (70 NH PUC at p. 269, 66 PUR4th at pp. 441, 442) (Condition 2).

On May 10, 1985, the Commission issued Report and 10th Supplemental Order No. 17,601 (70 NH PUC 367) which granted a PSNH Motion for Clarification or in the Alternative for a Modification of a Condition in Order No. 17,558. Specifically, the Commission provided that:

...Public Service Company of New Hampshire may spend or contribute cash from the

proceeds of the securities sold pursuant to Order No. 17,222 (September 21, 1984) at a level up to 35.56942% of \$5 million per week; such expenditures in excess of 10% of \$406 million shall be credited against the proposed \$525 million financing and after the issuance and sale of the proposed \$525 million in securities, restored to Public Service Company of New Hampshire for general corporate purposes and monthly accounting of the proceeds in accordance with the requirements of Order No. 17,222.... (70 NH PUC at p. 385. See also, Re Seacoast Anti-Pollution League, Dockets 85-252, 85-253, Aug. 13, 1985 at 1.)

On June 28, 1985, PSNH filed a Motion for Further Order Regarding Level of Seabrook Construction Contributions requesting, in effect, that the Commission find that Condition 2 is satisfied and, accordingly, remove the spending limitation.

On July 1, 1985, the Commission issued an Order of Notice scheduling a hearing for July 16, 1985. At the July 16, 1985 hearing, the Company, consistent with its Motion represented, "In this proceeding we do not intend to attempt to have the Commission remove condition one or to satisfy condition one..." 39 Tr. 7530. The Commission subsequently held three days of hearings on July 16, 19 and 25, 1985.²⁽²⁹⁹⁾ At the end of the July 25, 1985 hearing, PSNH claimed that its proof was sufficient to satisfy both Condition 1 and Condition 2. Accordingly, it submitted an oral Motion which, in effect, requested that the June 28, 1985 Motion be amended to include Condition 1. 41 Tr. at 8214-16. Briefs were filed on August 1, 1985 by PSNH, SAPL, and the Campaign for Ratepayers' Rights. PSNH filed a reply brief on August 6, 1985. Additionally, SAPL filed a written objection to the Company's request to lift Condition 1 based on the contention, inter alia, that further notice and opportunity to be heard is necessary before the Commission could consider the request to lift Condition 1. SAPL went on to argue that if it had notice that Condition 1 would be considered, it would have

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engaged in additional discovery and cross-examination. On August 2, 1985, the Commission issued an Order of Notice which provided, among other things, that " ... the SAPL Response to PSNH Oral Motion to Lift Condition 1 is persuasive to the extent that it pertains to the need for further notice and an opportunity to be heard, see, Re Public Service Co. of New Hampshire, 122 N.H. 1062, 1072-1077, 51 PUR4th 298, 454 A.2d 435 (1982)..." The Commission determined that the need to review the remaining issues expeditiously outweighed the interest of adhering to our 17 day notice requirement and, pursuant to N.H. Admin. Rules, Puc 201.05, waived the notice requirement and scheduled a hearing on August 8, 1985 "...for the purpose of receiving such additional evidence and argument as may be material to whether the PSNH Motion to Remove Condition 1 should be granted or denied..." Additionally, the Commission directed the parties to notify PSNH and the Commission of the witnesses they request PSNH to produce at the August 8, 1985 hearing for the purpose of further cross-examination.

Pursuant to the August 1, 1985 Order of Notice, SAPL notified PSNH that it wished to cross-examine Mr. Robert Harrison, the Company's President and Chief Executive Officer and Mr. Robert Hildreth, of Merrill Lynch Capital Markets. PSNH objected to the requirement to produce Mr. Hildreth, but the Commission, through the Secretary, overruled the PSNH objection and directed PSNH to produce Mr. Hildreth.

On August 7, 1985, one day prior to the Commission's scheduled hearing, SAPL filed with the Supreme Court a Petition for a Writ of Prohibition. The Petition requested the Court to stay the Commission proceedings because of alleged jurisdictional defects and because of alleged deficiencies in the Commission's notice. The Court, after providing counsel with less than two hours notice, heard oral argument in the afternoon of August 8, 1985. Concurrently, the Commission held its scheduled August 8, 1985 hearing. The Consumer Advocate participated in those proceedings. SAPL participated in the morning and did not participate in the afternoon. CLF did not participate at all. Testimony was taken from Mr. Harrison and Mr. Hildreth and a briefing schedule which concluded on August 13, 1985 was established. No briefs were filed by any party.

On August 13, 1985, the Court denied SAPL's request for a Writ of Prohibition and remanded the case to the Commission " ... in order that it may, upon proper notice and consistent with due process and its own rules, hold additional hearings and issue such additional orders as it determines are necessary and appropriate with respect to the conditions it previously imposed in Docket No. 84-200. Specifically, all parties should be given adequate time to exchange data and are entitled to recall and examine witnesses heard in that part of the proceedings relating to condition one."³⁽³⁰⁰⁾ The Court further provided: "The effect of any orders issued by the PUC upon remand is stayed pending the completion of the present appeals, appeals from such orders or further order of this Court."

The purpose of the instant Order is

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to schedule the additional hearings directed by the Court and to define the scope of those hearings. Thus, this Order constitutes proper notice consistent with the requirements of due process, the Administrative Procedure Act, RSA 541-A:16 (Supp. 1983), and the Commission's own rules, N.H. Admin. Rules, Puc 201.05 and 203.01.

Prior to establishing the schedule and scope of further hearings, it is useful to address some of the concerns of the Intervenor as brought to the attention of the Commission in letters⁴⁽³⁰¹⁾ and in oral comments.⁵⁽³⁰²⁾ Those Intervenor concerns are that a 6-day notice was inadequate to allow them to prepare properly and participate effectively in the upcoming hearing. Additionally, the Intervenor claimed that the notice was deficient because the Commission did not provide adequate reasons for its decision to waive its 17-day notice requirement pursuant to N.H. Admin. Rules, Puc 201.05. We shall initially discuss our rationale for the notice period established in the August 2, 1985 Order of Notice. We will then address Commission concerns about the manner in which the notice issues were raised.

The August 2, 1985 Order of Notice was issued after due notice and three days of hearings had already taken place regarding Condition 2. It was issued to provide the necessary notice and opportunity to be heard so that we could consider PSNH's request to lift Condition 1 consistent with due process.⁶⁽³⁰³⁾ It is important to emphasize that the elements that PSNH must satisfy to justify lifting Condition 2 are virtually the same as those necessary to lift Condition 1.⁷⁽³⁰⁴⁾ The Intervenor had the benefit of the discovery, PSNH's direct case and the cross-examination and other information already developed in three days of hearings prior to the scheduled August 8,

1985 hearing. Under those circumstances, we believe that the Commission reasonably concluded that a 6-day notice period would not per se prejudice the participation of any party and would comply with procedural due process requirements. Additionally, the evidence developed in those three hearing days indicated that PSNH had made at least a prima facie showing that a delay in a Commission ruling to raise construction to the full funding level authorized by the joint owners carrying into September, 1985 would have significant adverse consequences on the cost and schedule of Seabrook 1.⁸⁽³⁰⁵⁾ Evidence was presented which indicates that the continuance of a \$5 million weekly

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construction level without increasing to a full funding level of approximately \$9 million per week would result in a minimum delay of three months or longer; with associated increases in the overall cost of the project.

We found in Order No. 17,558 that the financing to complete Seabrook I is consistent with the public good subject to the conditions set forth therein. If evidence relating to the increase in construction expenditures to assure timely completion consistent with our findings in Order No. 17,558 demonstrates that Condition 2 should be removed, it becomes essential to determine whether permanent financing to support that level of funding for construction should be authorized by removing the restriction imposed by Condition 1. The extent to which the financing of full construction may be supported by corporate funds without permanent financing is limited to the projected cash flow of PSNH in 1985. See, Exh. A-34. Therefore, if the material evidence relating to Conditions 1 and 2 demonstrates that the public good would be served by the removal of those conditions, it is essential that the Commission adjudicate the matter in a timely fashion to protect the public good. These considerations mandated the Commission's conclusion in the August 2, 1985 Order of Notice that "...the record evidence to date establishes that the need for expeditious review and decision outweighs the interest of adhering to the 17 day notice requirement..." The public good would be served if construction and financing delay could be avoided consistent with due process.

Given the above circumstances, the Commission must be concerned about the manner in which the Intervenors brought their complaints to the attention of the Commission. It is important to note that we received no request for postponement pursuant to N.H. Admin. Rules, Puc 203.11.⁹⁽³⁰⁶⁾ See also, 42 Tr. at 8329-30. Moreover, the complaints lodged and the nature of the allegations in effect assert that a 6-day notice period is per se defective. The Intervenors did not choose to provide the Commission with any information about how much additional time the Intervenors required and what they intended to accomplish in that additional time. Under these circumstances, the Intervenors have no legitimate complaint that the August 2, 1985 notice deprived them of their due process rights. In view of the Court's remand and the matters discussed above, we shall schedule an additional hearing for the purpose of receiving such additional evidence and argument as may be material to whether the Motion of PSNH to remove Conditions 1 and 2 should be granted or denied. In this context, all parties will be free to present evidence and to request that PSNH produce witnesses from either the Condition 2 hearings (July 16, 19 and 25, 1985) or the Condition 1 hearing (August 8, 1985). Additionally, the Commission believes that it is necessary on our own motion to direct PSNH to produce the Chief Executive

Officer of New England Power Company at the upcoming hearing. All parties should be on notice that the record of the hearings of July 16, 19 and 25, 1985 and August 8, 1985 will be incorporated by reference in the upcoming proceedings. The parties are also

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hereby advised that the Commission, having considered the reasons expressed above, finds that the public interest will be served by a waiver of the 17 day notice period pursuant to N.H. Admin. Rules. Puc 201.05.

The schedule for the further proceeding will be as follows:

A hearing shall be held on August 22, 1985. All discovery between the parties shall be completed by August 20, 1985. On August 20, 1985 the Intervenors must file with the Commission and serve on PSNH a request for the production of witnesses by PSNH and a list of witnesses that will be presented on behalf of the Intervenors. The list of witnesses to be presented by Intervenors should be accompanied by a short statement summarizing the scope and the nature of the evidence to be proffered.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that further proceedings be scheduled in this docket for the purpose of receiving such additional evidence and argument as may be material to whether the Motion of PSNH to remove Conditions 1 and 2 should be granted or denied; and it is

FURTHER ORDERED, that the 17 day notice requirement set forth in N.H. Admin. Rules, Puc 203.01 be, and hereby is, waived pursuant to N.H. Admin. Rules, Puc 201.05: and it is

FURTHER ORDERED, that the schedule of the further proceedings be, and hereby is, as follows:

A hearing shall be held on August 22, 1985. All discovery between the parties shall be completed by August 20, 1985. On August 20, 1985 the Intervenors must file with the Commission and serve on PSNH a request for the production of witnesses by PSNH and a list of witnesses that will be presented on behalf of the Intervenors. The list of witnesses to be presented by Intervenors should be accompanied by a short statement summarizing the scope and nature of the evidence to be proffered; and it is

FURTHER ORDERED, that PSNH produce the Chief Executive Officer of New England Power Company to give evidence at the August 22, 1985 hearing; and it is

FURTHER ORDERED, that the record of the hearings of July 16, 19 and 25, 1985 and August 8, 1985 will be, and hereby is, incorporated by reference into the proceedings noticed herein.

By Order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1985.

FOOTNOTES

¹The Commission also provided "...that before the securities approved herein may be issued and sold appropriate representation and proof of satisfaction of the aforementioned condition must be presented to the commission for its review, approval, and further order as may be necessary...." (Id. 70 NH PUC at p. 269, 66 PUR4th at p. 441.)

²Those hearings were held subject to a jurisdictional objection of the Seacoast Anti-Pollution League (SAPL). That objection was subsequently adjudicated by the Supreme Court. The Court's Order will be discussed, *infra*.

³The Court may have mistakenly referred to Condition 1 when, in fact, it meant to refer to the hearings to consider removing Condition 2. In any event, as will be discussed *infra*, we will provide all parties the opportunity to examine witnesses previously heard in the proceedings pertaining to both conditions.

⁴Letter of Conservation Law Foundation of New England, Inc. (CLF) dated August 9, 1985 and Letter of SAPL dated August 9, 1985.

⁵41 Tr. 8226-27.

⁶Although the Order of Notice by its terms was a favorable ruling on a SAPL objection, it would be misleading to state that the reason it was issued was solely because SAPL objected. Our independent analysis led us to conclude that we could not consider lifting Condition 1 without further notice and hearing and, accordingly, such notice would have been issued even if SAPL had not objected.

⁷This is not intended to be a ruling on PSNH's analysis that the weight of the evidence necessary to satisfy the two conditions differs. 39 Tr. 7536-37. We shall address appropriately the proper standards of proof for the various conditions in our order adjudicating the merits of the instant issues.

⁸On August 13, 1985, PSNH filed a letter over the signature of Frederick Plett which indicated that the Company could continue funding the project under the present conditions at \$9 million per week for approximately an additional three weeks in September, 1985 without exhausting the "bank" balance and suffering the adverse consequences described in testimony.

⁹It is true that Rule Puc 203.11 requires that requests for postponement be filed at least 7 days prior to the hearing except for good cause shown. Obviously, good cause exists if the Commission issues a 6-day notice.

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NH.PUC*08/16/85*[61175]*70 NH PUC 707*Frank Weber d/b/a Manana Restaurant

[Go to End of 61175]

70 NH PUC 707

Re Frank Weber d/b/a Manana Restaurant

DE 85-280, Order No. 17,808
New Hampshire Public Utilities Commission
August 16, 1985

ORDER granting interim license for the operation of a customer-owned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS: Frank Weber, dba Manana Restaurant, 647 Amherst Street, Nashua, New Hampshire, 03063, filed with the Commission on July 30, 1985 a petition seeking status as a public utility for the limited purpose of installing and operating a COCOT at Manana Restaurant, 647 Amherst Street, Nashua, New Hampshire, 03063; and

WHEREAS; Mr. Weber assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ6CH-14382-CX-E; and

WHEREAS, Mr. Weber also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Frank Weber, dba Manana Restaurant, for the operation of one COCOT to be located at the Nashua address cited above; and it is

FURTHER ORDERED, that

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noncompliance with guidelines and rules regarding the operation of COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 1985.

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NH.PUC*08/16/85*[61181]*70 NH PUC 719*Public Service Company of New Hampshire

[Go to End of 61181]

70 NH PUC 719

Re Public Service Company of New Hampshire

Intervenor: Seacoast Anti-Pollution League

DF 84-200, 13th Supplemental
Order No. 17,821

New Hampshire Public Utilities Commission

August 16, 1985

ORDER granting request to postpone and set new schedule of hearings upon motion filed by an electric utility for removal of conditions attached to additional financing for completion of Seabrook nuclear power plant Unit 1.

SUPPLEMENTAL ORDER

WHEREAS, the Commission by Report and Twelfth Supplemental Order No. 17,820 (70 NH PUC 713) scheduled a hearing for August 22, 1985 for the purpose of receiving such additional evidence and argument as may be material to whether motions of Public Service Company of New Hampshire to remove Conditions 1 and 2 of Report and Ninth Supplemental Order No. 17,558, (70 NH PUC 164, 66 PUR4th 349, 441, 442) should be granted or denied; and

WHEREAS, on August 16, 1985 the Seacoast Anti-Pollution League (SAPL) filed a Motion to Postpone Hearing which averred, in part, that counsel will be unable to attend the August 22, 1985 hearing; and

WHEREAS, the Commission has been informally advised that other parties may require additional discovery and preparation time to participate effectively in the hearing scheduled for August 22, 1985; and

WHEREAS, for the reasons set forth in Order 17,820 the Commission finds that expeditious action is necessary to serve the public good; and

WHEREAS, the Commission also finds that it is necessary to provide all parties with sufficient time to engage in discovery and to participate effectively in the aforementioned hearing; it is therefore

ORDERED, that the Motion of SAPL to Postpone Hearing be, and hereby is, granted; and it is

FURTHER ORDERED, that the schedule adopted in Order 17,820 be, and hereby is, amended as follows: A hearing shall be held on September 5, 1985. All discovery between the parties shall be completed by August 29, 1985. On August 30, 1985, the Intervenor must file with the Commission and serve on Public Service Company of New Hampshire a request for the production of witnesses by Public Service Company of New Hampshire and a list of witnesses that will be presented on behalf of the Intervenor. The list of witnesses to be presented by

Intervenors should be accompanied by a short statement summarizing the scope and

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nature of the evidence to be proffered; and it is

FURTHER ORDERED, that PSNH produce the Chief Executive Officer of New England Power Company to give evidence at the September 5, 1985 hearing; and it is

FURTHER ORDERED, that all other provisions of Order 17,820 remain in full force and effect.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of August 1985.

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NH.PUC*08/19/85*[61182]*70 NH PUC 720*Mountain Springs Water Company

[Go to End of 61182]

70 NH PUC 720

Re Mountain Springs Water Company

Intervenor: Mountain Lakes District

DR 85-5, Second Supplemental
Order No. 17,822

New Hampshire Public Utilities Commission

August 19, 1985

APPLICATION for authority to increase rates for retail water service; granted, as modified.

Expenses, § 96 — Salaries and wages — Corporate officers — Water company.

An annual salary expense of \$5,000 was approved as reasonable for the corporate president of a water utility, based upon a hypothetical annual salary of \$20,249 (representing the weighted average of a comparable state employee salary for the duties performed by the president), annualized downward to reflect the fact that, in a "properly run" water company of the size of the rate applicant, the president's responsibilities should require only about one day of work per week, or about 514 hours per year. [1] p. 722.

Expenses, § 77 — Materials and supplies — Automobile — Water company.

An annual expense of \$442 was allowed to recover operating costs for an automobile incurred by a water utility. [2] p. 723.

Expenses, § 81 — Office rental — Market rates — Water company.

An allowable office rental expense for a water utility was calculated on the basis of a market

rate (\$7.00 per square foot) for comparable office space, as determined by interviews with realtors in and around the area of the utility's offices. [3] p. 724.

Expenses, § 144 — Water utilities — Water distribution system — Monitoring.

For ratemaking purposes, a water utility was authorized to recover costs for monitoring of its water distribution system calculated on the assumption that the monitoring function should require an average of about one hour per day of labor time. [4] p. 724.

Expenses, § 144 — Water utilities — Filter bed — Cleaning.

Recovery of costs incurred by a water utility for cleaning its filter bed was denied because of the failure of the utility to complete an engineering study to assess the feasibility of developing a new source of water supply. [5] p. 725.

Expenses, § 144 — Water utilities — Customer refunds — Cost recovery.

A water utility was denied authority for ratemaking purposes to recover the cost of refunding standby fees to standby customers, as required by court order, because of the culpability of the water utility management concerning a mistaken interpretation of deed covenants, which lead to

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contractual difficulties and a legal ruling that the standby fees were invalid. [6] p. 726.

Expenses, § 63 — Legal costs — Water utility.

A water utility was allowed for ratemaking purposes to recover legal expenses as an ongoing revenue adjustment, inasmuch as the utility was and continued to be engaged in litigation. [7] p. 728.

Expenses, § 92 — Rate case costs — Amortization period.

A three-year period was approved for amortization of water utility rate case expenses. [8] p. 728.

Expenses, § 109 — Taxes — Property taxes — Current assessments — Post test year adjustment.

Property taxes incurred by a water utility were adjusted for ratemaking purposes to account for known and measurable post test year changes in assessments. [9] p. 729.

Expenses, § 109 — Taxes — Property taxes — Assessments — Management prudence.

Water utility management was placed on notice that in future proceedings, the commission would carefully examine its actions in connection with current real estate tax assessments, given the fact that over a oneyear period, the utility's annual real estate tax had increased from \$10,639 to \$26,039, so that its annual property tax bill equaled about 24% of rate base. [10] p. 729.

Depreciation, § 81 — Water utility plant — Composite rate.

A 2.1% composite depreciation rate was adopted for ratemaking purposes for water utility plant. [11] p. 730.

Expenses, § 114 — Income taxes — Calculation method.

Ordinarily, the federal income tax expense is calculated for ratemaking purposes by tax effecting the rate of return to calculate the revenues necessary to meet the equity return requirement and the corporate income tax obligations generated by those equity returns; there is no federal income tax obligation on the rate of return on debt capital because debt interest expense is deducted from income. [12] p. 730.

Expenses, § 114 — Income taxes — Rate of return.

A water utility was denied any expense allowance for ratemaking purposes for federal income taxes because the equity component of its capital structure was 0.00%; because there was no rate of return on common equity, there could be no federal income tax expense. [13] p. 730.

Return, § 26.1 — Water utility.

A capital structure of 100% debt capital was assigned to a water utility for ratemaking purposes. [14] p. 731.

Return, § 115 — Water utility.

An overall rate of return of 11.5% was approved for a water utility with a 100% debt capitalization. [15] p. 731.

APPEARANCES: Meyers and Laufer by David William Jordan, Esquire, for Mountain Springs Water Company, Inc.; Laurance F. Gardner, Esquire, for the Mountain Lakes District.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 31, 1984, Mountain Springs Water Company, Inc. (Mountain Springs or Company) filed a Petition requesting an annual increase in revenues of \$105,609. If granted, the Company's Petition will result in annual rates of \$819 — a 219% increase. By Order No. 17,409, (January 18, 1985) the Commission suspended the filing pending investigation and hearing. An Order of Notice was issued on February 14, 1985 setting a prehearing conference for March 13, 1985. The prehearing conference was held as noticed and subsequently, on March 26, 1985, the Commission issued a procedural schedule establishing a June 25, 1985 hearing date.

II. POSITION OF THE PARTIES

At the June 25, 1985 hearing, testimony in support of Mountain Springs' Petition was provided by Mary M.

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Taber, President of Mountain Springs. Mrs. Taber's testimony was directed at the revenue requirements necessary to cover operating expenses and to provide a fair rate of return. Robert Macinni, Vice President and Treasurer of Fenn Construction, also presented testimony in support of Mountain Springs' Petition. Mr. Macinni's testimony addressed the monitoring of the water system and the expenses for infiltration well cleaning.

The Mountain Lakes District (Intervenor) opposed the Mountain Springs' Petition. In support of its position, Mark Keeney, Mountain Lakes District Manager, presented testimony which addressed the status of the infiltration well.

James C. Nicholson, PUC Examiner, and Dr. Sarah P. Voll, Chief Economist, presented testimony which set forth the position of the Staff. Mr. Nicholson's testimony discussed the results of a Staff audit and addressed the test year expenses as filed in support of the Mountain Springs' Petition. Dr. Voll's testimony provided a rate of return recommendation for ratemaking purposes. Included in her testimony was an analysis of the capital structure, the individual security issues of Mountain Springs and a calculation of cost rates for senior capital and common equity.

III. COMMISSION ANALYSIS

After review and consideration, we have decided to grant conditionally a rate increase of \$81,124. Our decision is based on our review of both disputed and undisputed issues as well as the evidence pertinent to the operation of the Mountain Springs System.

Initially, we will state that our review of the undisputed issues revealed no apparent deficiency in the Company's filing. Accordingly, we will find that the rates based on the undisputed issues are just and reasonable and we will grant the Company's request to the extent that it is based on those rate elements. We will now turn our attention to the disputed issues.

A. Expenses

Most of the material disputes in this proceeding concern the Company's proposed rates based on operation and maintenance expenses. Those disputed issues concern expenses for: 1) Officer's salary; 2) Automobile expense; 3) Rent; 4) Production expense associated with daily monitoring; 5) Production expense associated with filter bed cleaning; 6) Refund of standby fees; 7) Legal expenses; 8) Real estate taxes; 9) Depreciation; 10) Income taxes; and 11) Customer Accounting. We shall address each of the disputed expense issues in turn.

1. Officer's Salary

[1] The Company proposed a salary of \$12,480 for Mrs. Mary Taber, Mountain Springs President. Exh. 2; Exhibit at paragraph 11. The Staff proposed a salary of \$5,000. The Intervenor supported the Staff position.

The Company's figure is based on what it deems to be the weighted average of a comparable state employee salary for the duties performed by Mrs. Taber. Thus, the Company calculated that a full time state employee performing comparable duties would earn an annual salary of \$20,249. See e.g., Exh. 8. The Company then reduced that figure to reflect the less than full time

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hours devoted to the Company by Mrs. Taber. Thus, the Company's range of reasonable expense was between \$12,480 (62% time) and \$15,435 (76% time). See also, Exh. 4 at paragraph 16. The Company selected the number at the lower end of its range.

The Staff believed that Mrs. Taber's work is comparable to the work performed by an Account Steno; work that is compensated at \$6.00 per hour. Additionally, the Staff estimated

that Mrs. Taber's work should take no more than 16 hours (or two working days) per week. Thus, the Staff calculated a salary \$4,992 which was rounded up to its proposed allowable salary of \$5,000.

After review and consideration, we have decided to accept the Staff's figure of \$5,000 annually, but not for the reason proffered by Staff. The compensation level of \$6.00 per hour as analogous to the salary of an Account Steno is too low. As President of the utility, Mrs. Taber has responsibilities over and above the functions performed by an Account Steno and she should be compensated for those responsibilities. Thus, we will accept the salary level of \$20,249 proffered by the Company (Exh. 8); a salary that breaks down to \$9.74 per hour for a forty hour week. However, we believe that in a properly run water company of the size of Mountain Springs, the performance of the President's responsibilities should take little more than one day a week on the average. One nine to ten hour day per week accumulates to 514 hours per year. At the \$9.74 per hour rate, this equals a salary of \$5,000.

We recognize that Mrs. Taber testified that she devoted over 1,300 hours per year to the Company; a figure that was not seriously contested. We have not based our finding on a rejection of this time estimate as a fact. Rather, given that only 175 customers must be billed and given that the Company's legal, accounting and production work are delegated, to a large extent, to professionals, we cannot accept that more time than nine to ten hours per week (which is over 64 eight hour days per year) would be necessary if the Company were properly managed. Given that the actual time devoted to the Company was clearly excessive and the evidence offered by the Company contained only the conclusory summation of those hours, we cannot find that the Company has met its burden of proving that over 1,300 hours are required to manage the Company properly. See, RSA:8. We will therefore reject the Company's officer salary expense and accept the Staff's.

2. Automobile Expenses

[2] The Company proposed to recover automobile expenses of \$442: The Staff asserted that the automobile was also used for personal purposes and proposed to reduce the recovery by 50% to \$221.00. The Intervenor agreed with the Staff. After review, we will accept the Company's evidence. The automobile expenses were supported by a detailed breakdown of each trip. Exh. 5. Under cross-examination Mrs. Taber was able to specify a proper business reason for each individual trip identified by the questioner. The rate of \$.205 per mile is also reasonable.

We note that the automobile used by Mrs. Taber is a Mercedes which is borrowed from a Company conveyed by Mrs. Taber to her two sons. See, 1 Tr. at 144-145. While these facts warrant concern about the Company's public relations, we cannot say that the \$442

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expense, based as it is on logged mileage at prevailing per mile costs, falls outside the range of reasonableness for a Company like Mountain Springs. Accordingly, we will approve the expense.

3. Rent

[3] The Company proposed to recover \$3,600 in rent based on actual test year expense pro

formed to reflect a \$600 rent increase. (Exh. 2; Exh. 3 at paragraph 11). The Staff recommended that this expense be reduced to \$1,400 per year. The Intervenor supported the Staff adjustment. After review and consideration, we will accept the Staff figures.

The Staff's analysis was based on the application of a market rate for comparable office space to the space rented by the Company. The market rate was determined by interviews with realtors in and around the area of the Company's offices. On the basis of those interviews, the Staff recommended an application of the market rate of \$7.00 per square foot for commercial property to the Company's 200 square foot office.

The Staff's reasoning is persuasive. As noted by the Staff, the Company's office is located in the breezeway of Mrs. Taber's residence. The residence is owned by a family trust. See e.g., Exh. 17 at 7. Thus, we cannot review this cost as it were the result of an arms length transaction. Rather, the reasonableness of such a non-arms length cost must be tested by comparing it to prevailing market rates.

The Company argued that the Staff's reasoning was based on the erroneous assumption that a portion of the space was used for personal purposes. We have not based our finding on such an assumption. Our finding assumes that the office is used entirely for business purposes — business purposes that should not give rise to a cost over prevailing market rates. The Company further argues that the Staff witness, Mr. Nicholson, acknowledged that a rate of \$9.00 per square foot is within a range of reasonableness; a cost which would justify recovery of a minimum of \$1,800. We note, however, that Mr. Nicholson also testified that a rate as low as \$6.00 per square foot is within the range of reasonableness; a cost which only justifies recovery of \$1,200. We are not required to accept a figure that is either at the high end or the low end of the range of reasonable market rates.

After review of all the circumstances and all the arguments, we find that the Staff's recommendation is a reasonable midpoint within a range of reasonableness. Accordingly, we will allow a recovery of a \$1,400 rent expense

4. Production — Monitoring

[4] The Company proposed a pro forma adjustment of \$12,960 to recover the cost of monitoring the Company's water system. The Staff proposed a pro forma adjustment of \$1,652 for this cost; a figure which, when added to the test year cost of \$4,567, totals \$6,219 in monitoring expenses. The Intervenor supported the Staff position. After review and consideration, we will adopt the Staff position.

The Company's position was based on the testimony of Mr. Macinni who claimed that he needs to devote an average of 3.24 hours per day to the monitoring function. However, cross-examination indicates that the 3.24 hour time requirement reflects the high

end of the range of necessary time. See generally, 1 Tr. 15-71. It is not proper to assume that the maximum necessary time is an average. To do so would imply that Mr. Macinni must devote 1,183 hours per year to the task; a figure that translates to 148 eight hour working days. A properly managed and properly functioning water system should not demand that level of

production monitoring time commitment. We therefore believe that the evidence of the Staff (See e.g., Exh. 17 at 4), in combination with the cross-examination of Mr. Macinni, supports a finding that the monitoring function should average one hour per day. The Staff estimate of the cost of a one hour per day monitoring of \$6,219 (Exh. 17 at 4) has not been refuted. The Staff audit also revealed that test year expenditures to Fenn Construction for monitoring was \$4,567. The Staff recommended allowing the \$1,652 difference as a pro forma adjustment. We find that the estimate of pro forma expenses is reasonable and we will therefore allow the Company to increase its production monitoring costs by \$1,652.

5. Production — Filter Bed Maintenance

[5] The Company proposed a pro forma adjustment to production expense of \$9,958 to amortize the cost of cleaning its filter bed. Exh. 10. The Company presented the testimony of Mr. Macinni (Exh. 11) to support the total cleaning cost of \$29,875. The \$9,958 amortizes this cost over approximately 3 years; a period of time that, according to the Company, represents the proper intervals between filter bed cleaning. The Staff challenged the accuracy of this estimate. The Intervenor supported the Staff and went on to challenge the necessity of performing the filter bed cleaning as often as proposed by the Company.

After review and consideration, we will deny this request, without prejudice, pending receipt of and review by the Commission of the Company's plan to meet its long term water supply needs. Substantial evidence in this proceeding supports the finding that the current supply situation is unsatisfactory and must be addressed. In this context, the record reflects that, based on the recommendation of this Commission and the Water Supply and Pollution Control Commission, the Company contacted an engineering firm to assess the feasibility of developing a new source of supply. The Company has not yet received the analysis of that firm. See e.g., 1 Tr. at 81-85. It is unsound to spend the significant sum of \$29,875 to clean a filter bed periodically if there exist economic alternatives. Neither the Company nor the Commission will know if economic alternatives exist until they are identified and analyzed. Accordingly, we cannot approve this expense until the engineering firm submits its results to the Company, those results are analyzed by the Company, and the Company's analysis is filed with and reviewed by this Commission. We will direct the Company to file its analysis no later than 60 days from the date of this Order. After such Commission review, we will allow an appropriate modification of rates for the purpose of pursuing the most economic long term supply alternative. In the interim, the record supports a finding that short term solutions (such as punching a hole in the filter bed) will enable the Company to meet temporarily its service obligations. The Staff recommended that we allow

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a \$1,000 pro forma adjustment to cover the cost of those interim measures. We will accept the Staff's recommendation with the proviso that interim measures include both the interim cost of maintaining the filter bed and the cost of conducting the study directed herein. However, we will require the Company to keep accurate records as to the cost of any interim measures. Any unexpended portion of the \$1,000 pro forma adjustment will be credited to any rate modification that may be adopted by the Commission.

6. Standby Fees

[6] The Company proposed an adjustment of \$21,987.30 to recover the cost of standby fees which must be returned to standby customers pursuant to *Richter v. Mountain Springs Water Co.*, 122 N.H. 850, — A.2d — (1982).¹⁽³⁰⁷⁾ This adjustment amortizes the total cost of refunding those fees of \$109,936.50 over a five year period. The finance staff did not take a position on whether the Commission should include standby fees in the Company's revenue requirement; however, it recommended that if the Commission decided to include standby refund costs in rates, that 25% be allocated to the Company and 75% to ratepayers. Exh. 17 at 12-13; 2 Tr. 270-271. The Intervenor contended that the total cost of the standby fee refunds should be allocated to the Company. The Intervenor based its position on the Commission's rationale in *Re Mountain Springs Water Co.*, 68 NH PUC 723 (1983) (Order 16,803). After review and consideration, we have decided to adhere to our reasoning in Order 16,803. Thus, we will accept the position of the Intervenor and disallow the expense for standby fee refunds.

The starting point of our analysis is, as it must be, Order 16,803; which Order will be incorporated by reference herein and adopted in this docket. There the Commission determined that two factors govern our decision:

The first factor involves the legal effect of the decisions of the Commission and the Court. The second is the culpable role played by management in creating the present difficulties. (68 NH PUC at p. 725).

With respect to the first factor, the Commission noted that the standby fee rate structure was based on findings that such a structure would produce just and reasonable rates. (See, 68 NH PUC at p. 725, *Re Mountain Springs Water Co.*, 66 NH PUC 487 [1981], remanded on other grounds; *Re Mountain Springs Water Co.*, 123 N.H. 653, — A.2d — [1983]; *Re Mountain Springs Water Co.*, 62 NH PUC 343 [1977]; *Re Mountain Springs Water Company*, 61 NH PUC 254 [1976].) In *Richter*, the court held the standby fees to be invalid because of special contractual factors; not because of any improper determination by the Commission. Thus, we must continue to assume that the rate structure approved by the Commission fairly allocated costs between the various customer classes.

With respect to the second factor, we found that management was responsible for its inability to impose certain standby fees. This was based on: 1) the identity of the management of the

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Company and TCH; 2) the assumption that the deed covenants formed a basis of the bargain for the purchase of real estate, indicating that TCH had already been compensated for those covenants via the purchase price of the property; and 3) management's failure to minimize its exposure to future liability. Since management was responsible for its inability to recover just and reasonable rates, the Commission determined that it is unfair to impose the cost on the Company's general service ratepayers.

Subsequent to the issuance of Order 16,803, the Commission issued Second Supplemental Order No. 17,083 (69 NH PUC 331) (Order 17,083) which provided, inter alia, that: 1) the Commission had not made findings of fact or rulings of law in Docket No. DR 82-359; 2) that

the orders issued in that docket were issued without prejudice to the right of any party to address the issues in an appropriate future proceeding; and 3) that the orders continue to be valid solely for the purpose of providing the parties with a framework within which to present their positions in an appropriate proceeding. In the instant docket, the Company has requested the recovery of the cost of refunding standby fees from its ratepayers. Thus, this is an appropriate proceeding to consider the issue within the framework of analysis provided in Order 16,803. The Company cannot seriously claim that it did not have notice of this issue or of the analysis to be employed to evaluate the Company's request. The Orders in DR 82-359 provided such notice as did our language in Report and Order No. 17,667 (70 NH PUC 543). Order 17,667, issued in response to a Company Motion for Specification of Issues, provided, inter alia, "Commissioner Iacopino advised the company at the hearing that one issue of concern to him is whether the uncollected standby fees should be collected by the Company."

In the face of this notice, the Company supported its proposed standby fee recovery solely on the rationale that because standby fees lowered the rates to general service customers and because the Company has never earned an equity return, the entire benefit of those fees has gone to the customers. See, Exh. 3 at paragraph 8, 1 Tr. 104-105. This assertion, even if accepted, does not address the Commission rationale set forth at Order 16,803. The Company did not demonstrate that its previous rate structure, which included standby fees, resulted in rates which were unjust and unreasonable.²⁽³⁰⁸⁾ Additionally, the Company did not demonstrate that the responsibility for its inability to retain those revenues should not rest with the Company's management. Certainly, we cannot conclude on the basis of the current record that there was not an identity of management between TCH and the Company and that TCH/Mountain Springs did not already receive an economic benefit from including the restrictive

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covenants in the deeds. Thus, the Company failed to meet its burden of proving that the revenues associated with the standby fee refund are just and reasonable within the framework of analysis noticed without objection³⁽³⁰⁹⁾ by the Commission. RSA 378:8; Order 17,667 in this Docket; Orders 17,083, 16,859 and 16,803 in Docket No. DR 82-359. Accordingly, the proposed \$21,987 standby fee refund recovery will be disallowed.

7. Legal Expenses

[7,8] The Company's books reflect a test year legal expense of \$5,910. The Intervenor challenged this expense. Inasmuch as the Company was and continues to be engaged in litigation, the recovery of legal expenses as an ongoing revenue adjustment will be allowed. The Company should be on notice, however, that the Commission is concerned about whether this type of expense should be included as an ongoing expense for ratemaking purposes. Certainly, it is reasonable to expect that the many lawsuits in which the Company is participating will one day be resolved. After that time, legal expenses will, presumably, diminish. Since we do not expect this to occur prior to the next rate case, we have allowed the expense to be included in the rates established herein. However, we shall continue to monitor the situation and, if warranted, we shall not hesitate to open a proceeding on our own motion pursuant to RSA 378:7 to make appropriate rate adjustments in the interim.

In addition to test year legal expenses, the Company is proposing to recover \$10,683.81 in rate case expenses.⁴⁽³¹⁰⁾ The amount to be recovered in rate case expense has not been disputed. The dispute here is directed at the period of time over which the rate case expense is to be amortized. The Company proposed a two year amortization. The Staff proposed a three year amortization. The Intervenor agreed with the Staff.

After review and consideration, we will adopt the Staff position. The Company's rationale for a two year amortization period was that two years is "&...the expected interval between rate cases for utilities." Company Memorandum of July 12, 1985 at 22. There is no record support for the Company's assertion and we decline to base a finding such as this on expected average intervals between rate cases.⁵⁽³¹¹⁾ While such an expected interval is a factor to be considered, we must also consider the magnitude of the cost as compared to total revenue requirement and the fairness of such a period to both ratepayers and the Company. RSA 363:17-a. Given the instant circumstances, we find that the three year period recommended by Staff best balances all the

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various concerns. Accordingly, the Company will be permitted to recover \$3,561 for the next three years. Thereafter, the Company's rates are to be reduced to reflect the accomplished recovery of rate case expenses.

Accordingly, the Company will be permitted to include in rates a total of \$9,471 in legal expenses to reflect test year expenses (\$5,910) and amortization of rate case expense (\$3,561).

8. Real Estate Taxes

[9,10] The Company proposed to recover \$29,004 in real estate taxes based on its actual test year expense. The Staff proposed to allow the Company \$26,039; an amount that reflects actual property tax expenses subsequent to the test year. The Intervenor argued that no increase from the property tax expense of \$10,639 allowed in the last rate case should be permitted. The Intervenor's rationale is that the Company declined to contest its tax assessment, partly because it wished to enhance its position in other judicial proceedings.

After review and consideration, we will accept the Staff's position. The Company's position will be rejected because it does not reflect reality. Costs such as property tax expenses are typically pro formed to reflect post test year information about known and measurable changes. In this proceeding, the actual post test year tax bill satisfies the standard because the change is both: 1) known; and 2) measurable. Accordingly, the Staff proposal is most consistent with the Company's actual cost.

In arriving at our decision, we have considered carefully the Intervenor's argument. While that argument is not without merit, we do not believe it is appropriate to adopt it in this case. Nevertheless, the issues raised by the Intervenor warrant further comment.

The Intervenor contended that management was imprudent because it did not challenge the increase in the tax assessment. The Intervenor went on to argue that management's failure to challenge the assessment was due to its desire to enhance its position in a concurrent judicial condemnation proceeding; an argument that implies that management's motives were improper.

On the basis of the current record, we do not believe that there is substantial evidence to support a finding of improper motives. Accordingly, the Intervenor argument will be rejected. This does not end the matter, however. The magnitude of the property tax assessment as it relates to the Company's approved rate base is a cause of Commission concern. As discussed infra, the rate base approved in this proceeding will be \$108,165. Thus, a tax expense of \$26,039 is an annual property tax expense that is slightly higher than 24% of the Company's rate base. We believe that a property tax expense of this magnitude should be of as much concern to the Company as it is to the Commission.

It is axiomatic that the Company's management has the responsibility of minimizing costs for the benefit of ratepayers, consistent with the long term operation of the utility. Taxation is one of many areas which should be monitored by management so that realistic opportunities to reduce cost can be pursued. (See e.g., *Public Service Co. of New Hampshire v. Town of Seabrook*, 126 N.H. —, 496 A.2d 352 [1985]; *Re Public Service Co. of New Hampshire*, 122 N.H. 919, 451 A.2d 1321 [1982]. When taxes reach a magnitude of 24% of rate base, management certainly has the

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responsibility to assess the situation to determine whether the possibility of reducing this cost is realistic.

In the instant proceeding, we do not have an evidentiary basis to conclude that management did not assess the situation and act properly. Since the \$26,039 tax expense is based on actual cost, we cannot conclude that it is per se unreasonable. Rather, we find that such an expense is at the high end of a range of acceptability given the instant record. However, we are hereby providing notice that in future proceedings, we are going to review thoroughly management's reasons for declining to contest a tax expense of such magnitude. The taxing municipality should also be aware of the Commission's concern that property taxes have been established at a level of 24% of the Company's rate base in an instance where the Company does not appear to consume municipal services at that level and where the Company provides necessary water service to the citizens of the municipality.

9. Depreciation

[11] The Company proposed to recover \$3,603 in depreciation expense. The Staff asserted that the appropriate level of depreciation expense is \$2,337. The Intervenor supported the Staff position.

After review and consideration, we will accept the Staff position. The Company's proposal was based on its allocation of the \$400,000 of customer contributions in aid of construction to various rate base components. That credit was disproportionately allocated to mains; an asset which has a 50 year life. Exh. 2 at Schedule 1 Attachment E; 1 Tr. 88-90. At a 50 year useful life, mains have the highest longevity of any of the Company's assets. Thus, the allocation adopted by the Company increases the depreciation from 2.1% to 3.2%. *Id.* While the breakdown of individual useful lives appears to be supported (See e.g., Exh. 13), the Company's decision on how to allocate contributions among those individual useful lives is not supported by any studies or expert testimony. *Id.*; See also, 2 Tr. 190-191, 197-198. The effect of the Company's

allocation was to maximize the effect of contributions on the depreciation rate. Without more evidence, we cannot find that the Company has met its burden of supporting that effect. RSA 378:8. In the absence of such further evidence, the Staff's proposal, which allocates contributions proportionately over all assets, is reasonable. Accordingly, we will continue to utilize a 2.1% composite useful life. This corresponds to a revenue requirement of \$2,337.

10. Income Taxes

[12,13] The Company is proposing to recover \$10,494 in federal income tax expense. See e.g., Company Memorandum of July 12, 1985 at 25; Exh. 2 at 2. Generally, this expense is calculated by tax effecting the rate of return to calculate the revenues necessary to meet the equity return requirement and the corporate income tax obligations generated by those equity returns.⁶⁽³¹²⁾ As discussed infra, we find herein that the equity component of the Company's capital structure is 0%. Since there is no return on equity, there can be no federal income tax expense. Since the Company does not pay any

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federal income tax, the Company has not met its burden of proving that the proposed rate adjustment for such tax expense is necessary. RSA 378:8. Accordingly, the proposed recovery of \$10,494 in federal income tax expense will be disallowed.

11. Customer Accounting

In its test year, the Company incurred a customer accounting expense of \$176. This is based on the use of annual billing during the test year. The Company proposed a pro forma adjustment of \$550 to compensate it for the cost of going to monthly billing. The Staff disputed the pro forma adjustment. After review and consideration, we will reject the Company's proposed pro forma adjustment. Departure from test year data requires that the updated expense be both known and measurable. The Company's estimate of increased cost does not meet the "known and measurable" test. It is not supported and cannot be accorded any weight above that accorded to speculation. Accordingly, the pro forma adjustment of \$550 in customer accounting expense will be rejected. The Company's request to be permitted to bill monthly will likewise be denied.

B. Return

The Company proposed to recover \$12,329 in revenues based on a cost of capital of 11.51% applied to a rate base of \$107,118. See e.g., Exh. 2 at 2. As indicated, the return requirement is based on findings with respect to two rate elements: 1) rate base; and 2) cost of capital. We shall address each rate element in turn.

1. Rate Base

There was no material dispute about the rate base per se. However, the resolution of the depreciation issue will affect the rate base calculation. The Company's proposed rate base was \$107,118 after-appropriate adjustments were made for contributions in aid of construction and depreciation. Exh. 2 at Schedule 3. The adjustment for depreciation was based on the Company's proposed depreciation expense of \$3,603. As discussed supra, we have found the appropriate depreciation expense to be \$2,337. Thus, the Company's rate base must be increased to \$108,165 to reflect the lower reduction for depreciation.

2. Cost of Capital

[14,15] There is no material dispute about the cost of capital. The Company proposed a cost of capital of 11.51%. The Staff proposed a cost of capital of 11.5%. The difference between the two figures arises from differing capital structure recommendations. Thus, we will address the issue of the Company's capital structure.

The Company's proposed capital structure includes an equity component. The Staff's proposed capital structure also recognizes an equity component, but accords that component no weight because it is offset by a negative \$796,514 in earned surplus. See, Exh. 18 at 8. The Staff testimony on the offsetting effect of earned surplus was unchallenged in cross-examination. Thus, the remaining capitalization is composed of debt in the form of a Small Business Administration (SBA) loan at a cost of 11.5%. See e.g., Exh. 18 at 12. After review and

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consideration, we find that the Staff recommendation is most consistent with proper ratemaking analysis. Accordingly, the Company will be permitted to earn a rate of return of 11.5% based on a capitalization of 100% debt. The 11.5% cost of capital applied to a rate base of \$108,165 results in a return element of \$12,439.

While the difference between the Company and the Staff cost of capital is de minimus for the purpose of calculating the return requirement, the effect is significant for the purposes of the tax calculation. That adjustment has already been discussed supra.

3. Application of Revenues

The application of revenues is generally not part of a rate case. However, the record in this proceeding warrants the imposition of measures to address the Commission's concerns in this area. Those concerns arise from evidence which indicates that the Company has not been making payments on its SBA loan. As discussed above, we believe it is proper ratemaking practice to allow the Company sufficient revenue to meet its obligations to its investors to the extent that such investment capital is reflected in rate base. Thus, the Company is herein permitted to recover cost of capital revenues in the amount of \$12,439. However, given that those revenues are allowed for the purpose of meeting debt obligations, it is incumbent on management to take measures to ensure that the debt payments are made.

The Commission's concern in this area is fueled by the possible adverse consequences of default. Those consequences could be as serious as an attempt to foreclose on the Company's assets in satisfaction of the debt obligations. Needless to say, such consequences could have a significant and adverse affect on the Company's ability to render safe reliable service.

Accordingly, the Commission herein will direct the Company to establish a separate escrow account. The Company will be directed further to deposit in that account the \$12,439 associated with its rate of return requirement. The Company will: be permitted to apply that account automatically to its debt obligations to the SBA. If the Company wishes to utilize the funds in that account for any other purpose, it may do so only after first seeking and obtaining the formal approval of this Commission.

IV. CONCLUSION

As a result of the findings and conclusions set forth herein, we will allow the following elements to be included in the Company's revenue requirement.

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

Production
 Labor
 Fuel
 M&S
 Total Production
 Distribution
 Customer Accounting
 Admin. & General
 Officer's Salary
 Auto Expense
 Telephone
 Rent
 Accounting

Legal
 Other
 Total A&G
 Taxes - Property
 Taxes - Other
 Taxes - F.I.T.
 Depreciation
 Standby Fee Refund
 Return on Rate Base
 TOTAL REVENUE REQUIREMENT

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

⁷ Test year expense	\$7129	
Pro forma adjustment monitoring		1,652
TOTAL PRODUCTION LABOR		\$8,781

⁸ Test year expense	\$2,423	
Pro forma adjustment (Interim measure)		1,000
TOTAL PRODUCTION (M&S)		\$3,423

⁹ Test year expense	\$5,910	
Amort. Rate Case Expense		3,561
TOTAL LEGAL EXPENSE		\$9,471

The total revenue requirement of \$81,124 equals an annual per customer cost of \$463.57; a cost which is among the highest allowed all other water systems in this State.¹⁰⁽³¹³⁾ Since the Company's revenue requirement in its last rate case was \$46,550, the rates approved in this Order represent an increase of 74.3%

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Petition of Mountain Springs Water Company, Inc. for an increase in annual revenues of \$105,609 which would result in total annual revenues of \$148,848 be, and hereby is, denied; and it is

FURTHER ORDERED, that Mountain Springs Water Company, Inc. may file revised tariff pages which will result in total annual revenues of \$81,124 for all bills rendered on or after August 1, 1985 in accordance with the

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provisions of the foregoing Report; and it is

FURTHER ORDERED, that Mountain Springs Water Company, Inc. file with the Commission within 60 days of the date of this Order its analysis of long term supply alternatives; and it is

FURTHER ORDERED, that the \$12,439 rate of return revenues established herein be placed in an escrow account and disbursed from that account in accordance with the terms of the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1985.

FOOTNOTES

¹Richter held, inter alia, that the Company could not impose certain standby fees because they were inconsistent with certain deed covenants entered into by the property owners and the seller — Town and Country Homes (TCH). TCH was the entity that preceded the Company and it is not disputed that there is an identity of TCH and Company management.

²The Company's hearsay contention that it was advised to adopt a rate structure that included illegal standby fees by the Commission's Chief Engineer does not meet the burden of demonstrating that the recovery of the standby fee refund is just and reasonable. 1 Tr. 105-110. Even if the assertion is accepted, it underscores the Commission's belief that a rate structure which included standby fees was just and reasonable. The Company's inability to implement successfully such a rate structure did not arise from any limitation on the Commission's ability to establish such a rate, but rather from management's conduct in agreeing to the deed covenants. See, *Richter v. Mountain Springs Water Co.*, supra, 122 N.H. at p. 852.

³It is true that the Commission issued Order 17,083 partly as a result of Company objections. However, those objections were directed at certain alleged procedural deficiencies (See e.g., Company's July 15, 1985 Reply Memorandum at 2); there were no objections directed at any alleged substantive deficiencies in the framework of analysis established by the Commission. See also, Docket No. DR 82-359, Report and Supplemental Order No. 16,859 (69 NH PUC 25).

⁴Originally the Company estimated that rate case expenses would be \$7,000 " \&... for outside consultants." Exh. 3 at paragraph 11. Counsel updated and clarified the breakdown of rate case expense in the Company's July 12, 1985 Memorandum at 22.

⁵The instant proceeding is the first permanent rate filing since that filed on April 2, 1976. Re Mountain Springs Water Co., 66 NH PUC at p. 493, remanded on other grounds, Re Mountain Springs Water Co., 123 N.H. 653, — A.2d — (1983). If one were to apply the Company's rationale to this particular utility, the appropriate amortization period would be 9 years.

⁶There is no federal income tax obligation on debt returns because interest expense is a deduction from income.

¹⁰The comparison to the rates of all other New Hampshire water utilities cannot be determinative because rates are generally based on cost, rather than on an imputed market value. However, the Commission, consistent with its regulatory responsibilities, cannot ignore such a comparison for the purpose of determining whether rates are just and reasonable. For example, in this Order, the Commission has expressed its concern about production costs, property tax expense, legal fees and the time necessary to manage the Company properly. Comparisons based on our general knowledge of the industry, RSA 374:4, give us the ability to determine whether the rates established by the Commission are "&...adequate, under efficient and economical management, to maintain&...[the public utility's] credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 689, PUR1923D 11, 21, 67 L.Ed. 1176, 1183, 43 S.Ct. 675 (1923). (Emphasis Supplied). See also, New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 209, 44 PUR3d 498, 183 A.2d 237 (1962).

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NH.PUC*08/21/85*[61183]*70 NH PUC 734*Pennichuck Water Works

[Go to End of 61183]

70 NH PUC 734

Re Pennichuck Water Works

DE 85-112, Order No. 17,824

New Hampshire Public Utilities Commission

August 21, 1985

ORDER requiring a water utility to file a new tariff page governing cross-connection of water supply.

Water, § 13 — Water utilities — Operation — Cross connections.

Control of water supply cross-connection is a function of the Water Supply and Pollution Control Commission.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works has filed certain revisions to its tariff to include reference to a cross-connection control program; and

WHEREAS cross-connection control is a function of the Water Supply and Pollution Control Commission; it is hereby

ORDERED, that 1st Revised Page 11 and Original Page 11A of Pennichuck Water Works tariff NHPUC No. 4, suspended by Order No. 17,569 dated April 29, 1985, (70 NH PUC 329), are hereby rejected; and it is

FURTHER ORDERED, that Pennichuck Water Works file a new tariff page with the following reference to cross-connection control:

Cross-connection of any water supply with that of a public water supply shall be only as provided by New Hampshire Statute RSA 148.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of August, 1985.

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NH.PUC*08/21/85*[61184]*70 NH PUC 735*New England Telephone and Telegraph Company

[Go to End of 61184]

70 NH PUC 735

Re New England Telephone and Telegraph Company

DE 85-296, Order No. 17,828

New Hampshire Public Utilities Commission

August 21, 1985

ORDER authorizing a local exchange telephone carrier to file tariffs providing for a change in boundaries for "Epping" and "Newmarket" local service exchanges.

Service, § 445 — Telephone carriers — Local service exchanges — Boundaries.

A local exchange telephone carrier was authorized to file tariffs providing for a boundary change between the "Epping" and "Newmarket" local service exchanges.

By the COMMISSION:

ORDER

WHEREAS, on August 9, 1985 the New England Telephone Company filed for effect September 8, 1985 the following pages:

NHPUC — No. 75

Part A — Section 5 — 9th Revision of Sheet 28

Part A — Section 5 — 11th Revision of Sheet 30

and

WHEREAS, the filing provides for a boundary change between the Epping and Newmarket exchanges to administratively align the exchange boundary maps with the manner in which customers are currently being served in the Newmarket and Epping exchanges; and

WHEREAS, this administrative action will assure that four customers will continue to receive service from the Epping exchange as they have in the past; and

WHEREAS, this administrative action will avoid Company expenditures of \$55,600 to provide service from the Newmarket exchange; and

WHEREAS, upon investigation this Commission finds the administrative action to be in the public interest; it is

ORDERED, that the New England Telephone Company be and hereby is, authorized to make a boundary change between Epping and Newmarket exchanges as indicated in its 9th revision of sheet 28 and 11th revision of sheet 30 of part A section 5 to its tariff NHPUC No. 75.

By order of the Public Utilities Commission of New Hampshire this twentyfirst day of August, 1985.

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NH.PUC*08/23/85*[61185]*70 NH PUC 736*Concord Regional Waste/Energy Company

[Go to End of 61185]

70 NH PUC 736

Re Concord Regional Waste/Energy Company

Intervenor: Public Service Company of New Hampshire

DR 85-223, Supplemental
Order No. 17,829

New Hampshire Public Utilities Commission

August 23, 1985

ORDER denying motion for rehearing of a small power production long term rate filing.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rate — Commission regulations.

The commission denied a motion for rehearing of an order that had rejected a small power

producer's long term rate filing for failure to comply with the requirement that it contact the interconnecting utility for an interconnection study at least 45 days before filing for a long term rate; petitioner's claims that, (1) it was not required to contact the interconnecting utility for a study because its power would be wheeled to the interconnecting utility by another company, and (2) that it should remain eligible for the previous (higher) long term rates because of the financial concerns, were rejected as without merit and contrary to commission regulations and policies.

Procedure, § 33 — Rehearings — Grounds for granting — long term rate filing — Small power production.

Statement, in dissenting opinion, that a small power producer's request for rehearing of its long term rate filing should be granted because the case involves the economic interest of 27 towns and it has been decided without a public hearing. p. 740.

(MCQUADE, commissioner, dissents, p. 740.)

By the COMMISSION:

REPORT

On August 8, 1985, the Concord Regional Waste/Energy Company (Concord Regional or the facility) filed a Motion for Rehearing of this Commission's July 18, 1985 Order No. 17,756 (70 NH PUC 648) in this docket which rejected without prejudice its long term rate filing pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order 17,104). On August 19, 1985, Public Service Company of New Hampshire (PSNH) filed objections to Concord Regional's motion. Also on August 19, 1985, the Concord Regional Waste/ Energy Cooperative (the Cooperative) submitted a letter in support of Concord Regional's Motion for Rehearing.

As stated in our Order, the grounds for rejecting Concord Regional's rate filing are that Concord Regional had not complied with the requirement that it contact PSNH for an interconnection study at least 45 days before petitioning the Commission for a long term rate. In its Motion for Rehearing, Concord Regional claims that since its

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power is wheeled through the Concord Electric Company, Concord Regional is not required to contact PSNH for an interconnection study. Its engineering consultant, Kimball Chase Company Inc. (Kimball Chase) has had several contacts with PSNH, the last being in July of 1984. Motion for Rehearing, Statement of Facts, paragraph 10. Kimball Chase provided PSNH with a data sheet for the facility on June 13, 1985 and was subsequently informed by PSNH that an interconnection study would be required to determine the impact on the PSNH system of receipt of Concord Regional's power. Concord Regional states that "this was the first clear indication to [Concord Regional] of the claim by PSNH for an interconnection study for the Facility" Id.

Concord Regional further alleges that it will be materially prejudiced if the Order rejecting

its filing is upheld given the direct link between the cost of waste disposal and the price received for its electric power.

In its August 19, 1985 letter the Cooperative reviews the status of the project, the additional costs (\$550,000) per year that would have to be borne by the member towns should the project be ineligible for the rate established by Order 17,104 and states that the "27 cities and towns comprising the Cooperative were shocked to discover that the economic basis for their planning for a long term environmentally acceptable waste disposal solution was being jeopardized by some legal technicality."

PSNH argues in its objection that Concord Regional's project will have an impact on PSNH's system and the project should therefore be required to comply with the standards set forth in Order 17,104. Further, PSNH states that Concord Regional cannot claim that it has a vested property right in the rates set by Order 17,104 as the rate was only an expectancy when it began its planning and an expectancy is not a property right which is entitled to protection.

Having reviewed our decision, Concord Regional's Motion for Rehearing, PSNH's objection and the Cooperative's letter, the Commission denies the Motion for Rehearing. The Commission finds that Concord Regional's claim that lack of direct physical interconnection between its project and the PSNH system absolves Concord Regional from the responsibility of requesting an interconnection study from PSNH is without merit. Concord Regional and PSNH are obviously interconnected, albeit through Concord Electric. The flow of electricity from the project to PSNH will clearly have some impact on the PSNH system. Concord Regional therefore had a responsibility to ascertain from PSNH what studies will be required to analyze that impact.

The requirement that developers contact PSNH for an interconnection study 45 days prior to filing for a long term rate is not merely a legal technicality. Rather the requirement represents a substantive policy determination by the Commission. The 45 day notice was included in the Settlement Agreement after negotiations on the issue among the parties, and adopted by the Commission in Order 17,104 in part to alleviate some of the constraint imposed by the very narrow time limits allowed PSNH to respond to the Commission's NISI orders approving rate filings. This request for a study was intended to provide a notice to the PSNH staff that a rate filing could be imminent and therefore to allow it ample time to

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become familiar with the small power project. The developer's request for an interconnection study was chosen as an adequate notice to PSNH because it marks the point where a developer moves beyond asking PSNH for general information and instead asks that a site specific study be performed on its behalf. The developer at this point must also be prepared to pay the costs of such a study.

In this case, Concord Regional neither requested an interconnection study 45 days prior to its filing, nor made any other contact with PSNH which would have provided the notice of the imminence of the rate filing as contemplated by Order 17,104. Nothing in its previous contacts with PSNH (the last in July 1984) served to distinguish Concord Regional as a project approaching the stage of development when its planners would be applying for a long term rate.

The Commission also adopted the requirement that a request for an interconnection study precede the rate filing because it views both the request and the filing as part of a normal sequence in a project's development. The 45 day requirement provides some assurance that a project will have at least reached the point in its critical path of needing an interconnection study before its developers file for a long term rate. Within the 45 days following the request, PSNH is able to formulate an estimate of the cost of a study with a preliminary analysis of the potential complexity of the interconnection itself. A filing which has not met the 45 day requirement raises the question of the timeliness of the filing in relation to the other aspects of project development and suggests that the filing has been submitted out of sequence of the normal stages of development and is therefore premature.

The standard of economic efficiency for a project is whether it can produce power for a price below avoided costs.¹⁽³¹⁴⁾ The most accurate comparison would be obtained if the developer were required to file for a rate based on a projection of avoided cost calculated when the project is ready to go online. The Commission has recognized however, that many developers need the assurance of a long term rate in order to obtain financing for their projects. Therefore, the Commission has allowed small power producers and cogenerators to file for long term rates considerably in advance of their production of power. In the instant case, Concord Regional has applied for a long term rate in mid-1985 even though it does not expect to produce power until 1987.

In addition, should the avoided cost estimate rise before or during the period of a developer's obligation, we have also allowed the developer to "buyout" of his obligation and file for the current, higher long term rate for the remainder of the obligation. In effect, to the extent that a granted rate has over-estimated avoided cost, the developer is paid a rate above actual avoided cost. To the extent that a granted rate underestimates avoided cost, the developer may apply for the re-estimated higher rate. Having provided these benefits to the developers of alternate energy projects, however, we must balance them with a concern for the cost

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to the ratepayers. It is therefore incumbent upon the Commission to assure that a developer's rate when granted reflects the Commission's best estimate of avoided cost for the period of the developer's obligation. Given our liberal policy in allowing developers to file for rates well in advance of their expected on-line dates, we are extremely reluctant to waive the requirements of a prior request for an interconnection study. Waivers of the 45 day requirement mean that the Commission no longer has the assurance of a given level of maturity of the projects for which we are granting long term rates. As a result, there is less certainty that a developer will be able to fulfill its representations as presented in its rate application (including the on-line date) or that the project as eventually developed is accurately portrayed by the project description in the rate filing.

Concord Regional requested an interconnection study on June 13, 1985 and filed for a long term rate on June 19, 1985. PSNH notified Concord Regional of the need for an interconnection study at the cost of \$5,500 on July 3, 1985. Thus the timing of the rate filing did not satisfy the technical requirement of a 45 day interval between the request for an interconnection study and

the filing, did not serve to provide adequate notice to alert PSNH of the imminence of a possible rate filing, and appears out of the normal sequence of the stages of project development.

Finally, Concord Regional's allegation that it will be materially prejudiced if the Order rejecting its filing is upheld is also without merit. Concord Regional has a right, as a small power producer, to file for long term purchase power rates set by the Commission subject to the requirements set forth for the filing. It does not have a right to a particular long term rate or a right to any long term rate without fulfilling the required conditions.

The Commission recognizes that there is a direct relationship between the rate Concord Regional receives for its power and the cost of waste disposal for the member towns of the Cooperative (the tipping fee). The Commission does not suggest that the efforts of the towns to develop an environmentally acceptable waste disposal solution are anything but laudatory. However, the added costs to the member towns due to the facility's ineligibility for a rate now determined by the Commission to be above avoided costs, is not a sufficient reason for this Commission to grant Concord Regional the previous rate. The Cooperative has calculated that those added costs equal \$550,000 or \$11 million over a twenty year period. It is necessary to recognize that this calculation also measures the degree to which payment by PSNH and its ratepayers under the old rate would be above the current estimate of avoided cost. A finding that the project is eligible for a rate above avoided cost because of benefits unrelated to the value of the power it produces, transfers a financial burden of that magnitude from the citizens of the towns of the Cooperative to the ratepayers of PSNH. Thus such a finding would result in the ratepayers of PSNH subsidizing the solid waste disposal of the member towns, a result which is contrary to both the State and Federal statutes as well as Commission policy.

Our Order will issue accordingly.

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Dissenting Opinion of Commissioner Paul R. McQuade

I disagree with my fellow Commissioners in their denial of Concord Regional Waste/Energy Company's Motion for Rehearing. I believe that the public has a right to be fully heard by this Commission. This case involves the economic interest of 27 towns and has been decided without a public hearing. Therefore, I think that it would be appropriate to allow the towns to present their views to the Commission in a formal hearing.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the Concord Regional Waste Energy Company Motion for Rehearing in docket DR 85-223 is denied.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of August, 1985.

FOOTNOTE

¹See, Re Greggs Falls Hydroelectric Project, 70 NH PUC 138 (1985) Public Utility

Regulatory Policies Act of 1978 16 U.S.C.A. § 824a-3, Section 210, the regulations of the Federal Energy Regulatory Commission (FERC) at 18 C.F.R. §§ 292.101, et seq. and the Limited Electrical Energy Producers Act (LEEPA), RSA 362-A:4.

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NH.PUC*08/28/85*[61186]*70 NH PUC 741*Public Service Company of New Hampshire

[Go to End of 61186]

70 NH PUC 741

Re Public Service Company of New Hampshire

Additional petitioners: Community Action Program et al.

DRM 84-205, Supplemental
Order No. 17,831

New Hampshire Public Utilities Commission

August 28, 1985

ORDER denying, without prejudice, petitions for rulemaking to allow the implementation of an electric utility winter termination program.

Payment, § 32 — Termination of service — Rulemaking — Winter termination program — Electric utility.

Petitions for a rulemaking to allow the implementation of an electric utility winter termination program were denied for lack of information to determine what the terms of the rule should be; the commission ordered the opening of a new docket to evaluate the data generated by a previously authorized pilot winter termination program for the purpose of determining whether a system-wide program is appropriate and, if so, how such a program should be designed.

By the COMMISSION:

REPORT

On July 29, 1985, Public Service Company of New Hampshire (PSNH) Community Action Program (CAP) and the Office of the Governor - Division of Human Resources (DHR) (jointly referred to as Petitioners) filed with the Commission a Petition for Rulemaking pursuant to RSA 541-A:6 (Supp. 1983) which, inter alia, requested the Commission to initiate a rulemaking proceeding pursuant to RSA 541-A:3. The purpose of the proposed rulemaking is to allow PSNH to implement on a system-wide basis a targeted winter termination program which had previously been implemented solely on a pilot basis in a limited portion of PSNH's service territory. See e.g., Report and Order No. 17,247 (69 NH PUC 599) in this docket. On August 16, 1985, CAP filed a draft rule. On August 22, 1985, the Petitioners filed their direct testimony,

technical statements and exhibits.

After review and consideration, we will deny the Petition without prejudice, close this docket and concurrently open a new docket for the purpose of determining whether the Petitioners proposed system-wide targeted termination program should be implemented and,

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if so, the best regulatory mechanism to accomplish the Commission's objectives.

We are declining to initiate a new rulemaking at this time because we do not believe that we have the requisite information to determine what the terms of a new rule should be, if any. We recognize that CAP has submitted a draft rule and we believe that such a draft should be considered as one of several alternatives available to the Commission. However, it would be misleading to adopt the CAP draft as a proposed rule because such Commission adoption would imply that the Commission favors the CAP draft over other alternatives. We do not have the basis to decide now whether the Commission either favors or disfavors any alternative, including the CAP proposal.

We are closing the instant docket because it appears that the pilot program has accomplished the objective of generating data and information to determine whether the program should be expanded or terminated. That is precisely the issue confronting the Commission with the instant Petition. Since we have moved beyond the pilot approach, there is no need to keep open a docket designed to consider whether a pilot program should be approved.

The new docket will be opened to evaluate the data generated by the pilot program for the purpose of determining whether a system-wide program is appropriate and, if so, how such a program should be designed. We are mindful of our language in Order 17,247 which states (69 NH PUC at pp. 600, 601):

After due consideration of the filings of the parties concerning whether the Commission has the authority to issue exemptions and waivers of its rules, we have determined that PUC regulations 201.05 and PUC 301:01 (b) [sic] provide for this authority. However, the specific wording of the September 11, 1984 PSNH Petition is of concern to the Commission. Specifically the Company states that it is seeking "a rule (emphasis added) applicable uniformly throughout its franchise territory ..." While the Commission acknowledges its authority to grant waivers and exemptions it does not find sufficient basis upon which to grant a rule with permanent status without a formal rulemaking proceeding in compliance with the N.H. Administrative Procedure Act. Although a hearing was held on the PSNH petition for an exemption (emphasis added) from the PUC rule Section 303:08(k) [sic], there was not a petition offered requesting a rule change to allow for system wide application of a targeted termination program. (Emphasis in original).

The above quoted language correctly provides that if a permanent systemwide program is to be adopted, it would be necessary to modify the appropriate rules. However, as noted above, we cannot find at this stage that the pilot program should be implemented on a system wide basis and, if so, whether it should be implemented "as is" or with appropriate modification. Additionally, even if we find that system wide implementation is appropriate, we must consider whether such program should be "permanent" or adopted for a discrete time period solely for the purpose of addressing the alleged problem it was designed to solve. It is

therefore apparent that a rulemaking at this stage would be premature.

Our decision to investigate whether a rulemaking is appropriate prior to the time such a process is initiated, if at all, should not be read as rejection of the PSNH/CAP/DHR request to implement targeted termination on a system wide basis by December 1, 1985 (See, Preliminary Draft Procedural Schedule, attached to the Petitioners' July 29, 1985 Petition). If the new proceeding results in findings that warrant immediate implementation, the Commission can exempt PSNH from the applicable regulations pending the completion of the rulemaking process. See, N.H. Admin. Rules, Puc 201.05, 301. 01(b). See also, RSA 541-A:3-g. For this purpose, PSNH's Petition for Rulemaking will be construed as including a request for exemption pursuant to N.H. Admin. Rules, Puc 301-01(b).

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Petition of Public Service Company of New Hampshire, Community Action Programs and Office of the Governor - Division of Human Resources (jointly Petitioners) for a Rulemaking be, and hereby is, denied without prejudice; and it is

FURTHER ORDERED, that this docket be, and hereby is, closed; and it is

FURTHER ORDERED, that Docket No. DRM 85-309 be opened for the purpose of determining whether the Petitioners' proposed system-wide targeted termination program should be implemented and, if so, the best regulatory mechanism to accomplish the Commission's objectives; and it is

FURTHER ORDERED, that an Order of Notice in Docket DRM 85-309 be issued forthwith.

By Order of the Public Utilities Commission of New Hampshire this twentyeighth day of August, 1985.

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NH.PUC*08/30/85*[61187]*70 NH PUC 744*Somersworth Water Commission

[Go to End of 61187]

70 NH PUC 744

Re Somersworth Water Commission

DE 85-268, Order No. 17,832

New Hampshire Public Utilities Commission

August 30, 1985

ORDERS granting authority to a water utility to extend its service area and to construct a water

line.

By the COMMISSION:

ORDER

WHEREAS, the Somersworth Water Commission, a water public utility operating under the jurisdiction of this Commission for its service now provided in the Town of Rollinsford, by a petition filed July 24, 1985, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Rollinsford; 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 Rollinsford, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this 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 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 September 30, 1985; and it is

FURTHER ORDERED, that the Somersworth Water Commission 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 September 13, 1985 and designated in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI that the Somersworth Water Commission be authorized pursuant to RSA 374:22, to extend its service in the Town of Rollinsford to the manufacturing plant of Janco, Inc., on Goodwin Street, in the Town of Rollinsford, for the sole

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purpose of providing water for private fire protection; and it is

FURTHER ORDERED, that such authority shall be effective on October 1, 1985 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 thirtieth day of August, 1985.

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NH.PUC*08/30/85*[61188]*70 NH PUC 745*Somersworth Water Commission

[Go to End of 61188]

70 NH PUC 745

Re Somersworth Water Commission

DE 85-268, Supplemental
Order No. 17,833

New Hampshire Public Utilities Commission

August 30, 1985

ORDER approving water main construction contract.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Somersworth Water Commission has entered into a contract (Agreement to Construct Water Main to Janco, Inc., Rollinsford, New Hampshire) with the Janco, Inc. for the construction of a water line to serve the Janco, Inc. manufacturing facility in Rollinsford, New Hampshire; and

WHEREAS, upon investigation and consideration, we are of the opinion that the nature of the construction of this water line requires the issuance of a Special Contract (Agreement, etc.) and is in the public good; it is hereby

ORDERED, that this Contract, (Agreement) may become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1985.

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NH.PUC*09/04/85*[61189]*70 NH PUC 746*Connecticut Valley Electric Company, Inc.

[Go to End of 61189]

70 NH PUC 746

Re Connecticut Valley Electric Company, Inc.

DR 85-289, Order No. 17,834

New Hampshire Public Utilities Commission

September 4, 1985

ORDER permitting an electric distribution utility to change its method of recovering fuel costs from a monthly historical energy adjustment clause to a six month forward looking fuel adjustment clause.

Automatic Adjustment Clauses, § 7 — Energy cost clause — Forward looking fuel adjustment clause — Authorization.

An electric distribution utility was authorized to change its method of recovering fuel costs from a monthly historical energy adjustment clause to a six month forward looking fuel adjustment clause; the commission determined that the semi-annual forward looking fuel adjustment clause is an appropriate mechanism because, (1) it provides rate continuity, and (2) stabilized fuel prices and lessening dependency on foreign oil have eliminated the need for monthly rate adjustments.

APPEARANCES: For Connecticut Valley Electric Company, Inc., Joseph Kraus, Esquire; Daniel Lanning and James Lenihan on behalf of the Commission staff.

By the COMMISSION:

REPORT

Connecticut Valley Electric Company, Inc. ("CVEC"), a corporation operating in the State of New Hampshire as an electric public utility under the jurisdiction of this Commission, on August 1, 1985 filed certain tariff revisions proposing to change the Company's method of recovering fuel costs from a monthly historical Energy Adjustment Clause (EAC) to a six month forward looking Fuel Adjustment Clause (FAC). The FAC proposal will begin on September 1, 1985, with a fuel adjustment rate of \$0.0140 per KWH, and will remain in effect for a four month period through December 1985.

The Commission held a duly noticed hearing on August 27, 1985 to review CVEC's filing.

CVEC's EAC in effect during the month of August 1985 was a credit of \$(0.0056) per KWH. The substantial increase in the proposed FAC is primarily due to an extended outage of the Vermont Yankee Nuclear Power Plant scheduled to begin September 21, 1985. The impact of this outage will be partially offset by the purchase of Power from Hydro Quebec (H.Q. Highate) beginning in September 1985 and a refund of an estimated EAC overcollection

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for the months of July and August 1985.

This filing was issued simultaneously with a proposed tariff revision to CVEC's Power Cost Adjustment (PCA) (DR 85-290). This filing proposes to refund an overcollection of the PCA of \$1,170,115 over a ten month period ending June 1985 and was designed to mitigate the effect of the Vermont Yankee outage during that period.

In the instant docket CVEC proposes to change their EAC mechanism currently in effect. CVEC's EAC is a monthly historical with no reconciliation for over or under collected fuel costs. CVEC now proposes to utilize an FAC which parallels FAC's used by other large electric distribution utilities in New Hampshire, a semi-annual forward looking mechanism with a reconciliation of actual to estimated fuel cost and a "trigger" which flags over or

undercollections of the fuel costs that are in excess of 5%.

The Commission in its Report and Order No. 17,517 (70 NH PUC 133) and No. 17,702 (70 NH PUC 600) determined that the semi-annual forward looking FAC is an appropriate mechanism for utilities because:

a) it provides rate continuity, which is particularly relevant in the instant proceedings;

b) fuel prices have now stabilized and (especially for CVEC) the dependency on foreign oil for electric generation has decreased. The dependency on oil and its dramatic fluctuation in price was the key to initiating the monthly FAC in the early seventies. At the time this mechanism was needed to recover these cost variation [sic] as expeditiously as possible to prevent any undue strain on a utilities financial health.

Given the above, and CVEC's desire to establish rate continuity during the Vermont Yankee outage, the Commission will accept the proposed change of CVEC's fuel adjustment mechanism to a forward FAC. Said FAC mechanism to be effective for the periods July through December and January through June of each year.

During the hearings in this docket the Company presented two witnesses. Through testimony and cross-examination by staff and Commission of these witnesses the following issues were discussed:

- 1) sales forecast;
- 2) lost and unaccounted for;
- 3) monthly reporting of the FAC;
- 4) the energy cost forecast model of CVEC's principal source of power, Central Vermont Public Service Corporation;
- 5) Hydro Quebec Highate purchases;
- 6) Ontario Hydro purchases; and
- 7) a reconciliation of the accounting "lock up" of Energy Cost for July through August 1985 which occurred in the transition from the monthly historical EAC to the forward looking FAC.

Based on the evidence provided, the Commission finds the FAC rate of \$0.0140 per KWH to be just and reasonable and will approve the rate for the four month period beginning September 1985 and ending December 1985.

Our Order will issue accordingly.

ORDER

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

ORDERED, that in accordance with

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the attached report, Connecticut Valley Electric Company, Inc. be, and hereby is, permitted to revise their historical Energy Adjustment Clause to a semi annual forward looking Fuel Adjustment Clause to be effective for the periods July through December and January through

June of each year; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company, Inc. provide the Commission with monthly reports on the status of the approved FAC, providing explanations for over or under recoveries; and it is

FURTHER ORDERED, that 3rd Revised Page 16 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 - Electric, be, and hereby is, accepted; and it is

FURTHER ORDERED, that 105th Revised Page 18 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC, No. 4 - Electric, providing for an energy surcharge of 0.0140 per KWH for the period September 1, 1985 through December 31, 1985 be, and hereby is, accepted.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utilities classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624. The revenue from said adjustment to be recorded in a separate subaccount of Other Operating Revenues.

By Order of the Public Utilities Commission of New Hampshire this fourth day of September, 1985.

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NH.PUC*09/04/85*[61190]*70 NH PUC 748*Connecticut Valley Electric Company, Inc.

[Go to End of 61190]

70 NH PUC 748

Re Connecticut Valley Electric Company, Inc.

DR 85-290, Order No. 17,835

New Hampshire Public Utilities Commission

September 4, 1985

ORDER authorizing refund to electric distribution utility customers via a power cost adjustment.

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Automatic Adjustment Clauses, § 53 — Billing adjustment — Refund of overcollections — Purchased power costs.

A refund proposed in an electric distribution utility's fuel adjustment cost tariff filing was accepted; the tariff filing resulted from a power cost refund received by the utility relating to power purchases during 1984; the commission noted that acceptance of the tariff is not an acceptance of a power purchase that is currently the subject of a court ordered hearing.

APPEARANCES: For Connecticut Valley Electric Company, Inc. Joseph Kraus, Esquire; Daniel Lanning and James Lenihan on behalf of the Commission staff.

By the COMMISSION:

REPORT

On August 1, 1985 Connecticut Valley Electric Company, Inc. filed certain tariff revisions proposing to decrease customer rates by \$0.0122 per KWH. This results from a power cost refund received by the Company relating to power purchased during 1984.

A duly noticed hearing was held on August 26, 1985 at the Commission's office in Concord, New Hampshire to review the filing, at which time the Company presented one witness and five exhibits. Through CVEC witness testimony and cross-examination by staff the following issues were explored:

(1) the primary cause for the over collection of Central Vermont Public Service Corporation ("Central Vermont") wholesale rate, RS-2. This was caused by a shifting of peak demand periods from the forecasted month of January to the realized peak in December=1;

(2) the inclusion of CWIP in the RS-2 rate, as approved by FERC;

(3) allocation of AFUDC for CWIP not included in the RS-2 rate;

(4) variance of the 1985 estimated to actual RS-2 rate;

(5) the effect a decision in this docket will have on the Supreme Court remand of the Commission's decision in DR 83-200; and

(6) the interest rate used to calculate the estimated refund.

At least one of these issues merit further discussion. The purchase of power from Central Vermont by CVEC is subject to remand for consideration by the Commission by order of the Supreme Court of New Hampshire.

The Supreme Court, in their Docket No. 84-380, stated (— N.H. —, 498 A.2d 696):

The PUC stated expressly that it did not consider whether CVEC had alternatives to purchasing power from Central Vermont under the RS-2 rate and whether the purchases were reasonable. We must, therefore, remand this case to the PUC for additional findings before CVEC's burden of showing the reasonableness of this expense can be found to have been met.

The instant proceeding was not initiated to fulfill the remand requirements of the Supreme Court. The issues which will be the subject of the Court order hearing were not noticed for this docket. Any approval of the

refund proposed in CVEC's filing is not an acceptance of the purchase of power from Central Vermont by CVEC under the RS-2 rate.

This docket was filed simultaneously with CVEC's filing for a change in the mechanism of their FAC (DR 85-289). CVEC proposes to estimate their FAC for the four month period beginning September 1985 and ending December 1985. Following this period, CVEC then

proposes to calculate its FAC on a six month forward looking basis.

The change in the FAC also provides for an substantial increase in the FAC rate, caused by an extended outage of the Vermont Yankee Nuclear Power Plant, beginning September 1985. The combination of this refund spread over ten months, and the FAC rate mechanism forecasted for the first two periods beginning September 1985 and ending June 1986, was established by CVEC to partially mitigate the upcoming increase and to stabilize the companies rates.

Based on the evidence provided by CVEC, and in consideration of the above, the Commission approves the refund of \$0.0122 per KWH as 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 3rd revised pages 12 and 13 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 - Electricity, be, and hereby is, accepted; and it is

FURTHER ORDERED, that the 7th revised page 15 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 - Electricity, be, and hereby is, accepted; and it is

By Order of the Public Utilities Commission of New Hampshire this fourth day of September, 1985.

FOOTNOTE

170% of the FERC approved wholesale rate RS-2 is based on the allocation of the peak demand of Central Vermont's system.

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NH.PUC*09/04/85*[61191]*70 NH PUC 751*Southern New Hampshire Water Company, Inc.

[Go to End of 61191]

70 NH PUC 751

Re Southern New Hampshire Water Company, Inc.

DF 82-287, Order No. 17,836

New Hampshire Public Utilities Commission

September 4, 1985

ORDER authorizing a temporary increase in the short term debt limit of a water utility.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc., a public utility operating under

the jurisdiction of this Commission as a water utility in the towns of Hudson, Litchfield, and Windham seeks authority for a temporary increase in its short-term debt limit to \$3,000,000; and

WHEREAS, Southern New Hampshire Water Company, Inc. was previously authorized a short-term debt level of \$2,000,000 in Order No. 17,446 issued February 14, 1985 (70 NH PUC 57); and

WHEREAS, Southern New Hampshire Water Company, Inc. attests that the short-term notes outstanding at August 28, 1985 were \$1,870,000 and that the available balance of \$130,000 will be expended within two weeks of that date in payment of construction invoices; and

WHEREAS, Southern New Hampshire Water Company, Inc. further states that additional approved capital additions for the next three month period totals \$1,000,000 as a direct result of increased construction and the continued expansion of their service area; it is

ORDERED, that Southern New Hampshire Water Company, Inc., be, and hereby is, authorized to issue and sell for cash, and renew its short-term note or notes, payable less than twelve (12) months from the date thereof, in an aggregate principal amount not in excess of three million dollars (\$3,000,000); and it is

FURTHER ORDERED, that this authorization shall remain in effect until November 25, 1985 or such time as permanent financing is obtained whichever is sooner; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, the Southern New Hampshire Water Company, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes.

By Order of the Public Utilities Commission of New Hampshire this fourth day of September, 1985.

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NH.PUC*09/04/85*[61192]*70 NH PUC 752*New England Telephone and Telegraph Company

[Go to End of 61192]

70 NH PUC 752

Re New England Telephone and Telegraph Company

DR 84-95, Supplemental
Order No. 17,837

New Hampshire Public Utilities Commission

September 4, 1985

ORDER reopening docket for the purpose of reconsidering the application of telephone business rates.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on June 3, 1985 the Commission ordered inter alia:

FURTHER ORDERED, that unlimited business service be, and hereby is, restricted to those customers currently authorized such service in their present locations, new applicants for business services to be served only on a measured basis.

and

WHEREAS, it has been brought to the Commission's attention that significant misunderstandings have arisen in the business community as to the proper application of that Order; and

WHEREAS, the Commission finds it in the public interest to reopen docket DR 84-95 for the limited purpose of temporarily reconsidering the application of business service rates, until such time as the Commission investigates New England Telephone and Telegraph Company's entire rate structure in docket DR 85-182; it is

ORDERED, that docket DR 84-95 be, and hereby is, reopened for the limited purpose of determining:

1. Whether that portion of Order No. 17,639 (70 NH PUC 496) relative to measured business service should be withdrawn.
2. Whether it should be relaxed to allow all existing customers to continue at existing rates, even if they more [sic] or increase their equipment.
3. Whether the Order should remain in force.
4. Whether the grandfathering policy established in this docket should be rescinded or amended.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1985.

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NH.PUC*09/04/85*[61194]*70 NH PUC 763*Thermo-Electron Energy Systems

[Go to End of 61194]

70 NH PUC 763

Re Thermo-Electron Energy Systems

DR 85-236, DR 85-239,
Supplemental Order No. 17,840

New Hampshire Public Utilities Commission

September 4, 1985

ORDER denying motion for rehearing of a small power producer's long term rate filing.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — Commission regulations — Sufficiency of notice — Small power production.

Claims by a small power producer that it has received insufficient notice of a commission ordered stay of long term rate filings, that commission's rejection of its long term rate filing should be reheard, and that it should remain eligible for 1984 rates, were denied; the commission held that it is not required to give individual developers of small power production projects actual notice of pending long term rate changes and that prior orders provided developers with constructive notice of the change in rates.

Procedure, § 33 — Rehearings — Grounds for granting — Long term rate filing — Small power production.

Statement, in dissenting opinion, that a small power producer's request for rehearing of its long term rate filing should be granted because the case involves the economic interest of a private utility and it has been decided without a public hearing. p. 766.

(MCQUADE, commissioner, dissents, p. 766.)

By the COMMISSION:

On August 7, 1985, Thermo-Electron Energy Systems (Thermo Electron) filed Motions for Rehearing of this Commission's July 19, 1985 Order Nos. 17,760 (70 NH PUC 652) and 17,763 (70 NH PUC 655) in which the Commission rejected without prejudice its long term rate filings for its Campton and Fitzwilliam projects pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). On August 15, 1985, Public Service Company of New Hampshire (PSNH) filed its Objection to ThermoElectron's Motions regarding its Campton and Fitzwilliam projects.

As stated in our Order, the grounds for rejecting Thermo-Electron's rate filings are that the rate filings were submitted after the Commission's July 20, 1985 Order of Notice. The Order of Notice provided, inter alia, that "pending completion of this investigation, no long term rate filings filed after the date of the this [sic] Order of Notice

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based upon the long-term avoided cost rates set forth in [Order No. 17,104] will be accepted or approved by the Commission."

In its motions for rehearing, ThermoElectron alleges that our Order is defective because Thermo-Electron did not have actual notice of the stay of the existing rate under Docket No. DE 83-62, did not have an opportunity to be heard regarding the stay and is materially prejudiced by the lack of notice.

In its Objection to Motions for Rehearing, PSNH responds that the usual and customary notice in dockets like DE 85-215 is provided through publication by the Petitioner in accordance with Rule PUC 203.01. Constructive notice was provided and ThermoElectron was given an opportunity to intervene and be heard on the stay at the July 15, 1985 hearing. ThermoElectron

did not intervene, file testimony or appear at the hearing. PSNH argues that the stay was appropriate given Commission awareness that fuel costs and therefore avoided cost rates had declined, that requiring PSNH to purchase electricity at above avoided cost would irreparably harm PSNH's ratepayers, and that therefore the issuance of the stay was an appropriate balancing of the interests of ratepayers and small power producers. Further, PSNH argues that Thermo-Electron cannot claim to have been materially prejudiced by the stay because ThermoElectron has no entitlement to a particular rate and any material prejudice suffered by Thermo-Electron is due to its failure to file for a rate at an earlier stage in its projects' development not to the stay per se.

Based on our review of our July 19, 1985 decisions, Thermo-Electron's Motions for Rehearing and PSNH's Objection, the Commission denies the Motion for Rehearing. The Commission finds that Thermo-Electron's claim that it did not have actual notice of the stay to be without merit. The Commission is not required to give actual notice to individual developers of pending rate changes. Developers were provided constructive notice of the change in rates by the clear statement in Order 17,104 that "it is intended that avoided cost data will be updated annually by the Company and reviewed by the Commission to determine the extent, if any, to which the rates should be revised." (69 NH PUC at p. 367, 61 PUR4th at p. 147.) Small power producers and cogenerators should have expected that after one year filings might not be accepted under the July 1984 rates. The Commission also stated in Order 17,104 that "the short-term energy rate will be set every six months during energy cost recovery mechanism ("ECRM") proceedings. Except for the marginal energy cost, which will be redetermined in each ECRM proceeding, the methodology and all other factors will be held constant during ECRM proceedings." (69 NH PUC at p. 361, 61 PUR4th at p. 141.) Since July 1984, the short term rate has been reduced twice. These reductions should have alerted developers both that the Commission would revise rates based on updates in avoided cost data, and that the direction of avoided costs was down.

The buy out provision in Order 17,104 protects developers when updated rates increase; the Commission must balance this benefit to developers by establishing a properly noticed early effective date to protect ratepayers when updated rates are lower. The Commission finds that small power producers, including Thermo-Electron, had

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reasonable notice that a rate filing containing updated data could effectively preclude eligibility under the previous avoided cost rates.

Thermo-Electron errs when it claims that it did not have an "opportunity to be heard on the need for a stay or the applicability of the stay to any particular rate filing." Motions for Rehearing at 7 Thermo-Electron was not heard on these issues because it elected not to appear at the duly noticed July 15, 1985 hearing.

Finally, Thermo-Electron's allegation that it was materially prejudiced by the lack of notice is also without merit. As a cogenerator, Thermo-Electron has a right to file for long term purchase power rates set by the Commission subject to the requirements set forth for the filing. It does not have a right to a particular long term rate. ThermoElectron is correct when it states that

the standard for economic efficiency "is appropriately measured against avoided cost determinations at a specific point in time." Motions for Rehearing at 2. The most accurate measurement would be obtained if the developer were not allowed to file for a rate until his project was ready to go on-line, and a comparison were made at that time with avoided cost projections for the period of his obligation. The Commission has recognized, however, that many developers need the assurance of a long term rate in order to obtain financing for their projects. Therefore, the Commission has allowed small power producers and cogenerators to file for long term rates considerably in advance of their production of power. However, before granting a long term rate, the Commission expects that the project will have reached a certain level of maturity in its development and that the rate filing will be made in the normal sequence of developing a project. A filing whose timing has been dictated by a prospective change in the long term rates rather than the progress of the development of the site, has not satisfied the Commission that the project has reached the appropriate level of maturity. Therefore, there is less certainty that the representations presented in the filing, including the on-line date and the description of the project, will be fulfilled by the developer.

Thermo-Electron implies by its motions that it was ineligible to receive the rate set in July 1984 because its filing was one day late. The Commission notes that Thermo-Electron has also not presented evidence that it has fulfilled the requirement of a 45 day prior request for an interconnection study for its sites by PSNH. Lack of such evidence again raises the question of the timeliness of the filings.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Thermo-Electron Energy System's Motion for Rehearing in docket DR 85-236 is denied; and it is

FURTHER ORDERED, that ThermoElectron Energy System's Motion for Rehearing in docket DR 85-239 is denied.

By Order of the Public Utilities Commission of New Hampshire this fourth day of September, 1985.

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Dissenting Opinion of Commissioner Paul R. McQuade

I disagree with my fellow Commissioners in their denial of ThermoElectron Energy Systems Motions for Rehearing. I believe the public has a right to be fully heard by this Commission. This case involves the economic interest of a private utility and has been decided without a public hearing. Therefore, I think that it would be appropriate to allow the Company to present its views to the Commission in a formal hearing.

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NH.PUC*09/05/85*[61193]*70 NH PUC 753*Small Energy Producers and Cogenerators

[Go to End of 61193]

70 NH PUC 753

Re Small Energy Producers and Cogenerators

Intervenors: Public Service Company of New Hampshire, Northeast Power Associates, First Energy Associates, Hydroelectric Realty Corporation, Franklin Falls Hydroelectric Corporation, Concord Regional Waste Energy Cooperative, City of Nashua, Granite State Hydropower Association, Inc., Pinetree Power, Inc., and Whitefield Power and Light, Inc.

DR 85-215, Order No. 17,838

69 PUR4th 365

New Hampshire Public Utilities Commission

September 5, 1985

ORDER revising rates for small power producers and cogenerators.

Cogeneration, § 24 — Rates — Updates — Notice.

A statement in a previous commission order establishing rates for cogenerators and small power producers that long term avoided cost data would be updated annually to determine appropriate revisions to long term energy and capacity rates was adequate notice to small power producers that after one year an updated rate could preclude eligibility under the previous avoided cost rates. [1] p.756.

Cogeneration, § 27 — Rates — Avoided costs — Long term.

In an annual revision of rates for cogenerators and small power producers, a proposal by an electric utility to increase the discount rate used to calculate long term avoided energy cost rates for cogenerated power was rejected because the higher rate proposed by the utility was derived from a different methodology than that used to compute the discount rate already in effect; the lower discount rate was retained because the purpose of the rate revision was to update data and not to change methodologies. [2] p.757.

Cogeneration, § 27 — Rates — Avoided costs — Short term capacity.

In an annual revision of rates for cogenerators and small power producers, a proposal by an electric utility to increase the discount rate used to calculate the short term capacity rate was rejected because use of the higher discount rate would constitute a change in methodology rather than an update of data. [3] p.758.

APPEARANCES: Sulloway, Hollis & Soden by Margaret H. Nelson, Esquire for Public Service Company of New Hampshire; Orr and Reno by Howard M. Moffett, Esquire for Northeast Power Associates and First Energy Associates; Robert H. Rowe, Esquire for Hydroelectric

Realty Corporation and Franklin Falls Hydroelectric Corporation; Robert A. Olson, Esquire and William H. Wilson, Esquire for Concord Regional Waste Energy Cooperative, City of Nashua, Granite State Hydropower Association, Inc., Pinetree Power, Inc., and Whitefield Power and Light,

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Inc.; Larry M. Smukler, Esquire, General Counsel, New Hampshire Public Utilities Commission.
By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

In Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), ("Order 17,104") the Commission established rates for the purchase of energy and capacity by Public Service Company of New Hampshire (PSNH or Company) from small power producers and cogenerators. In Order 17,104, the Commission found that:

- 1) the short term energy rate will be set every six months during the Energy Cost Recovery Mechanism (ECRM) proceedings (69 NH PUC at p. 361, 61 PUR4th at p. 141);
- 2) short term factors other than the marginal energy cost, such as loss adjustment factors, the indirect factor and capacity will be revised when data from new studies become available in more comprehensive, non-ECRM dockets (69 NH PUC at p. 361, 61 PUR4th at 141); and
- 3) long term avoided cost data will be updated annually by the Commission to determine the extent, if any, of appropriate revisions to long term energy and capacity rates, (69 NH PUC at p. 367, 61 PUR4th at p. 147).

The instant docket, was initiated by a Petition filed with the Commission on June 14, 1985 by PSNH that requested, inter alia, a rate update in accordance with Order 17,104.

On June 20, 1985 an Order of Notice was issued setting a hearing date for July 15, 1985. The Order of Notice also provided that, pending Commission investigation into the Petition, no long term rate filings submitted after the date of the Order of Notice and based on the long term avoided cost rates established in Order 17,104 would be accepted or approved.

A duly noticed public hearing at the Commission's offices in Concord was held on July 15, 1985.

Subsequent to the hearing, Northeast Power Associates (Northeast) and First Energy Associates (First) filed a Motion for Leave to File Additional Testimony. PSNH filed an Objection in response to this motions and Northeast and First filed a Reply to PSNH's Objection.

II. POSITION OF THE PARTIES

This case involves the use of newly obtained data to update three Commission Rates:

- 1.) the short term capacity rate (component);
- 2.) the levelization of the long term capacity rates;
- 3.) the long term avoided energy cost rates and their corresponding long term levelized

energy rates.

The parties did not contest the application of the new data to the previously accepted methodology. However, each of these rates is a function of the discount rate and the discount rate is a contested issue.

PSNH's position was that the avoided cost rates requested in the Petition should be accepted by the Commission. At the hearing, PSNH offered Wyatt Brown, Manager, Energy Management

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and the prefiled Technical Statement of Wyatt W. Brown and prefiled Technical Statement of Mark K. Coulson (Exhibit A).

Mr. Brown supported the use of a discount rate of 15.40%. PSNH believes that since this value was found to be representative of its long term weighted cost of capital by the Commission in Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349 (1985), it is appropriate to employ it in the updating of rates.

Mr. Brown supported the short term capacity rate of \$38.20/KW-Yr as set forth in Exhibit A, (See, Exhibit 10; Updated Attachment 6 to Settlement Agreement, Revised July 8, 1985, Page 2 of 2.) Subsequent to the hearing, PSNH submitted Exhibit A-10. This exhibit includes a more recent calculation of the short term capacity rate of \$42.54/KW-Yr. (See, Exhibit D1, Exhibit 10, Revision 2, Updated Attachment 6 to Settlement Agreement, Revised July 22, 1985.)

Mr. Brown also supported the long term levelized capacity rates, the long term avoided energy cost rates and their corresponding long term levelized energy rates as set forth in Exhibit A. (See, Exhibit 8 at 3,4, and 5.)

Granite State Hydropower Association, Inc. et al (Granite State) generally supported the calculations underlying the rates requested in the PSNH Petition. However, it contested the proposed change in the discount rate. In support of its position, Granite State offered the testimony and exhibits of Martin J. Ringo, Vice President and Consulting Economist of the ELI Corporation. (Exhibit E). Dr. Ringo supported the use of a discount rate of 13.43% on the grounds that use of the value found in Docket No. DF 84-200 would constitute a change in methodology and thus violate the scope of this proceeding.

Dr. Ringo did not contest the long term levelized capacity rates or the long term avoided energy cost rates and their corresponding long term levelized energy rates as set forth in Exhibit A, (See, Exhibit 8, Pages 3, 4, and 5 of 6.) except for the substitution of the 15.40% discount rate for the 13.43%.

While Dr. Ringo did not support the short term capacity rate of \$38.20/KWYr at the hearing, (See, Exhibit 10; Updated Attachment 6 to Settlement Agreement, Revised July 8, 1985, Page 2 of 2) the subsequent submission of Exhibit A-10 was in response to discussions between Dr. Ringo and the Company on this issue. Thus, Dr. Ringo does support the calculation of the short term capacity rate currently before the Commission except for the substitution of the 15.40% discount rate for the 13.43%.

Realty and Franklin Falls contended that the scope of the instant proceeding is too narrow

and should include an examination of the adequacy of protection of the small power producers and cogenerators under the provisions of Order 17,104. To improve continuity, Realty and Franklin Falls suggest that no "new" rate should come into effect until 1987 and that the long term rates that were in effect as a result of Order 17,104 be reopened to all small power producers and cogenerators. No witnesses or other evidence was offered in support of this position.

The positions of Northeast and First are directed primarily at the procedural aspects of this proceeding. They believe that Order 17,104 was unclear as to when data updates to the rates would occur, and that the scope of the

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instant proceeding as set forth in the Order of Notice was unclear. Thus, Northeast and First argue that the June 20, 1985 effective date for new avoided cost rates was established without reasonable notice. Additionally, Northeast and First question the future procedure of the review of the methodology. Northeast and First offered no witnesses or other evidence to support their position at the hearing. Subsequently, they requested an opportunity to include the late filed testimony of Robert Rohr in the record. As noted previously, PSNH objected to the admission of the late filed testimony.

III. COMMISSION ANALYSIS

[1] All positions and data have been carefully reviewed by Melinda Butler and Mark Collin of the Economics Staff and the Commission. We will address each issue in turn. Initially, we will analyze the procedural assertions of Northeast and First. We will then turn to the merits of the proposed revisions to the avoided costs rates.

The assertions of Northwest and First are grounded in the argument that notice of the contemplated change in rates was inadequate. We disagree.

All parties were notified of the nature of the instant proceedings by the terms of both Order 17,104 and the June 20, 1985 Order of Notice in this docket. Order 17,104 explicitly provided that the long term avoided cost data will be updated "annually" by the Commission to determine the extent, if any, of appropriate revisions to long term energy and capacity rates (69 NH PUC at p. 367, 61 PUR4th at p. 147).

The scope of the instant proceedings was also made explicit in the June 20, 1985 Order of Notice. That Order of Notice directly cited the PSNH Petition for Avoided Cost Rate Update of June 14, 1985 and ordered the investigation of the long-term avoided cost rates that were proposed in that Petition. The Petition was available to all parties and, in fact, the record indicates that the Petition was served by PSNH on Northeast and First at the same time as it was filed at the Commission. All rates ultimately examined were explicitly identified in the Petition.

Given our above finding, we also find that Northeast and First's Motion for Leave to File Additional Testimony should be denied. Northeast and First had ample opportunity to file for an extension prior to the hearing and the testimony of their witness, Dr. Robert Rohr, is not pivotal to the outcome of this proceeding.

The Commission has considered Northeast and First's assertion that the June 20, 1985

effective date of the update of rates was established without reasonable notice. Since the Commission did in fact make it clear in Order 17,104 that long term avoided cost data will be updated annually, small power producers and cogenerators should have expected that, after one year, filings may not be accepted under the July 1984 rates. The buy out provision in Order 17,104 protects small power producers when updated rates are higher. It is unfair not to accord a properly noticed early effective date to protect PSNH ratepayers when updated rates are lower. In this case, the Commission finds that small power producers had reasonable notice that a new rate could effectively preclude eligibility under the previous avoided cost rates.

Clarification of the future procedure of the review of the methodology is

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appropriate given Northeast and First's concern. The Commission fully expects that the methodology adopted in Order 17,104 may be reviewed at some time in the future upon the request of any of the parties or upon the Commission's own initiative. Such a review will proceed independently of the annual updates and, as such, will have no effect on the regular occurrence of these updates.

Realty and Franklin Falls' position is directed at the scope of the instant proceeding. After careful review, the Commission concludes that the provisions of Order 17,104, adopted only last year, adequately address the issues raised by Realty and Franklin Falls. We do not believe that it is appropriate to reexamine those protections in the context of a routine annual update of rate inputs.

The Commission has carefully reviewed the positions of PSNH and Granite State regarding the value of the discount rate. The critical question surrounding an evaluation of the discount rate is whether or not its change would constitute a data update or a change in methodology.

The discount rate employed in the calculation of the long term rates that were established in Order 17,104 is 13.43%. The methodology for determining this number was set forth in the Stipulation Agreement (Exhibit 12, Attachment 9), was accepted in that Order and is supported by Granite State.

PSNH asserts that the use of a 15.40% discount rate in the instant docket is appropriate because it is the most recent Commission finding of a PSNH long term weighted cost of capital. (See, Re Public Service Co. of New Hampshire, 70 NH PUC at p. 229, 66 PUR4th at pp. 407, 408.) The calculation of this number is set forth in the Second Supplemental Testimony and Attachments of Frederick R. Plett in that docket (Exhibit 146).

[2] The Commission has compared the methodologies employed to calculate the 13.43% and the 15.40% and has concluded that they are different. The Order 17,104 weighted cost of capital calculation (13.43%) assumed constant cost rates over the period for long term debt and preferred stock while varying the cost rates of the common equity. Conversely, the DF 84-200 weighted cost of capital calculation (15.4%) assumed varying cost rates over the period for long term debt, preferred stock and common equity. Second, the 13.43% was calculated from a target capital structure established by Company management and approved by the Commission as reasonable (See, Re Public Service Co. of New Hampshire, 69 NH PUC 67, 82-87, 57 PUR4th 563, 578582 [1984]) whereas the capital structure used for the calculation of the 15.40% came

from the average of the projections of four separate scenarios.

Most importantly, we believe that the two discount rates are the result of significantly different rationales. As noted, the 13.43% represented the view of the parties of the reasonable average future cost of capital of PSNH. The 15.40% figure is the result of utilizing "Pessimistic" assumptions (e.g., a 23% incremental cost of long term debt) for the purpose of examining ratepayer and investor exposure when evaluating whether a proposed financing is consistent with the public good as required by RSA Chapter 369. Subsequent to that finding our analysis that the 15.40% figure is a "maximum" has been reinforced by current PSNH projections which estimate that the

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incremental cost of long term debt will be 19% for deferred interest bonds and 14% for Pollution Control Revenue Bonds. See, Re PSNH, DF 84-200, Exh. A-35. It is not rational to apply a pessimistic assumption used to evaluate exposure to the findings needed to discount avoided cost rates for the purposes of this proceeding.

Given that the methodologies used to calculate the 13.43% and the 15.40% are indeed different, and the 15.40% is not an appropriate calculation for the purposes of this docket in any case, the Commission finds that the 13.43% continues to be the appropriate choice because the objective in this proceeding was to update data and not to modify methodology.

The Commission has analyzed the proposed \$42.54/Kw-Yr. short term capacity component rate. (See, Exhibit A-10, Exhibit D1, Revision 2, Updated Attachment to Settlement Agreement, Revised July 22, 1985.) The \$42.54/ Kw-Yr. has been calculated by taking the results of the ECRM capacity values for the 1985 January-June and July-December cases (the base case) and comparing it to the decremental case (the change case). The difference is the increase in fuel cost due to the elimination of the use of an efficient unit or, \$3,451,000 in additional costs. The capacity cost decrease (the avoided capacity cost) due to the elimination of the need to make a purchase from Brayton 4 is \$5,399,000. Thus the net avoided capacity cost is \$5,399,000 minus \$3,451,000 or \$1,948,000. Up to this point in the calculation, the Commission is in agreement with the Company's accuracy and the claim that the previous methodology has not been violated.

The net change in cost of \$1,948,000 is an annual figure. It appears that the logic used for the present worth calculation displayed on Exhibit A-10, Exhibit D 1 was as follows:

The rate was assumed to be effective at the beginning of August so a present worth calculation to August was made. The annual discount rate used was 15.40% because PSNH supports the use of this value as a data update. The present worth calculation involved raising 1.154 (discount rate plus one) to the 5/12 power. (August to January is 5/12 of a year) The result was 1.0615. The \$1,948,000 net change was then divided by 1.0615. The resulting \$1,835,143 can be seen in the column, "Present Worth to August". Exhibit D1, Exhibit 10, Revisions 2, Updated Attachment 6 to Settlement Agreement, Revised July 22, 1985.

The \$1,835,143 present worth for 50,000 KW represents \$36.70 for 1 KW. Finally a loss factor of 1.159% was applied in keeping with the previously established methodology.

[3] The Commission has two concerns regarding the short term capacity rate. First, as noted

above, the Commission views the 15.40% discount rate as a change in methodology rather than a data update. Therefore in the context of a short term capacity rate calculation, a change to 15.40% continues to be inappropriate. Upon further review, the Commission notes that the most appropriate discount rate for a short term avoided cost rate is probably the Company's actual allowed rate of return rather than any projected Company cost rate. Presently the Company's allowed rate is 14.17%. Re PSNH, DR 82-333, Supra. However adoption of this finding would also be a change in methodology rather than data, and is therefore inappropriate at this time.

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The discount rate previously used in the calculation of the short term capacity rate was 15.10% (See, DE 83-62 Stipulation Agreement (Exhibit 12)); therefore, we find 15.10% to be the appropriate figure to be used here.

Secondly, the Commission also has concerns about the use of 5/12 as an exponent to the discount rate plus one. Originally, the discounting included an exponent of 6/12. The Commission recognizes that although the new capacity short term rate will become effective prior to January, the payments to small power producers and cogenerators will not begin until January. Thus, the discounting has no relation to the fact that the rate will be "effective" in August.

Previously, the 6/12 exponent was chosen to "average" the present value of the capacity rate over the period in which it was to be paid. In keeping with our purpose to update data and maintain the methodology of Order 17,104, the Commission finds that the 6/12 or 0.5 is the appropriate exponent to use in the discounting calculation.

The calculation of the capacity rate using the 15.10% discount rate and 0.5 exponent in the discounting equation is set forth in Table 1. After adjusting for the loss factor of 1.159% the updated rate is \$42.08 per 1 KW.

Having considered the proposed long term energy avoided cost calculations and the resulting levelized rates, the Commission adopts the calculation of the avoided energy cost as being accurate and in keeping with the previously established methodology.

The levelized rates are acceptable except for the use of the 15.40% discount rate which affects the present value divisor which in turn affects the levelized rates. The Commission finds that the substitution of a 13.43% discount rate (the rate based on the previously established methodology) for the 15.40% discount rate (the rate rejected because it modified the methodology) will result in accurate and updated levelized long term energy rates.

The Commission notes that the calculation of the long term capacity avoided cost was not updated, except for rounding corrections and therefore continues to support these numbers and the accuracy of their calculation. The proposed levelized long term capacity rates are different from the current rates only because of the Company's use of the 15.40% discount rate and the rounding corrections. Substitution of the 13.43% discount rate for the 15.40% discount rate will result in accurate levelized long term capacity rates and will approximately return the proposed levelized rates to their current levels with the rounding errors corrected.

Table 2 displays the avoided costs relevant to long term avoided cost rates as updated in

accordance with Order 17,104. Column A contains values for the Total Capacity Component, Columns B-ALL, B-ON and B-OFF display the total energy component for "all hours", "peak" and "off peak" rates respectively. This table of annual data provides the basis for selecting and determining a rate for each small power production or cogeneration site.

For informational purposes, the Commission has calculated the updated levelized value of obligations of 10, 15, 20, and 30 years, commencing in 1986, 1987, 1988, and 1989. The calculation includes in the capacity value the 5 percent discount per year when the rate is less than 20 years. Pursuant to Order 17,104 (69 NH PUC 352, 61 PUR4th

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132), long term front-end-loaded rates are subject to a "ceiling" provision, which must be factored into the rate calculation by developers filing under these rates.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Motion of Northeast Power Associates and First Energy Associates for leave to File Additional Testimony be, and hereby is, denied; and it is

FURTHER ORDERED, that the short term avoided cost capacity rate of Public Service Company of New Hampshire shall be as set forth at Table 1 of the foregoing Report; and it is

FURTHER ORDERED, that the long term avoided cost rates for energy and capacity of Public Service Company of New Hampshire shall be as set forth at Table 2 of the foregoing Report; and it is

FURTHER ORDERED, that the rates established herein will be applicable to all small power producers and cogenerators filings submitted to and accepted by the Commission on or after June 21, 1985.

By Order of the Public Utilities Commission of New Hampshire this fifth day of September, 1985.

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

TABLE 1

MARGINAL COST OF GENERATING CAPACITY

Year	Fuel Costs		Cost Net Present	Marginal Cost
	Base Charge Case	Capacity		
Year	Case (1)	-57.6 MW Cap	Difference Change (2)	Change Worth Generation (3)
	\$1000's	\$10000's	\$1000's	\$1000's to July \$/KW-YR
1985	213,973	217,424	3,451 5,399	1,948 1,816 36.31

CAPACITY COMPONENT OF SHORT-TERM RATE

(Marginal Cost) (Loss)
 (Of Generation) x (Factor) = \$42.08
 $\$36.31 \times 1.159 = \42.08

(1) Per ECRM capacity for cases January-June and July-December.

(2) Cost of Brayton 4 purchases including transmission and wheeling.
 (3) 1815730/50000 KW z 36.31 \$/KW-YR.

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

TABLE 2

SUMMARY OF AVOIDED COSTS RELEVANT TO SPP LONG TERM RATES

	COLUMN A	COLUMN B-ALL	COLUMN B-ON	COLUMN B-OFF
Year	Avoided Cost Total of Energy Loss Adjusted Capacity Costs	Avoided Cost of Energy After Adjustments	Avoided Cost of Energy After Adjustments	Avoided Cost of Energy After Adjustments
	\$/KW/YR	cents/KWH	cents/KWH	cents/KWH
1985	52.55	4.96	6.25	4.63
1986	56.06	5.28	6.07	4.68
1987	59.83	4.45	5.16	3.90
1988	63.84	4.69	5.48	4.08
1989	68.11	4.70	5.43	4.16
1990	72.68	5.31	6.13	4.67
1991	77.55	5.90	6.87	5.16
1992	82.78	6.57	7.68	5.72
1993	88.29	7.48	8.75	6.50
1994	94.19	8.39	9.94	7.21
1995	100.52	9.51	11.19	8.21
1996	107.25	10.95	12.82	9.51
1997	114.44	12.32	14.59	10.57
1998	122.09	13.12	15.67	11.16
1999	130.27	13.99	17.08	11.59
2000	139.00	14.46	16.91	12.60
2001	148.33	14.53	16.97	12.66
2002	158.26	16.98	20.10	14.59
2003	168.86	19.26	22.67	16.64
2004	180.17	21.92	26.08	18.72
2005	192.24	24.87	29.63	21.24
2006	205.12	28.29	33.54	24.28
2007	218.87	32.39	38.35	27.81
2008	233.53	35.15	41.77	30.06
2009	249.17	38.99	46.26	33.40
2010	265.88	45.81	53.46	39.94
2011	283.68	48.97	58.07	42.01
2012	302.69	53.31	62.96	45.93
2013	322.97	57.11	67.42	49.18
2014	344.62	61.49	72.65	52.92
2015	367.70	66.66	78.75	57.36
2016	392.34	72.26	85.37	62.18
2017	418.63	78.33	92.54	67.41
2018	446.66	84.91	100.31	73.07
2019	476.60	92.05	108.74	79.21
2020	508.54	99.78	117.87	85.86

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

TABLE 3

ENERGY - ALL HOURS cents/KWH

Start	1986	1987	1988	1989
Term				
10	5.73		6.10	6.74
15	6.83		7.26	7.94
20	7.76		8.36	9.21
30	9.80	10.62	11.68	12.87

CAPACITY \$/KWYR.

Start	1986	1987	1988	1989
Term				
10*	35.73	38.12	40.68	43.41
15**	59.34	63.33	67.57	72.11
20	85.87	91.62	97.76	104.31
30	96.22	102.67	109.55	116.89

*discounted 50%

**discounted 25%

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NH.PUC*09/06/85*[61195]*70 NH PUC 766*Lloyd D. Barrington d/b/a EMCA

[Go to End of 61195]

70 NH PUC 766

Re Lloyd D. Barrington d/b/a EMCA

DE 85-305, Order No. 17,845

New Hampshire Public Utilities Commission

September 6, 1985

ORDER granting interim license for the operation of a customer-owned, coin-operated telephone service.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 (70 NH PUC 89) in Dockets DE84152, DE84-159 and DE84-174 in which it authorized the use of customerowned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Lloyd D. Barrington, dba EMCA, 24 Old Bolton Road, Hudson, Massachusetts 01749, filed with the Commission on August 23, 1985 a petition seeking status as a public utility for the limited purpose of installing and operating three COCOTs in Greystone Plaza, 650 Amherst Street, Nashua, New Hampshire, 03063; and

WHEREAS, Mr. Barrington assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc., 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ6CH-14382CX-E; and

WHEREAS, Mr. Barrington also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Lloyd D. Barrington dba EMCA for the operation of three COCOTs to be located at the Nashua address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules

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regarding the operation of COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this sixth day of September, 1985.

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NH.PUC*09/06/85*[61196]*70 NH PUC 767*Bricketts Mill Water Company, Inc.

[Go to End of 61196]

70 NH PUC 767

Re Bricketts Mill Water Company, Inc.

DE 85-149, Order No. 17,848

New Hampshire Public Utilities Commission

September 6, 1985

ORDER authorizing the establishment of a water public utility and determining just and reasonable rates for water service.

Return, § 115 — Water utility.

The overall rate of return for a water utility was set at 10%. [1] p. 768.

Rates, § 595 — Water — Customer charge.

In developing the customer charge portion of the rate structure of a water utility the commission utilized fixed depreciation and tax charges to arrive at a reasonable minimum charge of \$25 per quarter. [2] p. 768.

Rates, § 595 — Water — Consumption rates.

In determining the usage or consumption portion of the rate structure of a water utility the commission subtracted customer charge revenues from the revenue requirement and divided that figure by estimated total annual consumption. [3] p. 768.

APPEARANCES: Peter A. Lewis and Stephen J. Noury for the Petitioner; Robert B. Lessels and James C. Nicholson for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 14, 1985, Bricketts Mill Water Co., Inc. (Bricketts), a New Hampshire corporation supplying water to 24 customers in a limited area in the Town of Hampstead, New Hampshire, filed a petition requesting authority pursuant to RSA 374:22 to establish a water public utility in that area. In addition, the petition requested that the Commission fix rates pursuant to RSA 378. An Order of Notice was issued on June 7, 1985 setting a hearing for July 31, 1985 at which time no one appeared in opposition to the petition. Testimony and exhibits in support of the petition were offered by Peter A. Lewis, President of Bricketts, and Stephen J. Noury.

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II. FINDINGS

Bricketts is a wholly-owned subsidiary of Lewis Builders (Lewis), a New Hampshire construction and development company located in Atkinson, New Hampshire. It was established by Lewis to provide water service to a residential development constructed by Lewis in Hampstead, New Hampshire. Since May, 1985, Bricketts has been supplying metered water service to 24 customers in the requested franchise area which is fully described in Exhibits 1 and 2. The two wells which comprise the supply source have an adequate yield to service this area.

In view of the above, we find that the granting of a franchise area to provide water service in the above-described area is consistent with the public good. We therefore will grant Bricketts' petition in that regard. We now turn to the issue of just and reasonable rates for such service.

A. Revenue Requirement

On the basis of the testimony and exhibits, we find Brickett's revenue requirement to be as follows:

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

Rate Base

Gross Plant \$47,996
 Less: Customer Contributions 5,400
 Average Plant in Service \$42,596
 Plus: Working Capital 946
 Average Rate Base \$43,542

Rate of Return

[1] The financing to build this water system, less customer contributions, was obtained from the developer and owner of the water system, Lewis Builders, with the resulting capital structure and composite rate of return as follows:

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

Cost Rate

Long Term Debt \$38,596 10%
 Common Stock 4,000 10%
 \$42,596 10%

Given the above-stated rate bases, the return requirement thus becomes:

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

Average Rate Base \$43,542 x 10% = \$4,354

Expenses

A. Operating Expenses
 Superintendence \$ 4,680
 Purification 150
 Maintenance of pumps 250
 Purchased power 600
 Customer meter reading 120
 Customer billing 300
 Office supplies 350
 Supervision fees 1,000
 Franchise requirement 120
 \$ 7,570
 B. Depreciation \$ 1,682
 C. Taxes – Property \$ 989

Revenue Requirement

Operation and Maintenance \$ 7,570
 Depreciation Expense 1,682
 Return Requirement 4,354
 Taxes – Property 989
 \$14,595

B. Rate Structure

[2,3] As above stated, Bricketts is presently serving 24 customers with the expectation of adding three additional customers before September. All customers are metered.

In developing a rate structure of this Company we have utilized certain fixed charges, in this case depreciation and taxes, to arrive at a reasonable minimum or customer charge of \$25 per

quarter as follows:

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

Annual Charge

Depreciation \$ 1,682
Taxes (Real Estate) 989
\$ 2,671

2671 ÷ 27 customers = \$98.93
use \$25 per quarter

The total revenue requirement of \$14,595 less the minimum charge revenues of \$2,700, leaves the \$11,895 to be recovered under the usage or consumption part of the rate schedule. We have used an estimated 2000 cubic foot quarterly consumption for each customer, for an estimated total annual consumption of 216,000 cubic feet.

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

\$11895 = \$.055 per cubic foot
216000 = or \$5.50 per 100 cubic feet

Therefore, the rate structure for all metered service shall be on a quarterly basis as follows:

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

Minimum charge \$25
All consumption \$ 5.50/100 cu. ft.

These rates shall become effective with all service rendered on or after October 1, 1985.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Bricketts Mill Water Co., Inc., be, and hereby is, authorized to operate as a public water utility in a limited area in the Town of Hampstead, New Hampshire as described in the foregoing Report; and it is

FURTHER ORDERED, that the Bricketts Mill Water Co., Inc., shall file a tariff describing the terms, conditions, and rates, as designated in the foregoing Report, so as to recover annual revenues of \$14,595, and bearing the effective date of October 1, 1985.

By Order of the Public Utilities Commission of New Hampshire this sixth day of September, 1985.

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NH.PUC*09/06/85*[61197]*70 NH PUC 770*Petrolane-Southern New Hampshire Gas Company, Inc.

[Go to End of 61197]

70 NH PUC 770

Re Petrolane-Southern New Hampshire Gas Company, Inc.

DR 84-380, Supplemental
Order No. 17,849

New Hampshire Public Utilities Commission

September 6, 1985

ORDER directing a gas utility to file a semi-annual cost of gas adjustment.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 20, 1985, the Commission, upon its own motion, issued Order No. 17,456 (70 NH PUC 69) which opened this docket to determine whether Petrolane-Southern New Hampshire Gas Company, Inc. should be directed to utilize a semiannual cost of gas adjustment vis a vis the current monthly cost of gas adjustment; and

WHEREAS, on March 25, 1985, Petrolane-Southern New Hampshire Gas Company, Inc. submitted correspondence conveying its agreement to adopt a semi-annual cost of gas adjustment after review of staff's analysis of the advantages and disadvantages of said semi-annual cost of gas adjustment; now therefore it is

ORDERED, that Petrolane-Southern New Hampshire Gas Company, Inc. be, and hereby is, directed to file a semiannual cost of gas adjustment on or about October 1, 1985 for the period beginning November 1, 1985 and ending April 30, 1986; and it is

FURTHER ORDERED, that said semi-annual cost of gas adjustment will be filed in a manner which is consistent with the cost of gas adjustments utilized by Northern Utilities, Inc., Manchester Gas Company, Gas Service, Inc., Concord Natural Gas Company, and Keene Gas Company; and it is

FURTHER ORDERED, that during September and October, 1985, Petrolane-Southern New Hampshire Gas Company, Inc. will continue to utilize the monthly cost of gas adjustment currently in effect.

By Order of the Public Utilities Commission of New Hampshire this sixth day of September, 1985.

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NH.PUC*09/09/85*[61198]*70 NH PUC 771*New Hampshire Electric Cooperative, Inc.

[Go to End of 61198]

70 NH PUC 771

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Granite State Electric Company, Inc.

Intervenors: New England Telephone and Telegraph Company and New Hampshire Attorney General

DE 85-135, Order No. 17,850
New Hampshire Public Utilities Commission
September 9, 1985

ORDER authorizing electric utilities to change service territories.

Service, § 320 — Electric — Service territories — Transfer.

The transfer of a limited portion of the town of Enfield from the service territory of one electric utility to that of another was approved as in the public interest; the commission found that the transfer would not diminish quality of service and would allow for more economical service. [1] p. 773.

Service, § 326 — Electric — Distribution system — Underground cable.

Where electric distribution lines were changed as a result of a service area transfer, those customers that had received underground service from the old distribution line were required to be offered like underground service from the new line at one-half the cost of the tariffed charges. [2] p. 774.

APPEARANCES: For the Petitioners, Earl Hansen and Charles Swanson, New Hampshire Electric Cooperative; Norman Dobson, Granite State Electric Company, Inc.; and James Cleveland, Esquire AMCA; Steven Merrill, New England Telephone Company.

By the COMMISSION:

REPORT

On April 29, 1985 the New Hampshire Electric Cooperative, Inc. and the Granite State Electric Company, Inc. filed with this Commission a petition for authority to change service territories in a limited portion in the Town of Enfield, New Hampshire pursuant to the provisions of RSA 374:22-c.

On June 18, 1985 an Order of Notice was issued setting a hearing for July 19, 1985 at 2:00 p.m. Notices were sent to Donald B. Reed, Vice President, New England Telephone and Telegraph Company (for publication); Earl F. Hansen, Plant Manager, New Hampshire Electric Cooperative, Inc.; and the Office of the Attorney General. Affidavits were received confirming that notification was made in The Union Leader on June 27, 1985, and in The Valley News on June 25, 1985.

The petitioners state that both New Hampshire Electric Cooperative (the Cooperative) and Granite State Electric Company (Granite State) are authorized to serve in the Town of Enfield, New Hampshire; each serves a portion of

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Enfield in accordance with franchise maps approved by and filed with this Commission. The

Cooperative has received a request for power from AMCA International at a site approximately 25 miles from the Cooperative's Sunapee substation. The Cooperative is unable to serve AMCA from its on site facilities and would require a substantial amount of line to be rebuilt from the substation to provide minimal service to AMCA.

Although Granite State Electric has no authority to serve AMCA, it has a substation located much closer to the AMCA site than does the Cooperative. Granite State is willing to build the necessary tie line to provide service to AMCA if the Commission will authorize the necessary franchise boundary change to transfer that portion of Enfield which includes the AMCA property to Granite State. Testimony at the hearing disclosed that the transfer of a small portion of Lebanon would also be necessary. An additional 21 customers, presently served by the Cooperative, would be similarly transferred to Granite State under the proposal. Granite State contends that it will be able to provide better, reliable and economical service to those customers. All of the effected customers have been notified of this proceeding.

Mr. Earl F. Hansen testified that AMCA requires 500 kilowatts of power. In order to serve them, the Cooperative would be required to construct 28 miles of overhead plant from its substation in Sunapee. Approximately 14 miles of that construction would involve cross-country service. The Cooperative is unable to purchase power from Granite State to provide the service since, among other things, Granite State has no wholesale rate which would allow the Cooperative a new delivery point.

The hearing was attended by approximately 12 concerned citizens.

Mr. H. B. Church, one of the customers who would be transferred under the proposal, testified that he and his wife had signed a petition in favor of the transfer, but that he had misunderstood some of the terms of the transfer. He objects to a new right-of-way along Eastman Hill Road and recommends that it follow the existing right-of-way away from the scenic road. Granite State responded that the condition of the existing line is such that a replacement is necessary whether or not the franchise transfer is made and that the replacement would be made in accordance with Company's present standard practice of locating along Eastman Hill Road. He contends that the Company will minimize the visual impact by installing Hendrix cable, which will allow for less tree trimming and fewer poles in the effected area.

An exhibit was offered listing the 21 customers of the Cooperative who will be transferred to Granite State if the petition is approved. The petitioners confirmed that 17 of the 21 listed had verified in writing their willingness to be transferred.

Mr. H. B. Church, one of the signatories, testified at this proceeding that although his family had signed the petition favoring the transfer, he was not in favor of the petitioners proposed rerouting of the right-of-way along the road. The line over Eastman Hill currently follows an existing right-of-way which is out of sight of the road. He objects to the visual impact of the new right-of-way. Mr. Church offered that the likelihood of car/pole accidents

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would also be eliminated by retaining the existing right-of-way.

Mr. Austin Kovacs also objected to the visual impact of the new cable, particularly since the

proposed project will cause the line to zig zag back and forth across the traveled way on Eastman Hill Road. The present line extends behind his home and buildings, and his home is served by an underground service which was installed at his expense. He recommends maintaining the old right-of-way and continuing his underground service. He also offered that a group of citizens has considered submitting a petition to the Town of Enfield, at Town Meeting, to have Eastman Hill Road declared a scenic road, and they have also considered petitioning the conservation district as essentially a zoning district. No action has been taken in either case.

Mrs. Eleanor Furlow testified that the Cooperative had provided excellent service over the years. She expressed her concern that there is apparent conflict as to where the new poles are going to be placed along Eastman Hill Road and requested that the line not be placed along the road at all. She would like to have a cross-country distribution line that extends from Eastman Hill to a single property across the field discontinued and replaced and have the line join one that extends from Eastman Hill Road up Potato Hill Road.

James Cleveland, Esquire, representing AMCA, offered a letter from the Department of Public Works and Highways recommending the franchise transfer. A history of past electrical outages has caused the Department to install a 25,000 K generator in view of the number of outages experienced at the Division II headquarters and the Division Garage. The franchise transfer will allow the Department to retire the generator.

COMMISSION ANALYSIS

[1] There is no evidence in the record which argues that the franchise transfer is not in the public interest. Although some customers attest to the satisfactory service provided by the Cooperative, there is no indication in the record that Granite State will not provide at least as good service as did the Cooperative. There is clear evidence that AMCA can be served more economically by Granite State than by the Cooperative, and it is clear that those economies ultimately accrue to the general body of ratepayers. The Commission upon review of the testimony and exhibits finds that the transfer of a limited portion of the Town of Enfield from the New Hampshire Electric Cooperative, Inc. to the Granite State Electric Company, Inc. to be in the public interest, and it so approves.

Having approved the concept, the Commission finds that there are opportunities for accomplishing the reconstruction while at the same time relieving some of the impositions upon the existing customers which are currently proposed. We find, for example, that the Company's plan to "zig zag" the line along Emerson Hill Road requires further study. While testimony shows that the proposal will minimize the amount of tree trimming necessary to maintain the line, it is clear that such a construction practice will increase the visibility of the line to the passing public. We will not prohibit "zig zagging", but we will require the participating companies to minimize the practice to the extent necessary to minimize adverse visibility.

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[2] We find underground construction along Eastman Hill Road to be an undesirable alternative in view of the cost which would be impacted upon all other customers. Underground services, on the other hand, are and will continue to be an option which can be exercised by the affected customers so long as they meet the provisions of the Company's tariff in covering the

additional costs that would be generated. We find an exception to that practice in the cases of existing customers along Eastman Hill Road who have already supported the costs of, and are realizing the esthetic benefits of, underground services. We find it be fair that those customers who have underground service from the old distribution line, shall be offered like underground utility service from the new distribution line at one-half the cost of the tariffed charges.

Finally, we find that it is reasonable to expect that the Company should remove those portions of its unused plant within 12 months of the new line's being put into service. We are confident that the Companies will adjust their crew schedule to expedite such removal.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of the New Hampshire Electric Cooperative, Inc. and the Granite State Electric Company, Inc. for authority to change service territories in a limited portion in the Towns of Enfield and Lebanon, New Hampshire as indicated on exhibits filed in this docket be, and hereby is, approved subject to the conditions noted in the aforesaid Report.

By Order of the Public Utilities Commission of New Hampshire this ninth day of September, 1985.

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NH.PUC*09/09/85*[61199]*70 NH PUC 775*D. J. Pitman International Corporation

[Go to End of 61199]

70 NH PUC 775

Re D. J. Pitman International Corporation

DR 85-171, Order No. 17,851

New Hampshire Public Utilities Commission

September 9, 1985

ORDER nisi approving an interconnection agreement and long term rates for a small power production project.

By the COMMISSION:

ORDER

WHEREAS, on May 24, 1985, D.J. Pitman International Corporation (Pitman) filed a long term rate filing for the Wadleigh Falls Hydroelectric Project; and

WHEREAS, the Petition requested inter alia a twenty-nine year rate order; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), such a rate order will be granted to the Petitioner if inter alia a surety bond

or a junior lien on the project is given to cover the "buy out" value at the site; and

WHEREAS, Pitman has averred that it is prepared to offer Public Service Company of New Hampshire (PSNH) a "junior lien" on the Wadleigh Falls Hydroelectric Project; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Pitman's Petition for a twenty-nine Year Rate Order; and

WHEREAS, Pitman's filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra, in all respects other than the lien; it is therefore,

ORDERED NISI, that Pitman's Petition for a Twenty-nine Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet for the Wadleigh Falls Hydroelectric Project is approved contingent on satisfactory negotiation of a junior lien; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1985.

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NH.PUC*09/09/85*[61201]*70 NH PUC 777*Granite State Telephone Company

[Go to End of 61201]

70 NH PUC 777

Re Granite State Telephone Company

DR 85-35, Order No. 17,854

New Hampshire Public Utilities Commission

September 9, 1985

ORDER approving proposed accounting treatment for the purchase of annuities by a telephone utility.

By the COMMISSION:

ORDER

WHEREAS, Granite State Telephone (the "Company") and the Finance Staff of this Commission have reached agreement on a suggested accounting treatment of the purchase of the annuities which are the subject of this proceeding; and

WHEREAS, the Commission has reviewed the recommendation of the parties and finds it to be a reasonable solution of the issues raised in this proceeding; it is

ORDERED, that for accounting and ratemaking purposes, that the purchase of the annuities which are the subject of this proceeding shall be accounted for as a non-recurring expense occurring in the Company's fiscal year ended December 31, 1984 to be charged to Account No. 672, Relief and Pensions.

By Order of the Public Utilities Commission of New Hampshire this ninth day of September, 1985.

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NH.PUC*09/09/85*[61202]*70 NH PUC 778*Concord Natural Gas Corporation

[Go to End of 61202]

70 NH PUC 778

Re Concord Natural Gas Corporation

Additional petitioner: EnergyNorth, Inc.

DR 84-345, Supplemental
Order No. 17,855

New Hampshire Public Utilities Commission

September 9, 1985

ORDER modifying a condition on the approval of the affiliation of a gas distribution company and a public utility holding company.

Intercorporate Relations, § 13 — Holding companies and affiliated interests — Conditions on approval of affiliation — Investment restrictions.

In response to complaints that one of its conditions on the approval of the affiliation of a gas distribution company and a holding company was unduly restrictive, the commission modified its condition that the holding company's investment in related and unrelated nonutility business, on an aggregate basis, shall not exceed 15% of total assets without prior commission approval; the modification established review procedures that would allow the holding company to engage in any transaction consistent with a commission approved business plan, including those that would raise the level of nonutility investment above the 15% limit, without having to file for commission approval on a transaction-by-transaction basis; the commission refused to eliminate the condition citing concerns about the effect of nonutility transactions on utility operations and rates; the concerns pertained to investment risk perceptions, allocation of corporate resources, and dilution of utility resources.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. INTRODUCTION

On July 15, 1985, the Commission issued Report and Order No. 17,745 (70 NH PUC 632) which, inter alia, conditionally approved the affiliation of EnergyNorth, Inc. (ENI) and Concord Natural Gas Corporation (jointly the Petitioners) by a tax exempt share exchange. On July 19, 1985, the Petitioners filed a Motion for Modification and Other Relief which requested that the Commission modify one of the conditions in Order 17,745. Specifically the motion requests the Commission to delete the condition in said Order which provides that ENI's investment in related and unrelated nonutility business, on an aggregate basis, shall not exceed 15% of its assets, except with the prior approval of the Commission (Condition 4).

By Supplemental Order No. 17,768 (July 29, 1985), the Commission scheduled on August 20, 1985 a hearing to review the Motion. During this

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hearing the Petitioners provided two witnesses and submitted five exhibits.

II. PETITIONERS' POSITION

The Petitioners object to Condition 4 because they claim that it upsets the balance between the investors of the Petitioners and the interest of the public. As a part of its direct submission, the Petitioners suggested certain conditions which they believed would balance the business interests of the Petitioners and the public interest in the regulated gas utilities. To accomplish this balance, the Petitioners distinguished between utility and non-utility business that would be carried on under the holding company structure. The non-utility businesses were further categorized as either related or unrelated businesses. The Petitioners proposed that non-utility unrelated business shall not exceed 15% of ENI's total assets, both individually and on an aggregate basis, except with the prior approval of the Commission. See, Exh. 5. In Order 17,745, the Commission declined to distinguish between related and unrelated non-utility businesses. Instead, Condition 4 provided that ENI's investment in both related and unrelated non-utility business, on an aggregate basis, shall not exceed 15% of its total assets, except with the prior approval of the Commission.

The Petitioners represent that their original proposal was sufficient to maintain a reasonable balance between the interests of investors and the interests of the public. According to the Petitioners, the Commission's modification of this condition creates disincentives to any diversification, unreasonably interferes with the exercise of ENI's business judgment, appears to be based on the incorrect assumption that public utilities derive no benefit from diversification and overlooks the adequacy of ENI's proposal, as filed, to guard the public interest.

The Petitioners further represent that Condition 4 in Order 17,745 drastically restricts ENI's ability to expand in the utility related nonutility business in light of significant current and contemplated investment by ENI in that business.

Lastly, the Petitioners state in the Motion that there is no evidence to the effect that the proposal would not accomplish the objectives of balancing the interest of the public and investors.

In the course of the August 20, 1985 hearing the Petitioners' witness provided testimony that indicated a reluctance of the Board of Directors to complete the affiliation if Condition 4 is not modified. Article VIII of the Agreement and Plan of Exchange (Exh. 2) provides for termination of the affiliation if conditions may have a material adverse effect upon the business prospects or are unduly restrictive or onerous or both. The Petitioners are concerned that Condition 4 will impede the Petitioners' ability to operate in an orderly, businesslike manner.

To accomplish what the Petitioners perceive as a reconciliation of objectives, the witness proposed a change to Condition 4 which eliminated any restriction on related nonutility business and lowered the ceiling on the unrelated nonutility business to 12.5 percent of the total assets of ENI, unless prior approval from the Commission is sought and obtained.

III. COMMISSION ANALYSIS

A. Condition 4

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The issue presented to the Commission through the Petitioners' Motion relates directly to the effect of Condition 4 on the future business operations of ENI if the proposed affiliation is accomplished. After review and consideration, we have decided to modify, but not eliminate, Condition 4 so that the Petitioners' concerns can be addressed to some degree consistent with the Commission's ability to exercise its responsibilities.

Accordingly, the affiliation is approved subject, inter alia, to the following modified Condition 4:

1) ENI will continue to be permitted to conduct nonutility transactions without further Commission requirements within the 15 percent limitation established in original Condition 4¹⁽³¹⁵⁾ ;

2) To the extent that ENI anticipates engaging in a transaction or a series of transactions which will, when completed, result in a corporate structure where nonutility business exceeds 15% of ENI's assets, ENI must file with the Commission a business plan for review and approval²⁽³¹⁶⁾ ;

3) Upon Commission approval of ENI's business plan, ENI will be authorized to engage in any transaction or series of transactions that are consistent with the business plan; and

4) None of the foregoing provisions may be construed as limiting the Commission's ability to exercise any of its ongoing regulatory responsibilities as they may be pertinent to any ENI affiliate.

B. Rationale for Imposition of Condition

The above provisions balance the concerns of the Petitioners with those of the public. The Petitioners' concerns are as set forth above. The public concern is the effect of ENI's nonutility

transactions on ENI utility operations and rates.

This concern can be refined as pertaining to three different areas: 1) risk; 2) allocation; and 3) dilution of utility resources.

The risk factor which a utility holding company maintains increases or decreases depending on investor perception of that companies' exposure to volatility of return on investment and investment growth. A major factor to this perceived exposure is the holding company's diversification into businesses other than regulated utility operations. Order 17,745 looks on all nonutility operations as diversification from utility operations because it is not directly regulated by the Commission.

The Petitioners take issue with this interpretation of the term diversification. It is their position that diversification of ENI can only properly be defined on a functional basis; i.e., investment in nonutility operations that are not related to utility operations is diversification. We cannot agree with this.

Business ventures outside of the regulated utility environment can have the effect of increasing risk through competition. Once a holding company expands its operation outside of its franchised customer area, it increases its exposure to a decrease in overall return through loss of market share in

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the nonutility business because of a competitive environment.

In this context, the Commission's responsibility must be to ensure that the holding company's utility ratepayers are not required to bear any increased cost arising from either the higher risk itself or any adverse consequences resulting therefrom. Condition 4 was included in Order 17,745 to accomplish this objective.

Allocation and dilution of resources are related issues. ENI through Manchester Gas Company, Gas Service, Inc. and Concord Natural Gas Corporation has in its employment highly qualified personnel in the field of utility operations and management. Diversification potentially draws this resource away from the utility operation. In addition, to the extent that nonutility operations draw on ENI's personnel, allocations must be made between utility and nonutility operations. The larger the nonutility operations grow, the more those operations potentially draw on the personnel resource (management in particular) available and the more scrutiny is needed to review whether such allocations are reasonable and fair to utility ratepayers.

C. Implementation of Condition 4

Throughout the rehearing, the Petitioners indicated their concern about the alleged hampering effect Condition 4 will impose on ENI's nonutility ventures.

One concern is the timing involved in prospective business deals. According to the Petitioners, business transactions are sometimes accomplished within a very short period. Where timing is important, regulatory requirements may unduly extend that time period, thereby possibly causing the other party to back off from the business proposition.

For the purposes of this rehearing, we will accept the representations of company

management despite the paucity of evidentiary support.

Condition 4, as modified, will not impede ENI's future business transactions. It is a mechanism which we intend to utilize to monitor and review diversification and the respective level of risk to which ENI, and thereby its utility ratepayers, will be exposed. Such a condition should not be unduly restrictive or onerous to ENI's business. ENI should not be engaging in new business transactions without first developing and adopting a business plan. Competent business management, such as ENI's, simply would not enter into a new business transaction which is inconsistent with such a business plan, at least until the existing business plan is reviewed and modified. Our condition requires the extra step of presenting the Companies' business plan to the Commission for review and approval prior to engaging in transactions which are consistent with that plan. Once the general business plan is approved by the Commission, ENI and its affiliates will have the ability to take advantage of opportunities that arise that are consistent with the plan without being required to file for Commission approval on a transaction-by-transaction basis. Thus, the Petitioners' concern that the process will be sufficiently burdensome in and of itself to interfere with its ability to conduct business is addressed. The Commission finds that this is a prudent mechanism to provide protection to utility ratepayers without imposing an undue burden on the Companies' ability to continue to engage in business on a day-to-day basis.

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IV. CONCLUSION

The procedures established herein provide a reasonable balance between the Petitioners' concerns and the fulfillment of the Commission's responsibility to remain informed and to oversee the utilities' involvement in ENI business transactions.

Condition 4 as modified is a necessary measure to accomplish this objective. The Commission had hoped that utilities and utility holding companies similar to ENI would provide such information to the Commission on their own. This has not been the case with ENI. Examples of this are the transfer of rent-a-space from Manchester Gas Company to ENI and establishment of EnergyNorth Real Estate Trust, all without formal notification to this Commission.

With this history, the Commission finds that it is necessary to establish modified Condition 4 so that our statutory obligations can be effectively exercised.³⁽³¹⁷⁾

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report, which is made a part hereof, it is hereby ORDERED, that Condition 4 is hereby modified as set forth in the foregoing report.

By Order of the Public Utilities Commission of New Hampshire this ninth day of September, 1985.

FOOTNOTES

¹Subject to Commission and statutory requirements. (70 NH PUC at p. 639.)

²The business plan would be similar to that which ENI Management provides its Board of Directors.

³As is apparent from the above rationale, our concern is directed more at the holding company structure than at the instant affiliation. Thus, we should directly state that, even if the proposed affiliation is not consummated, we would, after due notice, consider the imposition on ENI of a requirement such as that set forth as modified Condition 4 herein.

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NH.PUC*09/09/85*[61203]*70 NH PUC 782*Manchester Gas Company

[Go to End of 61203]

70 NH PUC 782

Re Manchester Gas Company

DR 85-214, Order No. 17,856

New Hampshire Public Utilities Commission

September 9, 1985

ORDER suspending revision to gas tariff pending results of investigation.

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By the COMMISSION:

ORDER

WHEREAS, Manchester Gas Company, a public utility providing gas service in the State of New Hampshire, on August 16, 1985 filed with this Commission certain revisions to its tariff, NHPUC No. 13; and

WHEREAS, it appears to the Commission that the rights and interests of the public affected require that the effective date thereof be suspended pursuant to RSA 378:6 pending investigation and decision thereon; it is hereby

ORDERED, that 1st revised page 1, 1st revised page 2, and 1st revised page 3 of Manchester Gas Company's tariff, NHPUC 13 - Gas Supplement No. 1, be, and hereby is, suspended until otherwise ordered by this Commission.

By Order of the Public Utilities Commission of New Hampshire this ninth day of September, 1985.

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NH.PUC*09/10/85*[61200]*70 NH PUC 776*Central Hooksett Water Precinct

[Go to End of 61200]

70 NH PUC 776

Re Central Hooksett Water Precinct

Intervenors: Hooksett Village Water Precinct and Manchester Water Works

DE 85-293, Order No. 17,853

New Hampshire Public Utilities Commission

September 10, 1985

ORDER approving an emergency standby water supply agreement.

By the COMMISSION:

ORDER

WHEREAS, the Central Hooksett Water Precinct having filed a petition on July 20, 1985 for approval of an emergency standby water supply agreement (Agreement) between Central Hooksett Water Precinct (Central) and Hooksett Village Precinct (Village) whereby Central would provide standby fire protection capability for the village; and

WHEREAS, a proposed amendment to the Central Hooksett Water Precinct wholesale contract with Manchester Water Works (Wholesale Contract), indicating approval by the Board of Water Commissioners, was filed by the Manchester Water Works on September 3, 1985, indicating that the Manchester Water Works, the supplier of water to the Village, agrees with the petition; it is hereby

ORDERED, that for good cause shown the Commission hereby approves the agreement; and it is

FURTHER ORDERED, that for good cause shown the Commission hereby approves the proposed amendment to the wholesale supply contract between Manchester Water Works and Central Hooksett Water Precinct; and it is

FURTHER ORDERED, that this Order is effective on the date that an executed copy of the amended wholesale contract is filed with the Commission.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1985.

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NH.PUC*09/12/85*[61204]*70 NH PUC 783*Southern New Hampshire Water Company, Inc.

[Go to End of 61204]

70 NH PUC 783

Re Southern New Hampshire Water Company, Inc.

DR 85-308, Order No. 17,857
New Hampshire Public Utilities Commission
September 12, 1985

ORDER suspending a water tariff pending results of a commission investigation.

By the COMMISSION:

ORDER

WHEREAS, Southern N. H. Water Company has filed with this Commission certain revisions to its tariff seeking to establish temporary rates for its Avery Division in Londonderry, New Hampshire; and

WHEREAS, the Commission finds that this filing requires investigation before rendering a decision; it is

ORDERED, that Original Page 18F, Southern N. H. Water Works Co. Tariff, NHPUC No. 7 - Water, be and hereby is, suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1985.

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NH.PUC*09/12/85*[61205]*70 NH PUC 784*New Hampshire Electric Cooperative, Inc.

[Go to End of 61205]

70 NH PUC 784

Re New Hampshire Electric Cooperative, Inc.

DE 85-254, Order No. 17,859
New Hampshire Public Utilities Commission
September 12, 1985

ORDER permitting an electric cooperative to install, operate, and maintain a voltage regulator on state-owned land.

APPEARANCES: For the Petitioner, Earl Hanson, NHEC.

By the COMMISSION:

REPORT

On July 5, 1985 the New Hampshire Electric Cooperative, Inc. filed with this Commission a petition for authority to install, operate, repair and maintain a voltage regulator and access road on state-owned land of the Concord to Lincoln Railroad Line in Woodstock, New Hampshire.

The Commission issued an order of notice on July 17, 1985 directing all interested parties to

appear at public hearings at 10:00 a.m. on August 27, 1985 and the Commission's Concord offices. Notices were sent to Earl Hanson, Plant Manager, New Hampshire Electric Cooperative, Inc. (for publication); John McAuliffe, Railroad Administrator, Department of Public Works and Highways; Robert X. Danos, Director, Safety Services; John Chandler, Commissioner, Department of Public Works and Highways; Thomas A. Power, Director, Division of Motor Vehicles; Jim Carter, Chief, Land Management (DRED); Kelton E. Garfield, Supervisor, Public Records, Department of Public Works and Highways; Christopher J. Kersting, New Hampshire Aeronautics Commission; and the Office of the Attorney General. An affidavit was received at the Commission's office on the day of the hearing confirming that publication was made in The Union Leader on August 3, 1985.

Company Witness Hanson testified that a new voltage regulator must be installed in order to maintain voltage levels. The location of the proposed regulator is very important in that:

1. It must be adjacent to an existing 34.5 kV transmission line;
2. It should be half way between the Thornton and North Woodstock substations to balance the regulator load;
3. The site should be reasonably level for the installation of a concrete pad to support the regulator.
4. The site must be accessible for installation and maintenance.

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5. It needs to be close to the distribution lines for station service power.

The proposed location, as indicated on exhibits in this docket, is at approximately station 860+20 on the stateowned Concord to Lincoln Railroad Line in Woodstock. That station meets the site location requirements of the Company.

Mr. Hanson testified that a license has been drawn by the Department of Public Works and Highways Railroad Division, that a one time license fee of \$570 has been agreed to by the two parties, and that the Railroad Division has no objection to the license. There will be no interference with rail traffic. All construction will be in accordance with the National Electric Safety Code and all pertinent state regulations.

No objections were filed or expressed either prior to or at the public hearing. In fact, no intervenors or interested parties were in attendance.

The petition was properly publicized and proper notification was given to the public as to the proposed installation.

The Commission finds that approval for a license to construct, and maintain a voltage regulator and access road on public lands of the State of New Hampshire as specifically designated in exhibits in this docket to be in the public interest.

Our Order will issue accordingly.

ORDER

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

ORDERED, that authority be granted to the New Hampshire Electric Cooperative, Inc. to install, operate, repair, and maintain a voltage regulator and access road on state-owned property of the Concord to Lincoln Railroad Line in Woodstock, New Hampshire at a location specifically designated in exhibits in this docket.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1985.

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NH.PUC*09/12/85*[61206]*70 NH PUC 786*Public Service Company of New Hampshire

[Go to End of 61206]

70 NH PUC 786

Re Public Service Company of New Hampshire

DE 85-259, Order No. 17,860

New Hampshire Public Utilities Commission

September 12, 1985

ORDER permitting an electric utility to construct and maintain an overhead electrical distribution line crossing state-owned land.

By the COMMISSION:

REPORT

On July 10, 1985, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition seeking authority to construct and maintain an overhead electrical distribution line over and across land of the Water Supply and Pollution Control Commission in Franklin, New Hampshire. An Order of Notice setting the matter for public hearing at the Commission's Concord office on August 28, 1985 at 2:00 p.m. was issued on July 17, 1985, with copies sent to Pierre O. Caron, Esquire, (PSNH) for publication; Donald Peters of the Water Supply and Pollution Control Commission; John Chandler, Department of Public Works and Highways; Robert Danos, Safety Services; Jim Carter, Chief of Land Management (DRED) Christopher Kersting, Aeronautics Commission; and the office of the Attorney General.

The duly noticed hearing was held as scheduled. Attorney Caron presented two witnesses, Ron Grondin, District Manager of the Franklin Office of PSNH and Gary Lemay, Staff Engineer. No intervenors were present. Mr. Caron described the crossing as an upgrade of the Franklin distribution system to meet growing demands for electric power in the Prospect Street area. The line to be constructed would be a 34.5/19.9kV, three-phase system. The present 2.4kV service to the Prospect Street area is inadequate to meet growth of the area. PSNH sought a license granting an easement of 25 feet on either side of the centerline of the proposed line as shown on PSNH Drawing No. R-9795. The plan shows new construction beginning at existing Pole No. 54/5 easterly through a series of 12 new poles identified as 12A/1 through 12A/12. The petition

of PSNH was marked as Exhibit 1, Drawing R-9795 as Exhibit 2. Also presented was a letter from the Water Supply and Pollution Control Commission indicating it had no objection to the crossing. That letter, dated April 15, 1985, was entered as Exhibit No. 3.

Witness Grondin indicated the cost of this extension was about \$64,000.

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Revenues expected from 78 units being built and requiring electrical service are estimated at \$60,000 per year. The complex has 40 units of apartments, 10 duplexes and 18 single-family homes. Witness Lemay testified that the line would be built in compliance with all applicable codes. Attorney Caron indicated alternative routes were considered, but rejected because of higher costs.

Because of the Company's need to upgrade its distribution system in order to provide electrical service within its franchised area, the commission finds the petition in the public interest. With no opposition voiced, we will grant the license as proposed. Our order will issue accordingly.

ORDER

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

ORDERED, that Public Service Company of New Hampshire (PSNH), be and hereby is, granted license to construct, maintain and operate a 34.5/19.9 kV, three-phase distribution line over and across land owned by the State of New Hampshire's Water Supply and Pollution Control Commission in the City of Franklin, New Hampshire, such construction as depicted in PSNH Drawing R.9795 (Exhibit No. 2); and it is

FURTHER ORDERED, that all construction be according to the National Electrical Safety Code and others where appropriate.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September.

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NH.PUC*09/13/85*[61207]*70 NH PUC 787*Public Service Company of New Hampshire

[Go to End of 61207]

70 NH PUC 787

Re Public Service Company of New Hampshire

Intervenors: Seacoast Anti-Pollution League and Campaign for Ratepayers' Rights

DF 84-200, Fourteenth Supplemental
Order No. 17,861

New Hampshire Public Utilities Commission

September 13, 1985

ORDER lifting restrictions on Seabrook nuclear plant unit I financing, and construction expenditures.

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Security Issues, § 44 — Factors affecting authorization — Nuclear plant construction financing — Limitations and restrictions.

The limitation on Seabrook I nuclear plant construction project payments to an average of \$5 million per week, and restrictions upon the issuance and sale of securities to finance the project were lifted based on a finding that it was reasonably certain that each participant in the Seabrook project would finance its share to fulfill contractual commitments to pay project construction costs; specifically, the commission found that: (1) regulatory uncertainty confronting the Massachusetts, Maine, and Vermont joint owners had been substantially reduced; (2) the joint owners, acting collectively, have the commitment to finance Seabrook I to completion; and (3) the joint owners, acting collectively, have the resources, even under existing regulatory restrictions, to finance Seabrook I to completion; the limitation and restrictions had been imposed to enable construction to proceed without exposing the primary owner's ratepayers and investors to a risk of a major short fall in construction funding.

Security Issues, § 44 — Factors affecting authorization — Nuclear plant construction financing — Limitations and restrictions.

Statement, in separate opinion, disagreeing with commission decision to lift restriction on Seabrook I financing and construction expenditures without adopting conditions on the amounts that can be charged to ratepayers; the separate opinion also urged the commission to direct the primary owner to: (1) review all means to conserve cash, (2) investigate any potential short term financing sources including specifically financing for fuel inventories, (3) develop plans to ensure the continuous operation of its generating plants in the event of a liquidity crisis, and (4) report to the commission on its efforts pursuant to the above. p. 813.

(AESCHLIMAN, commissioner, separate opinion, p. 813.)

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was initiated by an Order of Notice dated August 2, 1984 for the purpose of investigating the financing plan of Public Service Company of New Hampshire (PSNH or Company) to complete the construction of Seabrook Unit I. On August 18, 1985, after 38 days of evidentiary hearings, the Commission issued Report and Ninth Supplemental Order No. 17,558 (70 NH PUC p. 164, 66 PUR4th 349) which authorized the issuance and sale of certain securities

in the amount of \$525,000,000,¹⁽³¹⁸⁾ subject to certain conditions, including:

1. "...that the approval of the issuance and sale of the proposed securities be, and hereby is, subject to the condition that all Seabrook 1 joint owners have received regulatory authorization to finance their respective ownership shares of Seabrook 1 and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs..." (70 NH PUC at p. 268,

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66 PUR4th at p. 441)(Condition 1); and

2. "...that until further order of the commission, PSNH's request that the Commission remove the conditions imposed in Re Public Service Co., of New Hampshire, 69 NH PUC 522, (1984) which prohibits the company from contributing cash for the purpose of Seabrook construction at a level exceeding its ownership share of \$5 million per week be, and hereby is, denied provided, however, that any amount of expenditures less than PSNH's 35.6942 [sic] per cent share of \$5 million per week since December, 1984, may be aggregated and spent for any increase in joint funding levels for Seabrook 1 construction, but in no event more than 10 per cent of the net proceeds of the \$425 million in Order No. 17,222..." (70 NH PUC at p. 269, 66 PUR4th at pp. 441, 442 (Condition 2).

The Commission further provided:

"...that before the securities approved herein may be issued and sold appropriate representation and proof of satisfaction of the aforementioned condition [condition 1] must be presented to the commission for its review, approval, and further order as may be necessary..." (70 NH PUC at p. 269, 66 PUR4th at p. 441.)

Timely Motions for Rehearing were filed by several Intervenors. Additionally, PSNH filed a Motion for Clarification or in the Alternative for a Modification of a Condition in Order No. 17,558. The PSNH Motion requested a limited relaxation of Condition 2 to allow the Company to commit to the Seabrook project²⁽³¹⁹⁾ more than 10% of the net proceeds of the December, 1984 \$425 million "units" financing referred to in Condition 2. See also, Re Public Service Co. of New Hampshire, 69 NH PUC 522 (1984), aff'd., Re Seacoast AntiPollution League, 125 N.H. 708, 482 A.2d 1176 (1984). On May 10, 1985, the Commission issued Report and Tenth Supplemental Order No. 17,601 (70 NH PUC 367) which denied Intervenor Motions for Rehearing and granted the PSNH Motion. With respect to the PSNH Motion, the Commission provided (70 NH PUC at pp. 369, 370):

By the imposition of these conditions, we did not intend to place PSNH in breach of its obligations under the Joint Ownership Agreement, nor to force a hiatus in construction of Seabrook I. To the contrary, we intended that PSNH should be able to fund its pro rata share of construction of \$5 Million per week. We trust that the Joint Owners will also fund their respective shares of construction as due.

Pending resolution of questions of regulatory authorization to finance the ownership shares of the Joint Owners or reasonable assurances that Joint Owners will finance their share to fulfill contractual commitments to pay Seabrook I construction costs on a timely basis, the limitation

on the issue and sale of the proposed securities must continue temporarily. Upon receipt of reasonable assurance of financing the construction of Seabrook I by the Joint Owners, the

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Commission will issue such further order as may be required for PSNH to issue and sell the proposed securities consistent with the public good.

Pending the issue and sale of the proposed securities, it is essential to authorize construction funding by PSNH to avoid default in its obligation under the Joint Owners Agreement. Accordingly, the restriction imposed by Order 17,558 (Second Condition above) on the use of the net proceeds of the \$425 Million sale of securities approved in *Re Public Service Co. of New Hampshire*, 69 NH PUC 522 (1984) will be removed. We order herein that until further order of this Commission, PSNH may spend or contribute cash from the proceeds of the securities sold pursuant to Order No. 17,222 at a level up to 35.56942% of \$5 Million per week. See also, Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110) in this docket. Such expenditures in excess of 10% in the aggregate of \$406 Million shall be credited against the proposed \$525 Million financing and restored to PSNH for general corporate purposes and monthly accounting of the proceeds of the sale in DF 84-167 pursuant to the requirements of Seventh Supplemental Order No. 17,222. See also, *Re SAPL et al.*, Supreme Court Dockets 85-252 and 85-253, Order of August 13, 1985.

On May 31, 1985, SAPL filed a Motion for Rehearing on the foregoing provision of Order 17,601. The Commission denied the SAPL Motion in Report and Eleventh Supplemental Order No. 17,652 (70 NH PUC 516, 517) which stated:³⁽³²⁰⁾

SAPL asserts that regulatory decisions in other jurisdictions plus the failure by a joint owner to make a payment when due are new circumstances which undermine the rationale for approving the modification. We disagree. If anything, the circumstances as they continue to evolve, reinforce our rationale of maintaining the status quo of Seabrook construction until financial uncertainties can be resolved. Additionally, we must note that we found in Order 17,558 that PSNH's continued participation of the Seabrook project is consistent with the public good. Order No. 17,601 charts the prudent regulatory course of maintaining the status quo of construction pending resolution of the financing uncertainties confronting several of the joint owners.

On June 28, 1985, PSNH filed a Motion for Further Order Regarding Level of Seabrook Construction Contributions requesting that the Commission find that Condition 2 is satisfied and, accordingly, remove the spending limitation. An Order of Notice was issued on July 1, 1985 which scheduled a hearing for July 16, 1985. On July 10, 1985, the Seacoast Anti-Pollution League (SAPL) filed a response to the PSNH Motion which argued that the Commission did not have jurisdiction to hear the PSNH Motion because Order 17,558 had been appealed to the New Hampshire Supreme Court. PSNH filed a response to the SAPL argument on July 16, 1985.

Pursuant to the July 1, 1985 Order of Notice, the Commission convened on July 16, 1985 to take evidence on

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whether Condition 2 was satisfied.⁴⁽³²¹⁾ After taking the SAPL jurisdictional Motion under advisement, the Commission heard the testimony of William B. Derrickson, Senior Vice-President of the New Hampshire Yankee Division of PSNH and George W. Edwards, Jr., the President and Chief Executive Officer and Director of United Illuminating Company, one of the Seabrook joint owners. The Commission held additional hearings on July 19 and 25, 1985 at which it heard further testimony from Mr. Edwards and the testimony of Mr. Robert J. Harrison, President and Chief Executive Officer of PSNH; Richard K. Byrne, General Manager and Chief Executive Officer of Massachusetts Municipal Wholesale Electric Company (MMWEC), one of the Seabrook joint owners; Gerard J. Landergan, Commissioner on the Hull Municipal Light Board, an MMWEC participant;⁵⁽³²²⁾ and John F. G. Eichorn, Jr., the President, Chief Executive Officer and Trustee of Eastern Utility Associates (EUA), the holding Company of one of the Seabrook joint owners and Chairman of the Executive Committee of New Hampshire Yankee, the Seabrook project manager.

At the conclusion of the July 25, 1985 hearing, PSNH claimed that the evidence was sufficient to satisfy both Condition 1 and Condition 2. Accordingly, PSNH submitted an oral Motion to amend its Petition to include Condition 1. 41 Tr. 8214-16. The Commission directed the parties to file briefs and responses to the PSNH Motion to amend on August 1, 1985. Briefs were duly filed by PSNH, SAPL and the Campaign for Ratepayers' Rights (CRR). In addition, SAPL filed an objection to the PSNH Motion to Amend which renewed its earlier jurisdictional contention and argued further that the Commission could not consider the issue of Condition 1 without further notice and opportunity for hearing. On August 2, 1985 the Commission issued an Order of Notice which accepted the SAPL argument on the need for further notice and opportunity for hearing. Accordingly, it scheduled a further hearing for August 8, 1985 and directed the Intervenor to notify PSNH and the Commission of the witnesses which they would request PSNH to produce for the August 8, 1985 hearing.

Pursuant to the Order of Notice, SAPL requested PSNH to produce Mr. Harrison for further testimony and to present Mr. Robert Hildreth, of Merrill Lynch Capital Markets. PSNH objected to the request to produce Mr. Hildreth, which objection was overruled by the Commission.

On August 7, 1985, SAPL filed with the Supreme Court a Petition for a Writ of Prohibition requesting the Court to stay the Commission's proceedings because of alleged jurisdictional defects and because of alleged deficiencies in the Commission's notice. On August 8, 1985, the Court scheduled oral argument for that same day. Thus, on August 8, 1985, the Commission conducted its hearing at which it heard the testimony of Mr. Hildreth

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and Mr. Harrison⁶⁽³²³⁾ and, concurrently, the Court heard argument on whether to stay the Commission proceedings.

On August 13, 1985, the Court issued an Order denying SAPL's request for a Writ of Prohibition and remanded the case to the Commission:

...in order that it may, upon proper notice and consistent with due process and its own rules,

hold additional hearings and issue such additional orders as it determines are necessary and appropriate with respect to the conditions it previously imposed in Docket 84-200. Specifically, all parties should be given adequate time to exchange data and are entitled to recall and examine witnesses heard in that part of the proceedings relating to condition one.

The Court further provided:

The effect of any orders issued by the PUC upon remand is stayed pending the completion of the present appeals, appeals from such orders or further order of this Court.⁷⁽³²⁴⁾

On August 23, 1985, PSNH filed with the Supreme Court a Motion for Reconsideration Relative to Order of August 13, 1985. In that Motion, PSNH requested the Court to rescind the portion of its Order which stayed the effect of any Commission orders issued on remand. SAPL filed with the Court an Objection to the PSNH Motion on August 29, 1985. To date, the Court has not acted on the PSNH Motion.

Pursuant to the Court's August 13, 1985 Order, the Commission issued Report and Twelfth Supplemental Order No. 17,820 (70 NH PUC 713) which analyzed the need for an extended notice period to consider the issue of adjudicating PSNH's request to lift Condition 1.

The Commission stated (70 NH PUC at pp. 716, 717):

The August 2, 1985 Order of Notice was issued after due notice and three days of hearings had already taken place regarding Condition 2. It was issued to provide the necessary notice and opportunity to be heard so that we could consider PSNH's request to lift Condition 1 consistent with due process. It is important to emphasize that the elements that PSNH must satisfy to justify lifting Condition 2 are virtually the same as those necessary to lift Condition 1. The Intervenor had the benefit of the discovery, PSNH's direct case and the cross-examination and other information already developed in three days of hearings prior to the scheduled August 8, 1985 hearing. Under those circumstances, we believe that the Commission reasonably concluded that a 6-day notice period would not per se prejudice the participation of any party and would comply with procedural due process requirements. Additionally, the evidence developed in those three hearing days indicated

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that PSNH had made at least a prima facie showing that a delay in a Commission ruling to raise construction to the full funding level authorized by the joint owners carrying into September, 1985 would have significant adverse consequences on the cost and schedule of Seabrook 1. Evidence was presented which indicates that the continuance of a \$5 million weekly construction level without increasing to a full funding level of approximately \$9 million per week would result in a minimum delay of three months or longer; with associated increases in the overall cost of the project.

We found in Order No. 17,558 that the financing to complete Seabrook I is consistent with the public good subject to the conditions set forth therein. If evidence relating to the increase in construction expenditures to assure timely completion consistent with our findings in Order No. 17,558 demonstrates that Condition 2 should be removed, it becomes essential to determine whether permanent financing to support that level of funding for construction should be

authorized by removing the restriction imposed by Condition 1. The extent to which the financing of full construction may be supported by corporate funds without permanent financing is limited to the projected cash flow of PSNH in 1985. See, Exh. A-34. Therefore, if the material evidence relating to Conditions 1 and 2 demonstrates that the public good would be served by the removal of those conditions, it is essential that the Commission adjudicate the matter in a timely fashion to protect the public good. These considerations mandated the Commission's conclusion in the August 2, 1985 Order of Notice that "...the record evidence to date establishes that the need for expeditious review and decision outweighs the interest of adhering to the 17 day notice requirement..." The public good would be served if construction and financing delay could be avoided consistent with due process. (Footnotes omitted).

Pursuant to the foregoing analysis, the Commission scheduled a further hearing for August 22, 1985. Additionally, the Commission directed PSNH to present the testimony of the Chief Executive Officer of New England Power Company (NEPCO), a Seabrook joint owner. Intervenors were requested to complete discovery and provide PSNH and the Commission with a list of requested witnesses no later than August 20, 1985.

On August 16, 1985, SAPL filed a Motion to Postpone Hearing which averred, in part, that Counsel would be unable to attend the hearing scheduled for August 22, 1985. On that same day, the Commission issued Thirteenth Supplemental Order No. 17,821 (70 NH PUC 719) which granted the SAPL Motion and rescheduled the remanded proceeding. Specifically, the Commission provided (70 NH PUC at p. 719):

...that the schedule adopted in Order 17,820 be, and hereby is, amended as follows: A hearing shall be held on September 5, 1985. All discovery between the parties shall be completed by August 29, 1985. On August 30, 1985, the Intervenors must file with the Commission and

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serve on Public Service Company of New Hampshire a request for the production of witnesses by Public Service Company of New Hampshire and a list of witnesses that will be presented on behalf of the Intervenors. The list of witnesses to be presented by Intervenors should be accompanied by a short statement summarizing the scope and nature of the evidence to be proffered...

On August 22, 1985, PSNH submitted a Motion to Revise Deadline for Service of Witness List requesting that the Commission accelerate the deadline for submission of witness lists by one day to August 29, 1985. The Commission granted the PSNH Motion by Secretarial letter dated August 26, 1985. No requests for production of witnesses, other than those requested by the Commission, were submitted.

Pursuant to Orders 17,820 and 17,821 the Commission held a hearing on September 5, 1985 at which testimony was taken from Mr. Samuel Huntington, Chief Executive Officer of NEPCO and additional testimony was taken from Mr. Harrison. At the close of the hearing, a briefing schedule was established which concluded on September 9, 1985. Only SAPL elected to file additional argument.

II. POSITION OF THE PARTIES

The position of PSNH is that the requirements of the Commission's conditions have been satisfied. Additionally, PSNH contends that the cost of a delay in lifting the conditions substantially exceeds the benefits to be derived from maintaining the conditions. Accordingly, PSNH argues that both Condition 1 and Condition 2 should be lifted immediately.

With respect to the satisfaction of the Commission's conditions, PSNH contends that over 75% of the joint owners can finance Seabrook to completion without the need for further regulatory approvals. The remaining shares of Seabrook can also be financed to completion; however, the precise mechanism of financing is subject to varying degrees of uncertainty. For example, some shares may be purchased by another joint owner or by an outside investor who will have the capability of financing the project to completion. Because of the commitment of all of the joint owners to find a way and devote the resources necessary to finance the plant to completion, PSNH contends that there is "reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs..." (70 NH PUC at p. 269, 66 PUR4th at p. 441.)

With respect to the costs and benefits of delay, PSNH contends that the cost of continuing the spending limitation (Condition 2) would be a minimum of \$220 million in additional construction cost while the cost of lifting the spending limitation is only PSNH's 35.6942% share of an additional \$3 million per week to December 31, 1985. The cost of continuing the limitation on the marketing of the approved securities (Condition 1) would be manifest when the Company exhausts its cash; an event that is currently projected to occur sometime around the end of 1985 or the beginning of 1986. Thus, the Company needs the ability to market the

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securities in order to avoid a new liquidity crisis.

The only other parties who set forth their positions in brief were SAPL and CRR.

SAPL and CRR both object to the lifting of Conditions 1 and 2. It is their contention that PSNH has not satisfied the elements of the condition, i.e., all joint owners have not received regulatory authorization to finance their shares of Seabrook to completion, nor is there reasonable assurance that each participant will finance its share of the cost to complete. Thus, according to SAPL and CRR, the request to lift the conditions must be denied. CRR goes on to recommend that, if the Commission decides to lift Condition 2, it limit the increased spending by making its Order subject to reevaluation on or about January 1, 1986.

III. COMMISSION ANALYSIS

A. Introduction

The proceedings on the instant issue involved the testimony of eight witnesses over five hearing days with 49 supporting exhibits entered into evidence. The issue to be decided in these remand proceedings is whether the Commission should find that Conditions 1 and 2 have been satisfied and, accordingly, lift the restrictions on the amount PSNH may spend on the Seabrook project and on the marketing of the securities approved in Order 17,558. That issue turns on whether "...all Seabrook 1 joint owners have received regulatory authorization to finance their respective shares of Seabrook 1 and/or there is reasonable assurance that each participant will

finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction cost..." (70 NH PUC at p. 269, 66 PUR4th at p. 441.) Since not all Seabrook joint owners have received the necessary regulatory authorization to finance their respective shares of Seabrook 1 to completion, we must decide herein whether PSNH has met its burden of demonstrating that there is reasonable assurance that each participant will finance its share of Seabrook 1 to completion either through its own resources or by other arrangements. Additionally, we must decide whether PSNH has met its burden of demonstrating that the benefits to be derived from immediately lifting the Conditions exceed the burdens. Ultimately, we must determine whether the public good will be served by dissolution of restraints on construction spending (Condition 2) and on marketing securities (Condition 1) by PSNH.

B. The Ability of the Joint Owners to Finance to Completion

PSNH contends that the evidence warrants a finding that the joint owners will be able to finance Seabrook 1 to completion and that such a finding is sufficient to satisfy the Commission's conditions. Since the Commission issued its Order 17,558 on April 18, 1985 (70 NH PUC 164, 66 PUR4th 349) (and its Order 17,601 on May 10, 1985) [70 NH PUC 367] conditionally approving \$525 million of additional financing by PSNH and authorized PSNH to contribute its 35.56942% share of construction at a \$5 million per week level, there has been material improvement in the commitment and ability of other joint owners to finance their pro rata share of construction.

When Order 17,558 was issued, the

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Commission noted that regulatory approvals to complete the construction of Seabrook had been granted to participant joint owners carrying a 57.12927% ownership share. (70 NH PUC at p. 263, 66 PUR4th at p. 438.) The equivocal status of financing authorization by the Maine Public Utilities Commission (MPUC), the Massachusetts Department of Public Utilities (MDPU) and the Vermont Public Service Board (VPSB) and the absence of adequate assurance that the joint owners would be able to contribute their respective shares of construction cost without regulatory approvals, compelled our decision to maintain the status quo for construction at the \$5 million weekly level. The same uncertainties regarding the financing for the ultimate completion of Seabrook led us to impose the restrictions on the marketing of \$525 million of securities until the Commission received reasonable assurances that the total financing commitment to construct Seabrook by the joint owners would be made. (70 NH PUC 367.)

The evidence in the instant remand proceedings warrants a finding that the situation has changed significantly. We shall initiate our analysis of that evidence with a summary of those joint owners who have obtained the requisite regulatory authorization to finance Seabrook to completion or, in the alternative, require no further authorization to finance Seabrook to completion. We shall then examine the situation confronting the joint owners who are subject to restrictive regulatory rulings on a state-by-state basis.

Prior to engaging in the analysis of the situation confronting individual joint owners, it is useful to discuss generally the process established by the joint owners to resolve their financing difficulties. PSNH provided the testimony of George W. Edwards, Jr., President and Chief

Executive Officer of United Illuminating Company. Mr. Edwards is currently Chairman of the Seabrook Owners Financing Task Force. (Exh. A-3) The Task Force was created to address regulatory problems associated with obtaining financing approvals and to assess the ability of joint owners to finance their share of the remaining construction costs. 39 Tr. 7604. Mr. Edwards testified that the work of the Task Force to date indicates that: 1) Regulatory rulings creating financing problems affect only minor joint ownership interests and are manageable; 2) The ability of the joint owners to finance otherwise is excellent; and 3) If any joint owner for any reason cannot continue to pay for its share of the remaining construction cost, there will be new investors or existing joint owners or both who will make up the shortfall by purchasing all or a portion of the share of the disabled owner. 39 Tr. 7604, 7609-10.

Mr. Edwards was of the opinion that the vast majority of the joint owners are in a position to vote to go to full funding. 39 Tr. 7611. Mr. Edwards further stated that his knowledge was obtained by conversations with the Chairman of the joint owners group, John Eichorn and from the senior officers of the joint owners group. Mr. Edwards' testimony covered two particular issues. He reviewed the developments in Vermont, Maine and Massachusetts and he further testified regarding the owners' interest to go to full funding.

Mr. Edwards' testimony is supported by substantial evidence as our analysis demonstrates.

The starting point of the analysis is

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the joint owners who have the requisite regulatory approvals to finance their shares of Seabrook 1 to completion or have the financial capability to fund their respective shares of the construction costs without further regulatory authorization. Those joint owners are:

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

PSNH	35.56942%	
United Illuminating	17.50000%	
NEPCO	9.95766%	
Connecticut Light and Power Co.	4.05985%	
Canal Electric Company	3.52317%	
Montaup Electric Company	2.89989%	
N.H. Electric Cooperative, Inc.	2.17391%	
Taunton Municipal Lighting Plant	0.10034%	
Hudson Light & Power Dept.	0.07737%	

TOTAL 75.86161%

Exh. A-2, Affidavit of Robert J. Harrison.

The remaining joint owners, which account for 24.13839% of the project, all face, in varying degrees, regulatory restrictions from the Massachusetts, Vermont and Maine regulatory authorities. We shall now direct our analysis at the situation confronting the Maine, Vermont and Massachusetts joint owners.

1. Maine

All of the Maine companies are current in their payments and the MPUC has found that the further participation of Central Maine Power in the Seabrook project is consistent with the public convenience and necessity and is a reasonable act. 39 Tr. 7620; see also, Exh. A-8.

There has been considerable progress regarding the continuing ability of all Maine joint owners to meet construction payments for Seabrook pending disengagement from the project if a purchase of the Maine joint owners' share may be consummated consistent with the public interest of that State. Negotiations are currently in process for EUA to purchase the Seabrook shares of the various Maine joint owners. Acquisition discussions between EUA and Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company are proceeding. Resolutions of the Boards of Directors of the Maine companies and the Board of Directors of EUA to authorize the respective managements to negotiate and execute letter agreements incorporating the terms of EUA's offer are a part of this record. See, Exh. A-46 at R-5, Attachments A, B, C and D; see also, Exh. A-47, Supplemental response, Attachment B.

On August 29, 1985 EUA filed its application with the Federal Energy Regulatory Commission (FERC) for rate authorization to sell power to nonaffiliates at market-based prices and to prescribe just and reasonable wholesale rates for EUA Power Corporation. Upon clearance by the Securities and Exchange Commission (SEC), EUA Power proposes to acquire the Seabrook I and II shares of Bangor HydroElectric Company, Central Maine Power Company, Central Vermont Public Service Corp. (CVPS) and Maine Public

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Service Company. The acquisition of those Seabrook shares is contingent upon favorable regulatory decisions by the MPUC, the VPSB, the SEC, the Nuclear Regulatory Commission and the FERC. Exh. A-47, Supplemental Response, Attachment B. If EUA acquires the interests of these Maine utilities and CVPS, the construction payments of these utilities for completion of Seabrook will be assured. The ownership share of these utilities totals 11.26721% as indicated below:

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

Percent Ownership

Central Maine Power Company	6.04178
Bangor Hydro-Electric Company	2.17391
Maine Public Service Company	1.46056
Central Vermont Public Service Company	1.59096

Total	11.26721
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Even if the proposed acquisition by EUA of the Maine utilities and CVPS's shares should not receive the requisite regulatory approval to consummate the transaction, the evidence pertinent to the commitment of the joint owners to finance Seabrook to completion gives us a high degree of confidence that alternative means of accomplishing the necessary construction of Seabrook by acquiring these ownership shares will be developed and implemented.

2. Vermont

The VPSB has not authorized financing to complete Seabrook for those utilities subject to its jurisdiction. The VPSB Order also directed to Vermont joint owners to attempt to disengage from the project. That Order has been appealed. Additionally, further hearings on the economics of Seabrook have been scheduled in Vermont. CVPS and the Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) have filed testimony or otherwise indicated support

for the project in those proceedings.

As noted in the foregoing discussion pertinent to the Maine joint owners, EUA offered to purchase CVPS's Seabrook share and CVPS has agreed to sell. Both Boards of Directors have adopted the necessary resolutions to complete the transaction. In the interim, CVPS is continuing to meet its construction obligations. The sale of CVPS's Seabrook share to EUA is subject to the same regulatory uncertainties confronting the Maine joint owners, except that approval must be obtained from the VPSB rather than the MPUC.

The remaining Vermont share is owned by VEG&T, an owner of a 0.41259% share of the project. VEG&T is financing its Seabrook share through the United States Rural Electrification Administration (REA). The Order of the VPSB which did not approve of the VEG&T financing to completion through the REA has been reversed and remanded to the VPSB by the Vermont Supreme Court. *Re Vermont Electric Generation & Transmission Co-op., Inc., — Vt. —, — A.2d —* (August 14, 1985) (Slip opinion reproduced in the instant record at Exh. A-47). That Court decision favorably affects the ability of the VEG&T to continue to finance its share of Seabrook to completion.

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Mr. Edwards testified that although the VEG&T failed to make a payment of its share of the project costs (Exh. A-3 at paragraph 8), it subsequently made up that past due payments as well as its current payments and can be expected to continue to make future payments. 39 Tr. 7616-17; see also, Exh. A-33.

VEG&T's remaining construction payments to completion are estimated at \$1,683,000 based on a \$408 million cost to go, or \$2,476,000 based on a \$600 million cost to go. If, for any reason, VEG&T is unable to fulfill its contractual commitment to finance future construction payments, we may reasonably anticipate that arrangements will be made with the joint owners or others to pay their share. 42 Tr. 8324.

3. Massachusetts

The MDPU issued its general financing Order on April 4, 1985. *Re Canal Electric Co., D.P.U. 84-152*, April 4, 1985, (Mass. D.P.U.) which was affirmed on appeal by the Supreme Judicial Court of Massachusetts (SJC), *Fitchburg Gas and Electric Co., v. Massachusetts Dept. of Pub. Utilities, — Mass. —, 483 N.E.2d 76* (1985).

With reference to investor-owned utilities (IOUs), the SJC sustained the MDPU's holding that the financing obligation of each IOU will be denied unless the MDPU receives adequate enforceable assurances and binding obligations committing the IOU to the following:

1. In the event Seabrook 1 does not become commercially operable, cost recovery from ratepayers will be limited solely to those expenditures which were prudently incurred before the date of the Order.

2. In the event that Seabrook 1 becomes commercially operable, cost recovery from ratepayers will be limited to the marginal costs of capacity and energy that would otherwise be faced by the utility, but in no event more than the amount which would be collected by placing the prudently incurred, used and useful portion of the cost of the plant in rate base and no less

than the amount that the company would be entitled to collect if the plant were abandoned as of the date of the Order.

3. In the alternative, a company may choose to receive an as available marginal cost rate for electricity produced throughout the life of Seabrook 1, without a constraint on the minimum and maximum levels of cost recovery.

The SJC also sustained the MDPU's denial of MMWEC's requested authority to engage in further financing to complete Seabrook 1.

NEPCO has stated that it has no intention of agreeing to the conditions and will finance remaining Seabrook costs by internally generated cash and short term debt. Testimony of Samuel Huntington, Chairman, NEPCO and President and Chief Executive Officer of NEPCO's parent, New England Electric Systems (NEES). 43 Tr. 8441. NEPCO will abide by its commitments to pay for Seabrook completion costs regardless of the MDPU Order. Id. NEPCO owns 9.95766% of Seabrook I. Accordingly, the affirmance of the MDPU Order by the SJC does not affect NEPCO's capability to finance its contractual commitment to pay its

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share of Seabrook construction costs to completion.

NEPCO is not required to obtain MDPU approval of short term debt borrowing, although approvals of the SEC and this Commission are necessary. 43 Tr. 8400. We have approved short term borrowings of \$195 million and NEPCO has applied to increase its short term borrowing limitations to \$300 million. 43 Tr. 8401; see also, Re New England Power Co., Docket No. DF 85-329. Seabrook is an important part of NEES' 15 year plan to supply service to its customers. 43 Tr. 8408-8409. The by-laws of NEPCO authorize the issuance of short term debt up to 20% of capitalization and the total capitalization of NEPCO is in excess of \$1.5 Billion; thus, the increase in the short term debt limit to \$300 million is consistent with the by-laws. 43 Tr. 8534.

Other investor-owned utilities in Massachusetts, namely, Canal Electric Company and Montaup Electric Company (a subsidiary of EUA) do not require additional regulatory approvals to carry out their construction commitments. Fitchburg Gas and Electric Company (Fitchburg) is currently unable to finance its share of the construction payments for the completion of Seabrook. However, five of the joint owners have assumed those payments. Exh. A-42, 43 Tr. 8378, Affidavit of Robert J. Harrison, Exh. A-2. The five joint owners are Northeast Utilities, United Illuminating Company, NEES, Canal Electric or Commonwealth Energy, and EUA. 41 Tr. 8108, Testimony of Mr. Eichorn, Chief Executive Officer of EUA and Chairman of the Executive Committee of New Hampshire Yankee. Payments by NEES to make up the Fitchburg short-fall are advanced to the project rather than on behalf of Fitchburg so that NEPCO can claim a credit in the amount of such advances against its obligations to the project. 43 Tr. 8411. Arbitration proceedings against Fitchburg have been deferred. 41 Tr. 8108. Fitchburg's remaining construction payments to completion are \$3,529,000 based on a \$408 million cost to go for the project and \$5,196,000 based on a \$600 million cost to go. 41 Tr. 8036. In terms of the \$4.6 billion estimated capital investment in the project, Fitchburg's remaining payments are minimal. We believe that it is reasonable to conclude that Fitchburg's contractual commitment to pay its share of construction costs will be financed with the assistance of the joint owners or

other investors, if Fitchburg is unable to resume its construction payments.

With respect to MMWEC, the evidence is that 8.6% out of its total Seabrook share of 11.59340% has already been financed. Thus, the only uncertainty pertinent to MMWEC's ability to meet its obligations is whether it will be able to finance its remaining 2.99% ownership share. The 2.99% unfinanced portion corresponds to the shares of MMWEC member municipalities who do not favor completion and, thus, will not commit to the mechanisms which will allow MMWEC to meet its obligations fully. Mr. Edwards testified that there are outside investors and other joint owners including United Illuminating Company interested in buying out the 2.99% share of ownership owned by the dissident municipalities. See also, Hildreth, 42 Tr. 8332.

Even if the dissident ownership interest is taken out, that dissident ownership would continue to oppose MMWEC's remaining ownership interest in Seabrook. In such event, Mr.

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Edwards testified that there are remaining joint owners who would be willing to acquire that percentage ownership (8.6%) in return for a buy-back arrangement.

Richard K. Byrne, General Manager and Chief Executive Officer of MMWEC, also presented testimony. Mr. Byrne confirmed Mr. Edwards' testimony that MMWEC expects to be able to go forward with 8.6% out of its total Seabrook ownership share without further regulatory approval. 40 Tr. 788182. Mr. Byrne further identified and explained the alternatives available to MMWEC and its members to continue its participation in the Seabrook project. Those alternatives include:

Joint Owners' Buyback Agreement — Pursuant to this proposed option, another joint owner would agree to pay MMWEC's ongoing construction costs. In exchange for that, through an action under the Joint Ownership Agreement, MMWEC would transfer some percentage of its existing ownership share of the project to this participating joint owner. Those participants that choose to go forward would enter into new take or pay contracts with MMWEC to buy that power back from the joint owners. Those participants that elect to go forward would maintain their present construction and operation risks. It was Mr. Byrne's opinion that the vast majority of the participants desire to go forward. 40 Tr. 7881-82. The participants not choosing to go forward would be left with a paid up share of the project. 40 Tr. 7883. The transaction would not require amendment of the MMWEC power sales agreement and dissident towns will not be in a position to prevent the transaction. 40 Tr. 7884; Exh. A-21. MMWEC would not sell back at a rate higher than it would have been if MMWEC could have done tax exempt financing. 41 Tr. 8131; Exh. A-35.

Short Term Borrowing — The second alternative is for MMWEC to elect to do short term borrowings to meet its construction obligations in a timely fashion, 40 Tr. 7884, without the requirement of approval from the MDPU, 40 Tr. 7894. This could not be prevented by the dissident participants. 40 Tr. 7885. Mr. Byrne further testified that MMWEC has found an investor that is willing to lend money without a backup letter of credit and without any assurances that the MDPU will issue long term approval. 40 Tr. 7895-96.

Refunding Option — MMWEC is presenting to the MDPU a plan whereby, if the MDPU would approve construction funds, MMWEC would get its bond ratings to a point where it is

permitted to refund existing high coupon debt for \$3 to 4 million and thus afford present worth savings of a significant amount to its membership. The advantage of this approach is that it adds no additional costs to be borne by the consumer. This option requires MDPU approval. 40 Tr. 7907-10.

Power Sales Agreement Amendment — The power sales agreement, as amended, would clarify that billing of construction can be done by MMWEC for ongoing construction costs. 40 Tr. 7910.

Currently, MMWEC is under no regulatory order to cease its Seabrook contributions. MMWEC's constraint on raising additional financing for that portion of its construction costs which have not been previously funded comes about by the MDPU order which restricted the means by which Massachusetts utilities could raise funds to meet their Seabrook obligations. 40 Tr. 7885. The order denies MMWEC approval to

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issue bonds to pay for further construction costs of Seabrook I.

Since its appeal of the MDPU Order has not been successful, MMWEC must engage in a financing method that is not prohibited by the MDPU Order. Witnesses Harrison, Edwards, Eichorn, Londagran, Byrne and Hildreth all testified that MMWEC was actively and aggressively seeking options to raise the funds needed to meet its construction costs to completion of the project without further regulatory approval.

The witnesses testified to various options being considered; however, Mr. Byrne was more specific in the details of the options that MMWEC adopted as priority options. There is no need to repeat in detail the options that have already been identified, i.e., joint owner buy back arrangement, short term borrowings, refunding options and power sales agreement amendment. It should be noted that of the options described, Mr. Byrne prefers the joint owner buy back arrangement because it gives MMWEC the greatest flexibility, offers a solution to all of the problems and is absolutely feasible. In his opinion, it has a very high likelihood of success.

Mr. Byrne further testified that the vast majority of the participants strongly support going forward with the project recognizing its need and the savings which generated by Seabrook. Using a later on-line date and a higher cost estimate, there is still approximately \$178 million of present worth savings to member MMWEC participants by completing Seabrook. 40 Tr. 7887-88.

MMWEC needs its entire share of Seabrook. The MMWEC systems in the aggregate are short of capacity even with Seabrook in their mix. They are extremely short of capacity if it is not in their mix. This means that those systems that either would not like to continue to have Seabrook in their mix upon its completion will have a market within MMWEC's members for that power. MMWEC has a mix optimization program whereby it exchanges resources within the system. It saves a significant amount of money for the participants and an exchange of Seabrook among the participants would offer savings to MMWEC systems. 40 Tr. 7889.

It is not our function to determine what is the best option for MMWEC, but rather to determine whether MMWEC has planned options to finance and whether it is negotiating with

other joint owners to a point that we can conclude that there is reasonable assurance that MMWEC's share of construction costs will be paid as they become due. Based on the testimony of Mr. Eichorn, Mr. Byrne, Mr. Edwards, Mr. Harrison and Mr. Huntington, we are convinced that contingency plans have been made and the options previously referred to are being negotiated. We draw further assurance from the fact that NEPCO and United Illuminating Company have indicated that they, in conjunction with other owners, are attempting to work out a viable arrangement to assure MMWEC's payments and are willing to participate as part of a broad based effort to take entitlements from the 2.99% (30 MW) MMWEC interest opposed by the Towns or not currently funded due to the MDPU Decision. 43 Tr. 8445. Such arrangement would be considered under carefully defined conditions, assuming MMWEC has exhausted other options. Id. It is important that the joint owners, some of whom are actually negotiating with MMWEC, have a high degree of confidence that MMWEC will

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be able to meet its obligations. This assurance of financing the 2.99% interest is substantial evidence supporting a Commission finding that MMWEC will finance its share of construction costs to completion. Accordingly, we find that there is a high degree of probability that MMWEC will develop the financing needed to meet its construction costs to completion. See e.g., 43 Tr. 8437, 8439

Having decided that we have reasonable assurance that MMWEC will meet its construction costs we must now determine whether its present funds will last to a point when future financing is available. Mr. Byrnes' uncontroverted testimony states that with full funding at \$10 million per week, MMWEC will not run out of money for construction payments before January, 1986. We find no reason to dispute this fact and find that MMWEC's present funds are sufficient to last until one of the financing arrangements for the 2.99% ownership interest have been completed.

4. Summary of Joint Owner Financing Efforts

The result of the above analysis is that financing is reasonably assured for 96.14141%⁸⁽³²⁵⁾ of the cost of completing Seabrook. The remaining regulatory financing uncertainty of 3.85859% is attributable to Fitchburg (0.86519%) and the unfinanced portion of MMWEC's share. MMWEC is exploring at least four alternatives to finance its remaining share of 2.99%. Several of those alternatives involve other joint owners who have expressed a commitment to take actions necessary to complete the plant. Thus, Fitchburg is the only joint owner which is presently unable to finance its share to completion, absent a modification in the regulatory limitations established by the MDPU. PSNH presented evidence which indicated that other joint owners or outside investors would come forward to fill the gap. PSNH supported this evidence by argument to the effect that the other joint owners have too much at stake to allow a cancellation to be caused by the default of a de minimis share of 0.86519%.

To gain some perspective regarding the further investment from each joint owner or its successor in interest, we have summarized in the table below the percent ownership share of each company, the kilowatts owned by each company and the dollars required to complete the construction of Seabrook.

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

SEABROOK I PARTICIPANTS' COST TO COMPLETE UNIT I
ASSUMING \$600 MILLION COST TO GO

COMPANY	DOLLARS TO % OWNERSHIP	KILOWATTS	COMPLETE	
PSNH	35.56942	409,048	\$213,416,520	
United Illuminating Co.	17.50000		201,250	105,000,000
MMWEC	11.59340	133,324	69,560,400	
NEPCO	9.95766	114,513	59,745,960	
Central Maine Power Co.	6.04178		69,480	36,250,680
Connecticut Light & Power Co.	4.05985	46,688	24,359,100	
Canal Electric Co.	3.52317	40,516	21,139,020	
Montaup Electric Co.	2.89989	33,349	17,399,340	
Bangor Hydro-Electric Co.	2.17391	25,001	13,043,460	
N.H. Electrical Coop., Inc.	2.17391	25,001	13,043,460	
CVPS	1.59096	18,296	9,545,760	
Maine Public Service		1,46056	16,796	8,763,360
Fitchburg	0.86519	9,950	5,191,140	
VEG&T	0.41259	4,744	2,475,540	
Taunton Municipal Lighting Plant Comm.	0.10034	1,154	602,040	
Hudson Light & Power Dept.	0.07737		890	464,220
100.0000%		1,150,000kw	\$600,000,000	

The cash cost to go of \$600 million is in sharp contrast to the \$1 billion cost to go for planning purposes in the record evidence relating to Order 17,558.⁹⁽³²⁶⁾ In four to five months the financial planning horizon has been substantially reduced. Concomitantly, the financing requirements to PSNH have been reduced from the \$525 million approved in Order 17,558 to \$345 million. Exh. A-49 at 3. Assuming a projected total cost to completion of \$4.6 billion, the cost to go of \$600 million translates to 13% of the total capital investment.

The confidence of the joint owners in assuring that Seabrook I will be constructed is reflected in the resolution regarding Seabrook project funding levels of August 14, 1985. Exh. A-48. This resolution would increase construction funding above \$5 million weekly effective as of August 1, 1985 to provide supplemental funding of construction at the additional level of \$3 million per week through September, 1985. The additional funding by PSNH and other joint owners will be accomplished by using the balance in the project's construction bank account (discussed infra), which is anticipated to be approximately \$12 million as of September 1, 1985. The project can be funded at the \$8 million per week spending level until approximately mid-September. Exh. A-46 at R-6; 43 Tr. 8476-77.

The resolution further confirms that the proposed arrangements between EUA and the Maine and Vermont utilities contemplate that the transferors will support full construction funding until the transfers have been consummated. In addition, it is noted that the investment community is prepared to purchase securities issued to meet the remaining cost to complete Seabrook Unit I. The resolution further confirms that project management expects to achieve a hot functional milestone on schedule and to reach commercial operation before the end of 1986 at a remaining cash cost from August 1, 1985 of \$558 Million. Further,

Management Analysis Company's most recent independent reassessment of the project schedule concluded that fuel loading is expected to take place by August, 1986, Exh. A-32, although project management has targeted June 30, 1986 for core load. 41 Tr. 8031; Exh. A-7 1. Commercial operation is targeted for October 31, 1986 compared to a December 31, 1986 estimate for commercial operation in Order 17,558. Exh. A-1, Exh. b at 6.

The Commission believes that the following factors will compel continued commitment to complete the project so that the owners of the project will receive a return through rates on their capital investment: 1) The magnitude of the investment in Seabrook compared to the cost to go; 2) Evidence that the construction of Seabrook is proceeding on schedule; and 3) Total investment in Seabrook to commercial operation is forecasted to be within the \$4.6 — \$4.7 billion estimate adopted by this Commission in Order No. 17,558.

The increment in construction cash costs attributable to an increase in the weekly spending level from \$5 million to full funding (approximately \$9 million) will be approximately \$16.2 million for the months of October and November and \$25.7 million for the three month period October, November and December, 1985. 43 Tr. 847981. As discussed infra, we find that full funding payments retroactive to September 1, 1985 will equal \$32.9 million through December 31, 1985. 43 Tr. 8527; Exh. A-46 at R-9.

If full funding does not proceed and the level of spending remains at \$5 million weekly from the middle of September until December 31, 1985, the additional investment in Seabrook, including AFUDC, will be at least \$220 million. Exh. A-46 at R-3, Attachment A. An increase by PSNH of construction expenditures for the months of October, November and December, 1985 totaling \$25.7 million, or retroactive to August 1, 1985 totaling \$37 million, will save at least \$220 million of further investment by PSNH in Seabrook so that ratepayers will not be exposed to any additional rates found necessary to support that investment. 43 Tr. 8482 at R-9, Att. A, R-7 and R-3. Full funding includes about \$2 million per week for allowances and contingencies. The bank balance builds up until there is contingency spending. 43 Tr. 8542. The reason the project has been funded at a level of \$8 million per week rather than \$5 million since May, 1985 is the availability of the bank balance to meet contingencies. 43 Tr. 8543. If construction spending continues at the rate of \$8 million per week the addition of a \$2 million weekly for contingencies will raise the effective level of cash allocated for full funding to \$10 million per week.

On August 14, 1985, the joint owners agreed to provide supplemental funding of construction at the additional level of \$3 million per week effective August 1, 1985, over and above the \$5 million per week currently authorized. The funding level of \$5 million for September and the \$3 million supplemental funding may be exceeded by utilizing the bank account. Exh. A-48, 43 Tr. 8485. This resolution to increase the level of construction spending over \$5 million per week will be effective when PSNH notifies the Chairman of the Executive Committee of the project that PSNH has been authorized to participate in such implementation. Exh. A-48.

We note that PSNH's Motion to remove the weekly construction spending cap of \$5 million

referred to a project funding level of approximately \$9 million per week. Motion filed June 28, 1985 at paragraph 6. However, PSNH specifically moved that the Commission "by further order authorize PSNH to spend or contribute cash for the purpose of Seabrook construction at the levels established from time to time by vote of the Joint Owners." Because the levels of construction spending required to construct the plant on a timely basis to commercial operation may vary, the Commission will not impose a further weekly limit on construction spending upon removal of the present \$5 million weekly cap. Further restrictions on construction spending which may impair the ability of the joint owners to complete Seabrook construction are incompatible with the public good which will best be served by timely construction of Seabrook as found by this Commission in Orders 17,558 and 17,601.

5. Commission Ruling

Based on the record evidence the Commission now has "reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs." Whether the participant pays its share or whether its contractual commitment to pay is assumed by others in whole or in part is immaterial to meeting the standard if there is reasonable assurance that all participants' shares will be paid. Whether those shares are paid directly or indirectly through reasonable arrangements with others, PSNH will not run the risk of major default by other participants to finance their respective shares of construction.

The limitation on construction payments to an average of \$5 Million per week (Condition 2) and the restriction upon the issuance and sale of the proposed securities (Condition 1) were imposed to enable construction to proceed without exposing PSNH's ratepayers and investors to a subsequent risk of a major short fall in construction funding. Because there was not a reasonable certainty that Seabrook 1 would be constructed to completion within the investment and scheduling limits defined in Order 17,558, we believed that rational course of action was to impose limiting conditions until we received reasonable assurance that regulatory constrictions and uncertainties could be surmounted by the joint participants. We have reasonable assurance that the project not only will be constructed on schedule, but also that it probably will be constructed at a lesser investment cost than originally anticipated. The financing of the project by PSNH through completion of construction is now estimated at \$340 million rather than \$525 million. The project is no longer in jeopardy. As discussed infra, the completion of the project by proceeding to full construction will produce a minimum of \$220 million of savings for ratepayers compared to maintaining construction at \$5 million per week; a situation which would result in substantial delay before any recovery of investment may be secured through rates.

Based on the foregoing, we find:

- 1) The regulatory uncertainty confronting the Massachusetts, Maine

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and Vermont joint owners has been substantially reduced;

- 2) The joint owners, acting collectively, have the commitment to finance Seabrook 1 to completion;

3) The joint owners, acting collectively, have the resources, even under existing regulatory restrictions, to finance Seabrook 1 to completion; and

4) Despite our findings that the joint owners collectively can and will finance Seabrook 1 to completion there remains some uncertainty about the precise financing mechanisms which will be employed. See e.g., Harrison, 41 Tr. 8191, 8205, 8206; Huntington, 43 Tr. 8436, 8438, 8429; Eichorn, 41 Tr. 8019-21; Hildreth 42 Tr. 8325-27.

SAPL and CRR contend that the above described findings are insufficient to warrant a conclusion that the conditions have been satisfied. As noted, it is undisputed that all Seabrook 1 joint owners have not received the regulatory authorization to finance their respective ownership shares. Thus, the issue here is whether the alternative requirement of "reasonable assurance" has been satisfied. SAPL and CRR argue that this test has not been met because there continues to be a high degree of uncertainty about how several of the joint owners will meet their construction commitments.

SAPL and CRR misapprehend the legal standard established by the Commission in Order 17,558. Under their mechanical reading of the language, we must be satisfied that every uncertainty facing every joint owner is resolved in favor of financing the plant to completion before we can lift the conditions. Such a test is too narrow.

As we have outlined, the rationale underlying our imposition of conditions 1 and 2 was that the Commission receive reasonable assurance that each participant's commitment to pay construction costs on schedule would be met either by: 1) the participant; or 2) by others on behalf of the participant, e.g., the joint owners or by other investors through appropriate arrangements to assume the obligation of a participant who could not make it on its own. The other joint owners' commitment to the project to assure performance of each participant's contractual obligation to fund construction of the project is a dominant consideration enabling the Commission to rationally to conclude that Seabrook will be constructed without major default by the participants consistent with our finding in Orders 17,558 (70 NH PUC 164) and 17,601 (70 NH PUC 367).

Our original concerns regarding the joint owners' collective ability to complete Seabrook at the projected cost and schedule determined in Orders 17,558 and 17,601, have been allayed. We find that the difficulties confronting individual joint owners will not adversely affect the ability of the joint owners acting collectively to complete the job. We find that there are no reasonably foreseeable limitations on the funding capability of any individual participant which cannot be subsumed within the collective capacity of the joint owners to resolve the problem to assure construction of Seabrook.

The test proffered by SAPL and CRR is inconsistent with our rationale. It would not be sound public policy to deny financing authority if more than 99% of the financing is in place and the joint owners have committed themselves to meeting the obligations of the

remaining 1% owner.¹⁰⁽³²⁷⁾ However, the test proffered by SAPL and CRR would compel just that irrational result. It is therefore apparent that, under a proper application of our rationale,

Conditions 1 and 2 are satisfied if: 1) the joint owners collectively have the commitment to finance the project to completion; and 2) the joint owners collectively have the resources to finance the project to completion.

As is demonstrated by the foregoing analysis, the evidence warrants the finding that the conditions have been satisfied. We are mindful of the existence of uncertainty about precisely how the necessary financing will be accomplished. However, our inability to pinpoint now the precise financing mechanisms which will be employed is insufficient in and of itself to warrant a denial of PSNH's request. Based on our findings that the joint owners collectively have the commitment and the resources necessary to finance the project to completion, under the existing regulatory restrictions in Massachusetts, Maine and Vermont, we conclude that we have been provided with reasonable assurance that the plant will be financed to completion. Accordingly, we will in this Order lift the conditions imposed in Orders 17,558 and 17,601.

C. The Cost of Delay

According to PSNH, delay in lifting the conditions would adversely affect the ability of the joint owners to complete Seabrook at the currently projected cost and schedule. In support of its position, PSNH presented the testimony of Mr. Derrickson.

Mr. Derrickson testified that the maintenance of the spending limitation at the current level does not translate into an ability to maintain construction at the current level. This is because of the distinction between the level of construction spending on the one hand and construction contributions on the other. Construction spending is currently taking place at a level of approximately \$8 million per week. Joint owner construction contributions are currently at a \$5 million per week level.

The difference between the \$8 million per week being spent and the \$5 million per week being contributed is made up by drawing on a "bank" established by the joint owners. The bank was funded by contributions which had previously been made at the reduced construction level which had not been expended because, for a period of time, construction spending was at a rate lower than construction contributions. As construction continued, the relationship between contributions and spending reversed. Thus, currently the level of construction spending exceeds the level of construction contributions and the bank is being depleted, rather than built up. The evidence establishes that the bank will be depleted by the end of September, 1985. Exh. A-46 at R-5.

The implication of the above analysis is that a denial of the request to lift Condition 2 means that the construction effort must be reduced rather than maintained at the existing level. PSNH calls this "demobilization". Mr. Derrickson testified that demobilization would entail a workforce reduction of approximately 2000 craftsmen and engineers from the existing workforce of 5,500, plus a deferral of material purchases. 39 Tr. 7544, 7551, 7562. At the

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time full funding is restored, the joint owners would have to "remobilize". Mr. Derrickson testified that such remobilization would be expensive and would take approximately 3 months to accomplish. 39 Tr. 7561. PSNH estimates that the cost of such a demobilization and remobilization would be in the range of \$220 to \$250 million. See, Exhs. A-1; A-46 at R3,

Attachment A, compare, R-3a with R-3b; and 39 Tr. 7560. Since the demobilization and remobilization process impose significant costs regardless of the period of delay, those costs should be viewed as minimum costs. 39 Tr. 7561. Further delays will add additional costs over and above the minimum imposed by the demobilization and remobilization process. Exh. A-46 at R-3, Attachment A, compare, R-3b with R-3c.

Based on the foregoing analysis, we find that a delay in lifting Condition 2 will increase the cost of construction Seabrook by a minimum amount of \$220 million. It remains to compare that cost with the immediate costs imposed on the Company by lifting Condition 2 and to evaluate the effect of lifting Condition 2 on the substantive rights of all the parties.

The immediate cost of lifting Condition 2 is the increased construction contributions required of the Company. For the purposes of this analysis, we define the immediate cost as the cost to the Company of contributing its share of full construction less the cost to the Company of contributing its share of construction at a \$5 million per week level for the period September 1, 1985 to December 31, 1985 assuming a retroactive September 1, 1985 effective date. While the precise determination of that cost does not emerge from the record, we can establish a range of \$18.5 million at the low end to \$42.2 million on the high end. The low end of the range is based on a mechanical calculation of PSNH's 35.56942% share of increased costs of \$3 million per week (i.e., \$1.067 million per week) multiplied by the 17.3 weeks of the September 1 to December 31 time period. If the limit on weekly construction expenditures is removed effective September 1, 1985 instead of effective August 1, 1985, approximately \$4.5 million of cash will be conserved for general corporate purposes. The high end of the range is based on a comparison of the Company's calculation of construction cost requirements to December 31, 1985 under the \$5 million per week cash flow with what those construction cost requirements would be if Condition 2 is lifted, less an additional \$4.5 million to adjust to a September 1, 1985 effective date.¹¹⁽³²⁸⁾ Exh. A-46 at R-3, Attachment A, compare, 1985 sub-totals of scenario R-3a (\$161.1 million) with that of scenario R-3b (\$114.4 million).¹²⁽³²⁹⁾ On the basis of the evidence, we find that immediate cost of lifting Condition 2 will be \$32.9 million within the range established by the Commission. This finding is based on PSNH's cash flow projections which reconcile the Company's

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construction obligations with its cash flow requirements, less the additional \$4.5 million to adjust to a September 1, 1985 effective date. See, Exh. A-46 at R-9, Attachment A, p. 1 of 2, compare total funds disbursed for Seabrook for 1985 under the \$5 million per week scenario (\$70.896 million) with the comparable figure under the full construction scenario (\$108.261 million). However, even though we have found that the most likely immediate cost of lifting Condition 2 will be \$32.9 million, we shall utilize the \$42.2 million figure at the higher end of the range for the purposes of the instant analysis.

Our findings establish that a maximum immediate increased expenditure of \$42.2 million will save a minimum of \$220 million in increased construction cost. The comparison of the maximum immediate cost figure with the minimum savings figure weights the analysis most heavily in favor of retaining Condition 2. As is apparent, even with such a weighting, the

quantitative analysis compels a conclusion favoring the lifting of Condition 2. This is reinforced by the fact that the \$42.2 million maximum immediate cost does not offset the \$220 million minimum savings. That cost will be incurred in any event. Assuming that the Company is permitted to complete construction, the only variable applicable to the \$42.2 million cost is the question of when it will be spent; not whether it will be spent.

The quantitative analysis is supported by our evaluation of how the lifting of Condition 2 will affect the substantive rights of all the parties.

With respect to the Intervenors, the lifting of Condition 2 means that the Company will spend a maximum of \$42.2 million out of its total remaining construction obligation of \$213.4 million, assuming a \$600 million cash cost to go.¹³⁽³³⁰⁾ This amounts to an expenditure of less than 20% of the remaining construction cost. This increased expenditure does not accelerate the construction schedule; rather it is consistent with the schedule projected by the Commission in Order 17,558, (70 NH PUC at pp. 219-223, 66 PUR4th at pp. 399-402. If the Intervenors should prevail in their appeal of Order 17,558, commercial operation will still, presumably, be one year away, assuming a December 31, 1985 Supreme Court decision date. Thus, the lifting of Condition 2 will not allow increased expenditures to the point where the Company will be able to foreclose the effectiveness of any remedies which may be accorded to the Intervenors on appeal.¹⁴⁽³³¹⁾

With respect to PSNH, it is clear that the denial of its request to lift Condition 2 would have a significant and adverse affect on its substantive rights. Such a denial would result in a minimum increased project cost of \$220 million with a corresponding minimum schedule delay of 5 months. See, Exh. A-46 at R-3, Attachment A. Such increased costs and schedule delay could trigger additional Commission review of the proposed financing to the extent that such increased costs and later commercial operation date exceeds the high end of the projected ranges found to be reasonable by the Commission in

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Order 17,558. Such further Commission proceedings, with corresponding rights of appeal could, in turn, cause further delay and increases in cost. It is apparent that the consequences of a denial of the request to lift Condition 2 could amount to a de facto denial of PSNH's financing Petition Such a de facto denial is not consistent with either due process or the public interest. *Re Seacoast Anti-Pollution League*, 125 N.H. 465, 472-475, 482 A.2d 509 (1984).

Most importantly, we believe that we must be mindful of the affect of lifting Condition 2 on the Company's ratepayers. It is true that the lifting of Condition 2 could expose ratepayers to higher rates to support the \$42.2 million maximum immediate increased cost.

¹⁵⁽³³²⁾ However, the denial of the request to lift Condition 2 increases ratepayer exposure to a minimum increased cost of \$220 million; an increase in exposure which clearly compels a conclusion in favor of lifting Condition 2. In Order 17,558, we found that the completion of Seabrook at the cost and schedule projected by the Commission is consistent with the public good. The denial of the request to lift Condition 2 clearly results in increased Seabrook cost and a delay of at least 5 months in the availability of Seabrook generated power for ratepayers. Thus,

we must conclude that the interests of ratepayers are best served by a decision to lift Condition 2.

We conclude that Condition 2 of Orders 17,558 and 17,601 limiting weekly expenditures by PSNH to its share of \$5 million is no longer necessary to serve the public good and we will issue our Order accordingly. We recommend that no stay be imposed by the New Hampshire Supreme Court upon this order eliminating the \$5 million weekly spending cap.

We also have concluded that dissolution of the restraint on the marketing of securities imposed by condition 1 of our Orders 17,558 and 17,601 is consistent with the public good and we have so ordered subject to the stay ordered by the New Hampshire Supreme Court on August 13, 1985.

Pursuant to the New Hampshire Supreme Court's direction in its Orders of August 13, 1985 and August 23, 1985 and pursuant to RSA 541:15 we shall order that our findings and conclusions herein be reported forthwith to the New Hampshire Supreme Court.

D. Pricing Approval

At the conclusion of the hearing, PSNH requested pre-approval for the pricing of its financing without an additional pricing order. 43 Tr. 8453; see also, 43 Tr. 8450-52. The Company's rationale is that if the pricing is within the range already found by the Commission to be consistent with the public good in Order 17,558, the additional step of a pricing order serves no purpose and, in fact, could result in further delay. See, *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 718, 482 A.2d 1196 (1985) (SAPL II). No Intervenors objected to the PSNH request; however, SAPL commented that it believed that the Court issued its ruling in *Re SAPL (Part II)* in reliance on the established Commission practice of issuing pricing approvals. 43 Tr. 8467-68.

After review and consideration, we

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have decided to grant the Company's request. We have examined SAPL's comment, as well as undertaking an independent analysis, and we believe that the procedure suggested by PSNH is consistent with the public good under the circumstances of this proceeding. While such a procedure (i.e., preapproval of the issuance of securities so long as they are within a pricing range established by order of the Commission) has not been applied to PSNH in the past, it has been applied to the financing of other electric utilities. See e.g., *Re New England Power Co.*, 69 NH PUC 625 (1984). Our foregoing analysis of the effect of delay supports our decision here to expedite what has generally been a routine and uncontested step in the financing process.

Accordingly, PSNH will not be required to obtain additional pricing approval from this Commission prior to issuing and selling the securities approved in Order 17,558 so long as the terms, conditions, price and amount of those securities fall within the range found to be consistent with the public good in Order 17,558. PSNH will be required, however, to file with the Commission appropriate pricing information (see e.g., preliminary pricing information filed a Exh. A-49) at least 5 days prior to the issuance and sale of the securities so that the Commission can confirm that the securities fall within the range found to be consistent with the public good in Order 17,558. See also, RSA 365:28.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Commission finds reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook I construction costs; and it is

FURTHER ORDERED, that the request of PSNH to remove the first condition set forth in Order No. 17,558 70 NH PUC 164) be, and hereby is granted; and it is

FURTHER ORDERED, that the motion made by PSNH requesting the Commission to authorize PSNH to spend or contribute cash for the purpose of Seabrook construction at levels established from time to time by vote of the Seabrook Joint Owners in place of the limitation contained in the second condition set forth in Order No. 17,558 be, and hereby is, granted to the extent that such payments may be made for construction costs beginning on September 1, 1985; and it is

FURTHER ORDERED, that the portion of the condition set forth in Order No. 17,601 (70 NH PUC 367) that states "...such expenditures in excess of 10% of \$406 million shall be credited against the proposed \$525 million financing and after the issuance and sale of the proposed \$525 million in securities, restored to Public Service Company of New Hampshire for general corporate purposes and monthly accounting of the proceeds in accordance with the requirements of Order No. 17,222", shall continue and remain in effect; and it is

FURTHER ORDERED, that PSNH may consummate the sale of the securities provided that 1) the terms and conditions are within the range prescribed by the Commission in Order No's 17,558 and 17,601, and 2) PSNH notifies the Commission of the terms

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and conditions of the securities at least 5 days before such securities are issued.

By Order of the Public Utilities Commission of New Hampshire this thirteenth day of September, 1985.

Opinion of Commissioner Lea H. Aeschliman

I would agree with the majority that the prospects for financing the shares of the other joint owners have improved sufficiently to allow the spending limit to be raised and to allow Public Service Company to proceed with financing on an unsecured basis if the other conditions set forth in my separate opinion of April 18, 1985 were adopted. (Separate Opinion of Commissioner Aeschliman, Report and Ninth Supplemental Order No. 17,558, [70 NH PUC 167, 268, 66 PUR4th 349, 443].) Since those conditions, which limit the amounts which can be charged to ratepayers, have not been adopted and since the majority has approved secured financing, I cannot agree with the majority opinion. I also have serious concerns about the Company's cash flow and the lack of any contingency planning to address the need to provide service if adverse events occur. This point is discussed at the end of this opinion.

Financing Risk

There has been progress toward resolving the financing uncertainties relative to the shares of the Maine and Vermont companies and the Massachusetts Municipal Wholesale Electric Company (MMWEC). The most significant evidence is the apparent willingness of some joint owners to step forward to finance shares of the joint owners who are unable to finance or who are required to sell. This is a significant change.

However, while the financing risk has been lessened, it certainly has not been fully resolved. The EUA proposal to purchase the shares of the Maine and Vermont Companies depends upon receiving the required regulatory approvals. There is no certainty that the Maine and Vermont Commissions will approve the sale on the terms proposed, nor is there any certainty that the Federal Energy Regulatory Commission will approve the EUA proposal. The Order of the Maine Commission allowing the Maine Companies to continue their Seabrook contributions subsequent to the settlement of the Seabrook rate issues for Central Maine Power Company provides the greatest confidence of continued funding of the Maine shares. (Exhibit A-23 at 5)

The situation relative to MMWEC raises perhaps the greatest concern. While MMWEC is pursuing several courses to obtain financing, the testimony of Mr. Bryne, General Manager and Chief Executive Officer of MMWEC, indicated that the plan most likely to succeed was the joint owner buy back plan. (40 Tr. 7952, 7953) His testimony and Mr. Hildreth's testimony indicated that negotiations were very far along with a financially capable joint owner to consummate this arrangement. (40 Tr. 7900, 7901; 42 Tr. 8320, 8321) Mr. Huntington's subsequent testimony and Mr. Kelley's affidavit (Exhibit A-43) indicate that the Joint Owner that MMWEC has been negotiating with is United Illuminating (UI) (43 Tr. 8429). Apparently UI or another Joint Owner would provide the financing vehicle for the MMWEC members who wished to continue in

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the Seabrook project. UI, Commonwealth Electric Company, NEES and Northeast Utilities have apparently indicated a willingness under certain conditions to consider financing the shares of the MMWEC members who do not wish to continue.¹⁽³³³⁾ (43 Tr. 8430) However, NEES is clearly not willing to take on any additional substantial financing responsibility for the project. (43 Tr. 8427) Evidence of the risk NEES attributes to the Seabrook project is contained in the filings with the Securities and Exchange Commission in 1985 which describe the eventual completion of Unit 1 as very uncertain. (Exhibit A-41 at 5; Exhibit A-42 at Note D, General.)

In the meantime, MMWEC has indicated that it is not willing to exhaust its funds waiting for a plan to develop and has threatened action at its October 2, 1985 meeting. (Exhibit A-43 at 2, 3.) Mr. Huntington indicated that this may be part of MMWEC's bargaining strategy. (43 Tr. 8432) Nevertheless, the prospects for resolving the MMWEC situation appear less certain than Mr. Bryne's and Mr. Hildreth's prior testimony might have led one to conclude.

In addition, the financing risk of the Seabrook project has been increased by the action of the Joint Owners to reduce substantially the reserve required in their financing plans. The prior financing plans provided for a demonstration of financing capability at a level sufficient to fund

a project cost that met Management Analysis Corporation's 90% confidence level of being achieved. The present financing plan adopts the project's target budget for financing purposes. While this change has the benefit of substantially reducing the amount that PSNH must prefinance, it increases the possibility of the need for additional financing which could cause future delays and problems.

Seabrook Project Risks

Enormous risks surrounding the cost, completion and licensing of the Seabrook Project continue to exist. Unfortunately, these uncertainties are inherent in the project and while careful analysis can improve the Commission's judgment, a wide range of outcomes, including cancellation, continues to be possible. A high degree of risk and uncertainty is one of the critical circumstances the Commission must take into account in this case.

Because the level of risk far exceeds what is normally contemplated for utility investments and because I believe full cost recovery is not financially viable and will produce unreasonable rates, I continue to believe that conditions to limit the amounts which can be charged to ratepayers are necessary in the public interest. No evidence has been presented which would cause me to change my opinion that the conditions and exceptions outlined in my earlier opinion remain necessary and appropriate. In fact, the additional evidence received supports my previous analysis.

Evidence of the level of risk is clear

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from the rate of return required by investors putting up new money for the completion of the Seabrook project. Venture capital investors under the initial NuMaineCo proposal would have received a 40% rate of return — 30% for debt and 50% for preferred stock. (Exhibit 152 at 13.) With the involvement of a utility, Eastern Utility Associates (EUA), the proposed return was initially reduced to about 26% — 30% for debt and 16 3/4% for the equity invested by the utility (41 Tr. 8081). This proposal assumed inclusion of the sunk costs of the Maine and Vermont Companies in the EUA Power Corporation rate base. The subsequent EUA filing with FERC does not request inclusion of sunk costs in rate base, but in exchange requires a higher equity return of 25%.²⁽³³⁴⁾ (Exhibit A-47, EUA Power Corporation's Petition, supra, at 19.) The overall return in the latest proposal, calculated by proportionately weighting the debt and equity components, is 29%.

The testimony of Mr. Eichorn, President and Chief Executive Officer of EUA, and EUA's filing with FERC provide additional evidence of the level of risk. The EUA proposal to purchase shares of the Maine and Vermont utilities through a separate subsidiary is carefully structured to limit the risk to EUA. There are no guarantees or liens against EUA's assets to secure this venture (41 Tr. 8133, 8134). The EUA filing with FERC provides EUA's assessment of the risk involved in further investment in the Seabrook project in justifying extraordinary rates of return. (Exhibit A-47, EUA Power Corporation's Petition for a Declaratory Order and Motion for Expedited Consideration and Waiver of Initial Decision at 17-21).

Clearly there continues to be a need to limit ratepayer exposure in the event the plant may

not be completed. This need was addressed in my April opinion by denial of approval to further mortgage the Company's existing generating plants, and by the condition limiting cost recovery from ratepayers to those expenditures which were prudently incurred prior to the date of the April order in the event that Seabrook 1 does not become operational and that RSA 378:30-a is found to be unconstitutional. (Separate Opinion of Commissioner Aeschliman, supra, 70 NH PUC at pp. 305-308, 66 PUR4th at pp. 474-477.)

Assuming the plant is completed, the conclusion that full cost rate support is not reasonable or financially feasible is reinforced by events subsequent to the Commission's April decision and by evidence received in these additional hearings. FERC has denied PSNH's petition to continue the contracts with Concord Electric Company and Exeter and Hampton Electric Company (jointly UNITIL). 31 FERC at Paragraph 61,267 (June 4, 1985). Accordingly, PSNH has revised its load forecast to remove the UNITIL load (Exhibit A-18A and A-18B).

Since the full requirements customers, such as Concord and Exeter, purchase blended power from PSNH and not power from a particular plant, the decision of these customers to terminate service with PSNH indicates even when the Seabrook power is blended with the much cheaper power generated from PSNH's existing plants, that the PSNH system price is not

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competitive with other NEPOOL alternatives. Seabrook power by itself so far exceeds its economic value that Mr. Byrne of MMWEC has indicated that municipalities opting not to participate in further Seabrook investment would have to take at least a "75% hair-cut", i.e., lose 75% or more of their Seabrook power entitlement (40 Tr. 7914-7915, 7937, Exhibit A21). In other words, the selling town would receive a 25% or less paid up share and the purchasing utility 75% or more of the power entitlement in order that the power could be priced at a level which would be marketable (41 Tr. 7937-7938).³⁽³³⁵⁾

The EUA purchase proposal also provides an indication of economic value. EUA is offering to purchase the Maine Companies' Seabrook shares for about 14 cents on the dollar (41 Tr. 8159). This represents the incremental cost from January 1, 1985, and would require the Maine companies and ratepayers to absorb all of the sunk investment prior to that date.

An additional problem which may affect PSNH's financial condition was raised in the last hearing. The present North/South transmission grid is inadequate to carry all the power which will be available when Seabrook comes on line with the result that 1200 megawatts of Northern New England power will be locked in and cannot be transmitted South. (43 Tr. 8535). While Seabrook would be operated as a base load plant, other PSNH plants may be displaced causing PSNH to incur economic penalties. Since PSNH's financial forecasts are based on dispatching its own load, any such penalties have not been estimated. (43 Tr. 8537) In addition, PSNH may be unable to sell excess capacity if that capacity cannot be transmitted. The delay in building the Seabrook to Tewksbury line has occurred because the requisite regulatory approvals in Massachusetts have not been obtained. Since there is significant opposition to the route, there is no assurance that the matter will be resolved in a timely manner.

While a prudence review in a future rate proceeding is essential, it may have little relevance to market viability, in that what regulators deem to be the prudent investment based on a review

of PSNB's Seabrook management decisions may bear little relationship to what the market will absorb or to what a reasonable level of rates may be. I believe the traditional regulatory approach is simply inadequate to deal with the magnitude of the problem in this case. The condition relative to excess capacity as set forth in my opinion of April 18, 1985 provides a regulatory mechanism in addition to any write off required by imprudence to address this situation. (Separate Opinion of Commissioner Aeschliman, *supra*, 70 NH PUC at pp. 301-305, 66 PUR4th at pp. 471-474.)

Cash Flow and Contingency Planning

At the request of the Commission, PSNH has performed a revised cash flow analysis (Exhibit A-46, at R-9) to reflect the action of the Joint Owners at the August 14, 1985 meeting making Seabrook contributions at the \$8 million per week level retroactive to August 1, 1985, subject to the approval of the Commission and the lifting of the stay by the New Hampshire Supreme Court. Approval of Seabrook contributions at the requested level results in a depletion of the Company's cash balance by the end of December 1985 unless financing is accomplished prior to that time. If the contributions at the \$8 million level are not made retroactive to August 1, the cash balance would last until the end of January. (Exhibit A-34) If spending

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contributions continued at the \$5 million per week level, the cash balance would last until April. (Exhibit A-46, Response R-9 at 2 of 2.)

There is no question that if the project is ultimately to go ahead that further delays and increased cost due to cash restrictions should be avoided if possible. Nevertheless, the primary responsibility of the Commission must be to insure the provision of service to customers. In the face of severe cash flow problems if financing is not completed because of a delay in the Supreme Court decision, a reversal or remand by the Court of the Commission's decision or any other event adverse to PSNH or the Seabrook project, such as lack of ability to finance by MMWEC or another Joint Owner, it is critical that efforts be made to conserve cash and to prepare contingency plans to the extent possible.

It is clearly not appropriate to make retroactive contributions to the Seabrook contingency account in these circumstances, and I am in agreement with the majority on this point. However, the majority order authorizes PSNH to spend or contribute cash for the purpose of Seabrook construction "at levels established from time to time by the Joint Owners". While the PSNH motion projects a \$9 million per week level of spending beginning September 1, 1985,⁴⁽³³⁶⁾ the Order does not put any limit on the amount of contribution which may be made. Accordingly, the removal of the retroactive payments to protect the PSNH cash flow is essentially meaningless, since the Joint Owners can accomplish the same thing by merely raising the contribution level. The Commission cannot count on PSNH to limit contributions based upon past experience. Mr. Harrison had not even considered the negative impact of retroactive payments on the Company's cash reserves when the Joint Owners adopted this provision on August 14, 1985. (43 Tr. 8528, 8529). Consequently, I believe some upper limit on contributions prior to completion of the financing is essential.

In addition, the Commission should be requiring PSNH to undertake contingency planning

and should not accept the Company's attitude toward such planning. (Exhibit A-46 at R-10). Planning for adverse developments is a critical management function.⁵⁽³³⁷⁾ While it is clear that ultimate denial of financing for the Company will cause a liquidity crisis and probably will result in bankruptcy for the Company, careful planning may avert a liquidity crisis for some weeks. This time would allow an orderly response to an adverse development without endangering disruptions in service or severe financial penalties from purchased power if the Company's existing plants cannot be operated.

While the Company may have legitimate business reasons for maintaining the confidentiality of contingency plans, this should not mean that they have no obligation to develop such plans and to apprise the Commission of their planning. Where confidentiality is required, there are mechanisms to address that necessity.

Accordingly, I believe the Commission should direct the Company to:

- (1) review all means to conserve cash;
- (2) investigate any potential shortterm financing sources including specifically financing for fuel inventories;
- (3) develop plans to insure the continuous operation of the Company's

Page 817

generating plants in the event of another liquidity crisis; and

- (4) report to the Commission on the Company's efforts pursuant to the above.

FOOTNOTES

¹The procedural history leading up to Order 17,558 is set forth at length in that Order, (70 NH PUC at pp. 167-178, 66 PUR4th at pp. 352-362) and need not be repeated here.

²Unless otherwise explicitly provided, all references to Seabrook herein shall mean Seabrook Unit No. 1 and common facilities. References to Seabrook 1 include common facilities.

³It is the issue of whether the joint owners have resolved financing uncertainties that is addressed in the instant Order.

⁴PSNH represented at the July 16, 1985 hearing that, "In this proceeding we do not intend to attempt to have the Commission remove condition one or to satisfy condition one ... " 39 Tr. 7530. PSNH Counsel went on to state: "It may well be that the evidence that we present here will go a long distance toward satisfying the Commission stated concerns with regard to conditions number one....You will have all the evidence we have on regulatory equivocacy (sic) today. We are holding nothing back...." 39 Tr. 7532-33.

⁵The testimony of Mr. Landergan was sponsored by SAPL. All other testimony was sponsored by PSNH.

⁶At the conclusion of its August 8, 1985 hearing, the Commission established a briefing schedule which concluded on August 13, 1985. No briefs were filed by any party.

⁷On August 23, 1985, the Court issued a further Order which clarified the procedure with respect to the issues remanded to the Commission. The Court provided: "In accordance with RSA 541:15, the PUC is to report its action on remand to this court within 20 days of its receipt of additional evidence. Upon receipt of the PUC's report, this court will issue a supplemental scheduling order regarding the procedure to be followed for amendments of the pleadings or other incidental proceedings in this court pursuant to RSA 541:16."

⁸The 96.14141% is the sum of the joint owners who have secured regulatory financing approvals or have the capability to continue payment of their respective shares of construction without further regulatory approval (75.86161%), the EUA purchase of certain Maine and Vermont shares (11.26721%), the share of VEG&T (0.41259%) and the portion of MMWEC's share which already financed (8.6%).

⁹From August 1, 1985, project management expects to achieve the hot functional milestone on schedule and to reach commercial operation before the end of 1986, at a remaining cash cost of \$558 million, including \$150 million for allowances and contingencies. Exh. A-31. Excluding allowances and contingencies, costs to go to complete Seabrook I construction are estimated at \$408 million. The \$600 million cost to complete for financial planning purposes allows 50% for allowances and contingencies. 41 Tr. 8016, 8017, 8033; Exh. A-7 at 6.

¹⁰Such a situation could well occur if Fitchburg, a 0.86519% owner, becomes the only joint owner unable to meet its obligations to finance to completion.

¹¹The Company's schedules are all based on the assumption that full funding will be retroactive to August 1, 1985 in accordance with the August 14, 1985 resolution of the joint owners. Exh. A-48. Since we are herein only lifting Condition 2 retroactive to September 1, 1985 pending the marketing of the proposed financing, we have reduced all numbers in the range of the immediate cost of lifting Condition 2 by \$4.5 million.

¹²The \$42.2 million difference between the two scenarios reflects increased cash expenditures of \$42.2 million. The remaining \$0.5 million is attributable to corresponding requirements to book increased amounts of Allowance for Funds Used During Construction (AFUDC) to the cost of the plant. Exh. A-46 at R-3, Attachment A.

¹³These figures are not directly comparable because the \$42.2 figure includes some AFUDC in addition to cash cost to go obligations. Although this distinction weights the analysis in favor of the Intervenor, it does not change the result. Thus, for simplicity, we have continued to use the \$42.2 million maximum figure.

¹⁴It is true that the increased expenditures would accelerate the onset of a new liquidity crisis if the Intervenor prevail on appeal. However, the evidence supports a finding that this contingency would make such a liquidity crisis inevitable in any event. See e.g., Exh. A-46 at R-9 and R-10.

¹⁵Such higher rates are not a certainty and, in fact, if the Intervenor prevail on Appeal with a concomitant cancellation of Seabrook recovery from ratepayers could be prohibited by RSA 378:30-a. See also, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984)

Opinion of Commissioner
Lea H. Aeschliman

¹The participation of United Illuminating in the MMWEC financing plans raises questions about the acceptability of this involvement by the Connecticut Commission. The Connecticut Commission in its order approving United Illuminating's financing conditioned that approval on the requirement that none of the proceeds of UI's financings be used for purposes other than financing UI's ownership interest. The Company was specifically prohibited from making any expenditure to finance another Joint Owners' Seabrook 1 ownership without prior DPUC approval. (Exhibit A-14 at 12, 13)

²The filing indicates that it is Mr. Hildreth's opinion that if equity were to be raised in the venture capital market that the return required would be 40% or more. (Exhibit A-47, supra at 20.)

³It should also be noted that MMWEC's Seabrook cost is significantly less than PSNH's because it has been financed by tax-exempt municipal debt.

⁴PSNH Motion For Further Order Regarding Level of Seabrook Construction Contributions, June 28, 1985, at 3.

⁵The contrast in PSNH's attitude toward contingency planning for adverse developments and NEES' attitude expressed in the same day of testimony is striking. NEES is preparing for numerous adverse contingencies which might affect its cash position. (43 Tr. 8433, 8434)

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NH.PUC*09/16/85*[61208]*70 NH PUC 818*Northeast Hydrodevelopment Corporation

[Go to End of 61208]

70 NH PUC 818

Re Northeast Hydrodevelopment Corporation

DR 85-176, DR 85-186

Re Beaver Brook Hydro Corporation

DR 85-188

Re Main Street Hydro Associates

DR 85-189

Supplemental Order No. 17,863

New Hampshire Public Utilities Commission

September 16, 1985

ORDER requiring small power producers to increase their insurance coverage as a condition on approval of long term rate filings.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — Licensing status.

An interconnecting electric utility's objection to the long term rate filing of a small power producer (SPP) on the grounds of a lack of information about the Federal Energy Regulatory Commission licensing status of the SPP was denied as without merit; documentation of the FERC licensing of a SPP is not required as part of a long term rate filing, and, in any case, SPPs are required to submit a survey form, which includes information about FERC licensing status, before the rate filing can be processed. [1] p.820.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — Insurance coverage.

An interconnecting electric utility's objection to the long term rate filing of a small power producer (SPP) on the grounds that the insurance coverage provided by the interconnection agreement was inadequate was accepted; the commission found that the SPPs must have sufficient insurance to indemnify and hold the interconnecting utility harmless from increased risks associated with SPPs and, accordingly, required the maintenance of a \$3 million insurance level. [2] p.820.

By the COMMISSION:

REPORT

On May 28, 1985, Northeast Hydrodevelopment Corporation (NHC) filed a long term rate petition for the Weare Reservoir Project. On May 31, 1985, Northeast Hydrodevelopment Corporation (NHC), Beaver Brook Hydro Corporation (BBHC) and Main Street Hydro Association (MSHA) respectively filed long term rate petitions for the McLane Dam Project, the project at Mammoth Road Mill Pond on Beaver Brook and the Salmon Brook Project. NHC-Weare Reservoir and BBHC filed two (2) amendments to the filings on July 8, 1985 and July 26, 1985. NHC-McLane Dam and MSHA filed three

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(3) amendments to the filings on June 17, 1985, July 8, 1985 and July 26, 1985.

On August 13, 1985, the Commission issued Orders NISI No. 17,809 (70 NH PUC 708), No. 17,810 (70 NH PUC 709), No.17,811 and No. 17,812 for the approval of the interconnection agreement with Public Service Company of New Hampshire (PSNH) and for approval of the rates set forth on the long term worksheets of each filing.

PSNH filed timely Comments and Exceptions on August 23, 1985 to the four Orders NISI issued by the Commission with respect to the long term rate filings noted above. Three of the paragraphs in the Comments and Exceptions filed by PSNH object to the long term rate filings of NHC, BBHC, and MSHA. We will discuss each of these objections in turn.

Paragraph No. 1 of PSNH's Comments and Exceptions objects to the approval of the long term rate filing "unless and until additional information is provided regarding the Federal Energy Regulatory Commission (FERC) licensing status." PSNH states that "the FERC licensing status

is a significant factor in evaluating the likelihood that a project will operate for the entire rate term."

Paragraph 2 of PSNH's Comments and Exceptions objects to the approval of the long term rate filings "unless and until documentation is produced which fully establishes George K. Lagassa as a duly authorized agent having the capacity to bind NHC, BBHC, and MSHA to the rate filing terms and conditions." PSNH contends that Mr. Lagassa is not an attorney, therefore further evidence of authorized agency is warranted.

Paragraph 3 of PSNH's Comments and Exceptions objects to the approval of the long term rate filings "because insurance coverage provided by NHC's, BBHC's and MSHA's interconnection agreements is not satisfactory. NHC, BBHC, and MSHA currently have insurance coverage on their interconnection agreements of one million dollars which PSNH requests be increased to three million dollars to provide adequate protection.

PSNH outlines its position with respect to the insurance coverage in Exhibit A, an attachment to its Comments and Exceptions. Exhibit A is a response dated August 16, 1985 to comments in Docket No. DR 85-105 filed by Power House Systems (Power House) on July 5, 1985.

In its response to PSNH's Comments and Exceptions, Power House contends that a three million dollar insurance limit proposed by PSNH is unreasonable. Power House stated that the overall characteristics of its project (i.e. size, classification, engineering) do not warrant insurance coverage of three million dollars. Power House theorized that PSNH's request for high insurance limits from Small Power Producers (SPPs) is intended to reduce PSNH's liability, a liability that will be decided by the courts and cannot be limited by higher insurance coverage.

PSNH countered that SPPs are required to indemnify and hold PSNH harmless. PSNH contended that the appropriate mechanism for enabling SPPs to indemnify and hold PSNH harmless for the increased risk associated with SPPs is through the maintenance of adequate insurance coverage. PSNH finds a three million dollar coverage level is reasonable based on the cost of insurance, the degree of risk involved,

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and the size of reasonably expected settlement and verdict awards.

Commission Findings

[1] The Commission finds that PSNH's objection to the long term rate filing "unless and until additional information is provided regarding the FERC licensing status" is without merit. Documentation of the FERC licensing status of an SPP is not required as part of a long term rate filing under Order 17,104 (69 NH PUC 352, 61 PUR4th 132). In any case, SPPs are required to submit to the Commission a "survey form" before a long term rate filing can be processed. The "survey form" includes information on the FERC licensing status of an SPP. This information is on file at the Commission and the Commission takes whatever action is appropriate prior to the granting of a long term Commission rate.

The Commission agrees with PSNH's objection relating to the lack of documentation establishing George K. Lagassa as a duly authorized agent having the capacity to bind NHC,

BBHC, and MSHA to a long term rate filing. As Mr. Lagassa is not an attorney, the Commission will require further evidence of authorized agency.

[2] The Commission finds that PSNH's request that NHC, BBHC, and MSHA maintain insurance coverage of three million dollars is reasonable and in the best interest of all parties concerned. Article 7 of the Interconnection Agreements requires NHC, BBHC, and MSHA to indemnify and hold PSNH harmless "from any and all loss by reason of property damage, bodily injury (including attorney's fees) caused by or sustained by NHC, BBHC, and MSHA, among other things." The three million dollar insurance level is a reasonable limit for enabling SPPs to indemnify and hold PSNH harmless for the increased risk associated with SPPs. The Commission is also aware that the majority of SPPs maintain a liability coverage in the three to five million dollar range. The Commission finds that the characteristics of NHC's, BBHC's and MSHA's facilities do not warrant special consideration in regards to the insurance coverage on the interconnection agreement. Therefore, the Commission requires that the insurance coverage provided by NHC's, BBHC's and MSHA's interconnection agreements be maintained at a level of three million dollars.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that pursuant to RSA 365:28, Orders No. 17,809 (70 NH PUC 708), 17,810 (70 NH PUC 709), 17,811 and 17,812 are suspended until further Order of the Commission; and it is

FURTHER ORDERED, that the conditions for approval of the long term rate petitions of Northeast Hydro Development Corporation, Beaver Brook Hydro Corporation, and Main Street Hydro Associates, shall be as set forth in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1985.

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NH.PUC*09/23/85*[61209]*70 NH PUC 821*Power House Systems

[Go to End of 61209]

70 NH PUC 821

Re Power House Systems

DR 85-105, Supplemental
Order No. 17,865

New Hampshire Public Utilities Commission

September 23, 1985

ORDER requiring a small power producer to increase its insurance coverage as a condition on the approval of its long term rate filing.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — Insurance coverage.

An interconnecting electric utility's objection to the long term rate filing of a small power producer (SPP) on the grounds that the insurance coverage provided by the interconnection agreement was inadequate was accepted; the commission found that the SPPs must have sufficient insurance to indemnify and hold the interconnecting utility harmless from increased risks associated with SPPs and, accordingly, required the maintenance of a \$3 million insurance level.

By the COMMISSION:

REPORT

The Commission issued Order No. 17,646 (June 5, 1985) in this docket which approved NISI the long term rate petition of Power House Systems (Power House).

Public Service Company of New Hampshire (PSNH) filed timely Comments and Exceptions to Power House's long term rate petition on June 14, 1985.

The Commission found that PSNH's Comments and Exceptions warranted further review and therefore, pursuant to RSA 365:28, issued Supplemental Order No. 17,710 suspending Order No. 17,646 (70 NH PUC 510).

Two of the paragraphs in the Comments and Exceptions filed by PSNH noted exceptions to the long term rate petition of Power House.

Paragraph 1 of PSNH's Comments and Exceptions noted "exception to the insurance coverage indicated in Power House's Interconnection Agreement." PSNH requested that the Commission require Power House to maintain Comprehensive General Liability Insurance for bodily injury and property damage at a minimum limit of three million dollars (\$3,000,000). PSNH argued that the \$100,000/\$300,000 limits proposed by Power House were unacceptable for a hydroelectric facility of the size proposed.

Paragraph 2 of PSNH's Comments and Exceptions noted "exceptions to the manner and execution of Power House's Interconnection Agreement." PSNH requested that the Commission condition its order approving the long term rate petition on an Interconnection Agreement indicating, the type of entity making the rate filing, the

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domicile of the entity, the capacity of the person or persons executing the Interconnection Agreements, and evidence of proper registration to engage in business in New Hampshire.

In response to PSNH's Comments and Exceptions Power House filed Comments and an amended Interconnection Agreement. (July 12, 1985) Power House represented that the amended Interconnection Agreement would be with PSNH and Power House, a New Hampshire registered general partnership. Power House proposed to change the Comprehensive General Liability Insurance which was contained in the original Interconnection agreement to one million dollars

(\$1,000,000).

Power House contended that a three million dollar insurance limit proposed by PSNH is unreasonable. Power House argued that the overall characteristics of its project (i.e. size, classification, engineering) do not warrant insurance coverage of three million dollars. Power House theorized that PSNH's request for high insurance limits from Small Power Producers (SPP's) was intended to reduce PSNH's liability a liability that would be decided by the courts and cannot be limited by higher insurance coverage.

PSNH responded to Power House's amended Interconnection Agreement and Comments with Supplemental Comments filed with the Commission on August 16, 1985.

First PSNH noted that the amended Interconnection Agreement supplied by Power House lacked proper manner and execution. PSNH proposed to provide Power House with a proper Interconnection Agreement for signature after the insurance issue was resolved.

Regarding the insurance issue, PSNH objected to Power House's discussion of "why PSNH is requesting a three million dollar insurance limit and its suggestion as to why such limits are unnecessary." PSNH countered that SPP's are required to indemnify and hold PSNH harmless. PSNH contended that the appropriate mechanism for enabling SPP's to indemnify and hold PSNH harmless for the increased risk associated with SPP's is through the maintenance of adequate insurance coverage. PSNH finds a three million dollar coverage level is reasonable based on the cost of insurance, the degree of risk involved and the size of reasonably expected settlement and verdict awards.

Commission Findings

The Commission finds that PSNH's request that Power House maintain insurance coverage of three million dollars is reasonable and in the best interest of all parties concerned. Article 7 of the Interconnection agreement requires Power House to indemnify and hold PSNH harmless "from any and all loss by reason of property damage, bodily injury (including attorney's fees) caused by or sustained by Power House, among other things." The three million dollar insurance level is a reasonable limit for enabling SPP's to indemnify and hold PSNH harmless for the increased risk associated with SPP's. The Commission also notes that the majority of SPPs maintain a liability coverage in the three to five million dollar range. The Commission finds that the characteristics of Power House's facilities do not warrant special consideration in regards to insurance coverage or the interconnection agreement. Therefore, the Commission requires that the

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insurance coverage provided by Power House's Interconnection Agreement be maintained at a level of three million dollars.

PSNH has proposed to provide Power House with a proper Interconnection Agreement for signature after the insurance issue has been resolved. The Commission accepts PSNH's proposal and requires Power House file the amended Interconnection Agreement with the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the conditions for approval of the long term rate petition of Power House Systems, shall be as set forth in the foregoing Report.

By Order of the Public Utilities Commission of New Hampshire this twentythird day of September, 1985.

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NH.PUC*09/26/85*[61210]*70 NH PUC 823*New England Telephone and Telegraph Company

[Go to End of 61210]

70 NH PUC 823

Re New England Telephone and Telegraph Company

DR 85-318, Order No. 17,874

New Hampshire Public Utilities Commission

September 26, 1985

ORDER approving reclassification of telephone exchanges and localities.

By the COMMISSION:

ORDER

WHEREAS, on August 30, 1985, New England Telephone and Telegraph Company filed with this Commission certain revisions of its Tariff No. 75 by which results of the annual survey of weighted main telephone exchange lines are documented; and

WHEREAS, such revisions indicate the survey resulted in the upgrade of the following exchanges and localities:

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

Bartlett Jackson Merrimack
Candia Lyme No. Walpole
Derry Meredith Penacook
Rye Beach So. Hampton; and

WHEREAS, such survey and reclassification conform to approved procedures outlined in Section 5.1.3 of Part A in the cited tariff; it is

ORDERED, that 6th Revised Page 8, 4th Revised Page 22, 3rd Revised Pages 23-26, and 2nd Revised Page 27 of Section 5, Part A, New England Telephone and Telegraph Company tariff No. 75 be, and hereby are, approved for effect with service rendered to affected exchanges on and after September 30, 1985; and it is

FURTHER ORDERED, that each affected customer be given a one-time notice of this

approval by a bill insert summarizing the impact on those customers' local exchange service.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of September, 1985.

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NH.PUC*09/26/85*[61211]*70 NH PUC 824*Errol Hydroelectric Limited Partnership

[Go to End of 61211]

70 NH PUC 824

Re Errol Hydroelectric Limited Partnership

Intervenor: Public Service Company of New Hampshire

DR 85-198, Order No. 17,875

New Hampshire Public Utilities Commission

September 26, 1985

ORDER nisi granting petition of a small power producer for approval of its interconnection agreement and long term rate filing.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — FERC requirements — Project ownership.

A small power producer that leased its production site from an electric utility did not violate the requirement of the Federal Energy Regulatory Commission that a qualified small power production facility may not be owned by a person primarily engaged in the generation or sale of electricity; in determining that the utility was not the owner, the commission accepted the small power producer's contentions that: (1) the relationship of the small power producer and the electric utility was that of lessee/lessor; (2) the utility had no equity interest in the project development; and (3) proceeds to the utility from the lease rates would never approach 50% of the stream of benefits from the project. [1] p.825.

Cogeneration, § 5 — Qualifying status — Eligibility for long term rates — FERC requirements — Licensing.

In approving a small power producer's long term rate filing the commission found that conflicts surrounding Federal Energy Regulatory Commission licensing of the project had been satisfactorily resolved. [2] p.825.

APPEARANCES: Angus King, Esquire, for Errol Hydroelectric Limited Partnership; Catherine Shively, Esquire for Public Service Company of New Hampshire; Dr. Sarah P. Voll and Mark Collin, New Hampshire Public Utilities Commission.

By the COMMISSION:
REPORT

On June 4, 1985, Errol Hydroelectric Limited Partnership (Errol Hydro) submitted to the Commission a 30 year rate filing for the Errol Dam pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). On July 30, 1985, the Commission issued Order No. 17,775 which noted that a question existed in regard to the utility ownership of the site and therefore the project's eligibility for a Commission established rate, and set the matter for hearing. A hearing was held on August 26, 1985. On September 6, 1985, Errol Hydro submitted amendments to its filing.

The concern of the Commission was twofold. First, according to the regulations of the Federal Energy Regulatory Commission (FERC), a qualified small

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power production facility may not be owned by a person primarily engaged in the generation or sale of electric power. FERC will consider a person to be primarily engaged in the generation or sale of electric power if more than a 50% equity interest is held by an electric utility. 18 C.F.R. §§ 292.205. In the instant case, Errol Dam is owned by the Union Water Power Company (Union) which is a wholly owned subsidiary of Central Maine Power Company. Secondly, while the Commission does not require a developer to have received his FERC license prior to applying for a long term rate, the Commission does question the timeliness of a rate petition in a case where the FERC license application has been contested and the FERC has not yet designated the approved licensee. In the instant case, according to the latest information on file at the Commission, there had been two license applications before the FERC to develop the Errol Dam, but neither were made by Errol Hydro. One was filed by Union on behalf of Union and Public Service Company of New Hampshire (PSNH) and a second was filed by PSNH on its own behalf. The FERC had granted the joint application, but PSNH had declined to accept the joint license on October 27, 1983. Thus the licensing status of the Errol Dam, and therefore the right of Errol Hydro to develop the site, appeared to be, at best, uncertain.

[1] Errol Hydro represented in prefiled documents and at the hearing that the developer of the project is the Errol Hydroelectric Limited Partnership whose general partner is the Swift River/Hafslund Company. The relationship between Errol Hydro and Union is that of lessee/lessor. Union itself has no equity interest in the hydroelectric development of the Errol Dam; the lease rate is 14% of the project proceeds in years one through 20, and 25% for the remainder of the lease. As the lease is the result of an armslength negotiation, and the proceeds to Union never approach 50% of the stream of benefits, Errol Hydro argues that it does not violate the FERC regulations regarding utility ownership of the project.

[2] Errol Hydro further represented that while the licensing process of Errol Hydro was not yet concluded, the conflict surrounding the license application had been resolved. PSNH explained that original plans for developing the site involved a joint venture between PSNH and Union with PSNH being responsible for the engineering work and ultimately leasing Errol Dam from Union. However, PSNH and Union had been unable to agree to lease terms and therefore

PSNH declined the joint license and filed a license application on its own behalf. In return for reimbursement for the engineering expenses incurred, PSNH has now agreed to withdraw its independent license application and accept the joint license for the sole purpose of transferring the license to Errol Hydro. PSNH submitted a copy of the July 26, 1985 letter from Roy G. Barbour, Vice President, PSNH, to the FERC to confirm the present status of the Errol Dam license. Exhibit 2. PSNH represented that, barring intervention by a third party, it was clear that the FERC would approve the transfer. Tr at 18.

The Commission finds that the explanations regarding the ownership and licensing of the Errol Dam proffered by PSNH and Errol Hydro satisfactorily resolve the Commission concerns.

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The filing as amended appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, supra. We will therefore approve the interconnection agreement and rates as set forth on the long term rate worksheet nisi, subject to allowing PSNH an opportunity to respond to Errol Hydro's Petition for a long term rate.

Our Order will issue accordingly.

ORDER

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

ORDERED NISI, that Errol Hydro's Petition for a Thirty-Year rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheets is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of September, 1985.

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NH.PUC*09/27/85*[61212]*70 NH PUC 826*Pennichuck Water Works, Inc.

[Go to End of 61212]

70 NH PUC 826

Re Pennichuck Water Works, Inc.

DF 85-299, Order No. 17,876

New Hampshire Public Utilities Commission

September 27, 1985

ORDER authorizing a water utility to issue and sell unsecured debt to finance construction of a transmission facility.

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Security Issues, § 111 — Financing methods — Sale of unsecured debt — Construction financing — Conditions — Water utility.

Authorization for a water utility to issue and sell unsecured debt to finance construction of a transmission facility was conditioned upon the utility keeping accurate accounting records of its cash position, assuring that interest income is properly assigned, and ensuring that utility operations are not subsidizing nonutility operations.

APPEARANCES: for the Petitioner John B. Pendleton, Esquire; for the staff Eugene F. Sullivan, Finance Director and Robert Lessels, Water Engineer.

By the COMMISSION:

REPORT

By this unopposed petition, filed August 13, 1985, Pennichuck Water Works, Inc. (the Company), a corporation duly organized and existing under the laws of the State of New Hampshire, and operating therein as a water public utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, 369:3 and 369:4 to issue and sell unsecured debt for \$1,575,000 of cash.

As a preliminary matter, the Company has filed documentations which indicates that the name of the utility has been changed from Pennichuck Water Company, Inc. to Pennichuck Water Works, Inc. Pennichuck Water Works, Inc., the former holding company and parent of Pennichuck Water Company, Inc., has restated its Certificate of Incorporation to Pennichuck Corporation. In Order No. 16,373 (68 NH PUC 253) and Supplemental Order No. 17,047 (69 NH PUC 258), this Commission authorized the reorganization of Pennichuck Water Works, Inc. The form of the reorganization remains the same. The holding company is now known as Pennichuck Corporation. This Commission has rules and regulations related to its responsibility to be informed, and the Company has been delinquent in that regard. In the future, the Company will be expected to follow the rules and regulations promulgated by this Commission.

At the hearing on the petitions, held in Concord on September 19, 1985, the Company submitted that the City of Nashua, acting through the Nashua Industrial Development Authority, will issue \$1,575,000 of Industrial Facility Revenue Bonds which the Indian Head National Bank is committed to purchase in the amount indicated above. The funds from the sale of the taxexempt bonds will be loaned to the Company on an unsecured basis, subject to the terms of the bonds. The Company will use these funds to retire the short-term borrowings for the

construction of its Merrimack River Supplement project including the costs of the issue. This project consists of a water transmission facility involving the construction of a 20 million gallon per day raw water supplemental pumping facility in the Town of Merrimack, New Hampshire and the laying of transmission main in the city of Nashua, New Hampshire and the Town of Merrimack for the purpose of pumping the Merrimack River water into the Company's water reservoir system. The loan will have a term of 20 years with interest at a fixed rate of eight percent for three years and then variable at eighty percent of prime for the remaining 17 years.

The Company presented evidence that the negotiated issue of debt had

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been made on the most favorable terms available under the conditions prevailing both in today's money markets and in the money markets at the time the loan commitment was obtained.

The Company submitted a balance sheet at June 30, 1985 actual and pro formed to reflect the effect of the bond issuance and the infusion of the permanent loan funds. In addition, exhibits were also submitted showing: pro formed income statements; estimated expenses of the financing; statement of capitalization ratios at September 30, 1985, and pro formed to include the permanent construction loan; interest coverages; and the commitment letter from the lender that was addressed earlier in this report.

The Company also filed an additional exhibit after the hearing consisting of the restated certificates of incorporation and amendments for Pennichuck Water Works, Inc. and Pennichuck Corporation. Staff submitted exhibits which provided a detailed breakdown of the costs of the project. The costs include an estimate of the financing costs. The Commission will require the Company to file a detailed summary of the actual financing costs. A copy of the final agreements should also be filed with the Commission.

During cross examination two areas of concern were raised which are matters that this Commission will require the Company to address in the future. The first area is the requirement to keep accurate accounting records of the cash position of the utility and to assure that interest income is properly assigned to the utility. As is the case with all holding companies we will require that appropriate allocations are made so that utility operations are not subsidizing nonutility operations. The second concern is related to the capital structure. In its rate case, the Company has expressed the need to improve its TIER coverage. In this case, the Company witness expressed no urgency in issuing further equity. We note that the Company can alleviate any TIER coverage concerns by issuing equity.

Upon investigation and consideration, the Commission is satisfied that the proceeds from the proposed financing will be expended to permanently finance the construction of the Merrimack River Supplement facility retiring the short-term financing in the amount of \$1,575,000, including payment of the costs of the financing, and finds that this issue of unsecured debt upon the terms proposed for the purposes as heretofore stated 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

ORDERED, that Pennichuck Water Works, Inc. be and hereby is, authorized to issue and sell for cash, upon the terms proposed, one million five hundred seventy-five thousand dollars (\$1,575,000) of its unsecured debt; and it is

FURTHER ORDERED, that the proceeds from the sale of this debt shall be used to permanently finance the construction of its Merrimack River Supplement facility, including the costs of the issue; and it is

FURTHER ORDERED, that on or before November 30, 1985 Pennichuck Water Works, Inc. shall file with this Commission a detailed statement, duly

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to [sic] sworn to by its Vice President or its Treasurer, showing the complete disposition of the proceeds of said debt being authorized so that said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of September, 1985.

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NH.PUC*10/01/85*[61213]*70 NH PUC 829*New Hampshire Electric Cooperative, Inc.

[Go to End of 61213]

70 NH PUC 829

Re New Hampshire Electric Cooperative, Inc.

DR 85-326, Order No. 17,877

New Hampshire Public Utilities Commission

October 1, 1985

ORDER extending fuel adjustment clause overcollection refund period.

By the COMMISSION:

ORDER

WHEREAS, on March 28, 1985 the Commission in its Report and Order No. 17,516 (70 NH PUC 299) revised New Hampshire Electric Cooperative, Inc.'s (Coop) Fuel Adjustment Clause (FAC) rate to \$2.706 per 100 KWH, reflecting a reduction in fuel costs, said order also providing for a surcharge credit of \$1.096 per 100 KWH, refunding an overcollection from the FAC rate previously in effect; and

WHEREAS, the New Hampshire Electric Cooperative, Inc. on September 24, 1985, has petitioned for an extension of the refund period (to expire September 30, 1985 pursuant to Order No. 17,843) until October 31, 1985 due to overcollections accumulating from the FAC rate approved in Order No. 17,516; and

WHEREAS, the New Hampshire Electric Cooperative, Inc. has further petitioned to reduce said surcharge credit from \$1.096 per 100 KWH to \$1.000 per 100 KWH to avoid refunding an amount in excess of that which is owed the Cooperative members and

WHEREAS, upon review of the petition the Commission finds the requested extension and reduction of the surcharge credit to be in the public good; it is hereby

ORDERED, that the New Hampshire Electric Cooperative, Inc. be, and hereby is, permitted a one month extension of the surcharge credit of \$1.000 per 100 KWH, until October 31, 1985; and it is

FURTHER ORDERED, that, on or about October 31, 1985, the Coop shall file a reconciliation of the amount overcollected versus the amount refunded by said surcharge credit, at which time the Commission will

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determine whether any additional adjustment is necessary.

By Order of the Public Utilities Commission of New Hampshire this first day of October, 1985.

=====

NH.PUC*10/01/85*[61214]*70 NH PUC 830*New England Telephone and Telegraph Company

[Go to End of 61214]

70 NH PUC 830

Re New England Telephone and Telegraph Company

DR 85-321, Order No. 17,878

New Hampshire Public Utilities Commission

October 1, 1985

ORDER approving tariff implementing low-use measured telephone service.

By the COMMISSION:

ORDER

WHEREAS, this Commission in its Order No. 15,752 issued under docket DR82-70 (70 NH PUC 469) required that New England Telephone and Telegraph Company (NET) implement lowuse measured service in all its exchanges no later than December 31, 1985; and

WHEREAS, NET has been complying with that mandate on a scheduled basis; and

WHEREAS, said company has filed its final tariff revisions for such implementation to meet such deadline in all remaining exchanges; and

WHEREAS, availability of required measuring equipment for the mandated low-use service for residential customers also makes available measured business service; and

WHEREAS, the Commission reiterates its earlier decisions that availability of such service is for the public good; it is

ORDERED, that revised pages of New England Telephone and Telegraph Company Tariff No. 75 as shown on the list attached be, and hereby are, approved for effect On October 7, 1985; and it is

FURTHER ORDERED, that public notice be given on a timely basis to subscribers of affected exchanges in the form of a bill insert, such that the customer is aware of his opportunities for a variety of local telephone services.

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

- NHPUC - No. 75
- Supplement No. 23 - Title Page
 - Original Page 1
 - Part A - Section 5 - Sixth Revision of Page 9
 - Second Revision of Page 9.1
 - Seventh Revision of Pages 19 and 20
 - Third Revision of Pages 20.1, 20.2 and 20.3
 - Fifth Revision of Pages 20.4, 20.5 and 20.6
 - Sixth Revision of Page 20.7

 - Third Revision of Page 20.8
 - First Revision of Pages 20.9, 20.10 and 20.11
 - Original Pages 20.12, 20.13, 20.14 and 20.15
 - Eighth Revision of Page 21
 - Fifth Revision of Pages 29.1, 29.2 and 29.3

By order of the Public Utilities Commission of New Hampshire this first day of October, 1985.

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NH.PUC*10/02/85*[61215]*70 NH PUC 831*Granite State Electric Company

[Go to End of 61215]

70 NH PUC 831

Re Granite State Electric Company

DR 85-341, Order No. 17,879

New Hampshire Public Utilities Commission

October 2, 1985

ORDER approving reduction in electric rates.

By the COMMISSION:

ORDER

WHEREAS, Granite State Electric Company (Granite State) has filed certain revisions to its Tariff NHPUC No. 10 - Electricity, Fourth Revised Page 32 and Third Revised Page 41, proposing a reduction in rates by \$300,000 annually; and

WHEREAS, said reduction in rates was requested by Granite State because of the unusual sales growth experienced during the last several months; and

WHEREAS, the tariff affecting this reduction shall not be a precedent for the design of rate structure and is approved only for the purpose of expeditiously passing on this reduction to ratepayers ; and

WHEREAS, it is in the public good to fix these rates in an expeditious manner; it is hereby

ORDERED, that pursuant to RSA 378:3, Granite State be, and hereby is, permitted to reduce its rates by \$300,000 annually; and it is

FURTHER ORDERED, that Granite State Tariff 4th Revised Page 32 and 3rd Revised Page 41, NHPUC No. 10 - Electricity, be, and hereby is, permitted to go into effect October 1, 1985.

By Order of the Public Utilities Commission of New Hampshire this second day of October, 1985.

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NH.PUC*10/02/85*[61216]*70 NH PUC 832*Fuel Adjustment Clause

[Go to End of 61216]

70 NH PUC 832

Re Fuel Adjustment Clause

Intervenor: Granite State Electric Company

DR 85-175, Supplemental Order No. 17,880

New Hampshire Public Utilities Commission

October 2, 1985

ORDER permitting a revision to an electric utility's fuel adjustment clause.

Automatic Adjustment Clauses, § 53 — Over- and undercollections — Semi annual fuel adjustment clause rate — Rate revision.

An electric utility was permitted to revise its semi annual fuel adjustment clause rate to mitigate recurring undercollections projected for the remaining term of the semi annual period; the original semi annual rate filing had contained an agreement that allowed for a reopening of the proceedings in the event of an over- or undercollection of greater than 5% of total fuel costs.

APPEARANCES: As previously noted.

By the COMMISSION:

On September 16, 1985 Granite State Electric Company, (Granite State) filed a revision to its semi annual Fuel Adjustment Clause (FAC) in effect through December 31, 1985. This filing was made in accordance with a Stipulation Agreement approved by the Commission in Report and Order No. 17,702 (70 NH PUC 600).

Said Agreement provides for a trigger on the FAC revenues of five (5) percent on over or under collected fuel costs. If the FAC rate collects more or less than the five (5) percent band around fuel costs, the parties will have an opportunity to reopen the proceedings to show cause for adjusting the FAC rate.

In the instant filing, Granite State represents that the FAC rate of \$0.636 per 100 KWH will undercollect fuel costs by greater than 7 percent. Accordingly, they have filed a revised FAC rate of \$1.268 per 100 KWH designed to recover the undercollection to date and mitigate recurring undercollections projected for the remaining semi annual period (October-December, 1985). Said revision is proposed to become effective on October 1, 1985 and remain in effect through December 31, 1985.

On October 1, 1985 the Commission held a hearing to review the merits of the filing. During the hearing 14 exhibits were accepted and various issues were discussed. Among the issues discussed were:

1. In the present filing, Granite State revised its sales forecast from the

Page 832

original filing in June 1985. Based on actual data through August 1985 Granite State believes its sales will grow an additional two percent during the last quarter of 1985 over what was originally projected for that period;

2. The forecasted price of oil is lower then the original filing but the forecasted price of coal is higher; and

3. The larger than anticipated undercollection during the first three months of the semiannual FAC was primarily due to an accident at Brayton 3 causing that generating facility to shut-down for an extended period of time. The cost of replacing the generation from this unit exceeds the cost of fuel with the unit in operation.

After review of the evidence provided, and in accordance with the Stipulation Agreement approved in Order No. 17,702, we find the revision of Granite State's FAC rate to be just and reasonable and therefore will approve the rate of \$1.268 per 100 KWH as filed.

In a separate issue, for future filings pursuant to the trigger mechanism, the Commission will require filings at least three weeks in advance of the proposed effective date for the revision. This will provide adequate lead time for discovery and for preparation for the hearing.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that 18th Revised Page No. 30 of Granite State Electric Company tariff, NHPUC No. 10 - Electricity, providing for a fuel surcharge of \$1.268 per 100 KWH for the months of October through December, 1985, be, and hereby is, permitted to go into effect for said period.

The above noted rate to be adjusted by a factor of approximately 1 percent in accordance with the Franchise Docket, DR 83-205, Order No. 15,624.

By Order of the Public Utilities Commission of New Hampshire this second day of October, 1985.

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NH.PUC*10/02/85*[61217]*70 NH PUC 834*Promulgation of Rules for Gas Service

[Go to End of 61217]

70 NH PUC 834

Re Promulgation of Rules for Gas Service

DRM 85-165, Supplemental
Order No. 17,883

New Hampshire Public Utilities Commission

October 2, 1985

ORDER adopting gas safety standards.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission opened this docket for the purpose of adopting certain rules regarding gas safety standards; and

WHEREAS, on May 21, 1985, the Commission issued Report and Order No. 17,614 (70 NH PUC 397) which adopted those gas safety standards as emergency rules pursuant to RSA 541-A:3-g; and

WHEREAS, on June 25, 1985, the Commission obtained a Fiscal Impact Statement from the Legislative Budget Assistant as required by RSA 541-A:3-a; and

WHEREAS, on July 11, 1985, the Commission filed a Notice of Proposed Rule with the Administrative Procedures Division of the Office of Legislative Services for publication in the August 9, 1985 issue of the New Hampshire Rulemaking Register as required by RSA 541:3-a; and

WHEREAS, on August 22, 1985, the Commission held a public hearing at which time no one appeared to offer comments on the proposed rules; and

WHEREAS, in response to comments received by the Administrative Procedures Division of the Office of Legislative Services the Commission made certain changes to the proposed rules and on September 9, 1985 obtained an Amended Fiscal Impact Statement regarding those further changes from the Legislative Budget Assistant; and

WHEREAS, on September 11, 1985, the Commission filed a Final Proposal with the Administrative Procedures Division of the Office of Legislative Services as required by RSA 541-A:3d; and

WHEREAS, on September 20, 1985, the Joint Legislative Committee on Administrative Rules held a hearing and unanimously approved the Final Proposal; and

WHEREAS, we find that the requirements of RSA 541-A, the Administrative Procedures Act, have been met and the proposed rules may now be adopted; it is hereby

ORDERED, that the proposed rules

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set forth in the Final Proposal and approved by the Joint Legislative Committee on Administrative Rules be, and hereby are, adopted; and it is

FURTHER ORDERED, that in accordance with RSA 541-A:2, these rules shall be effective for a period not longer than six years.

By Order of the Public Utilities Commission of New Hampshire this second day of October, 1985.

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NH.PUC*10/02/85*[61218]*70 NH PUC 835*Concord Steam Corporation

[Go to End of 61218]

70 NH PUC 835

Re Concord Steam Corporation

Intervenors: New Hampshire Hospital and Concord Hospital

DR 85-304, Order No. 17,884

New Hampshire Public Utilities Commission

October 2, 1985

ORDER setting procedural schedule for proposed steam rate step increase.

APPEARANCES: For the Petitioner David W. Marshall, Esquire; Peter C. Scott, New Hampshire's Assistant Attorney General for New Hampshire Hospital; Theodore Wadleigh,

Esquire for Concord Hospital; Robert B. Lessels, Daniel D. Lanning and James L. Lenihan for staff.

By the COMMISSION:

REPORT

On May 10, 1985 Concord Steam Corporation (CSC) filed a Motion to Re-open DR 82-239. The Motion was filed in accordance with a Settlement Agreement (Agreement) approved by this Commission in Report and Order No. 16,408. Said Agreement provides that if "CSC's projected annual steam sales exceed or fall short of 491,000,000 pounds by 10,000,000 pounds or more, both the Meter Rate and the Energy Cost Adjustment shall be reopened on the motion of any party or the Commission." CSC represents that the annual sales volume has declined to 350,000,000 pounds, well below the 481,000,000¹⁽³³⁸⁾ pound trigger amount.

The Commission, in Order No. 17,617 (70 NH PUC 403), suspended CSC's Motion to Re-open without prejudice pending investigation on May 27, 1985.

An order of notice was issued on September 4, 1985, scheduling a prehearing conference for September 24, 1985, for the purpose of establishing a procedural schedule. On September 17, 1985, CSC filed a Petition for Temporary Rates requesting that the filed increase of \$297,500 be fixed as temporary rates and that the Commission promptly hold hearings to determine and prescribe such rates.

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The hearing examiner²⁽³³⁹⁾ recessed the proceedings to allow the parties an opportunity to stipulate to a procedural schedule. Following the recess, CSC requested to be heard at the September 24 hearing on the issue of temporary rates. The New Hampshire Hospital, Concord Hospital, and staff objected citing the need for additional discovery before proceeding on the merits. Staff also questioned the adequacy of notice on the temporary rate issue. The intervenors requested that the hearing on temporary rates not occur before October 1, 1985, to allow the parties adequate time for preparation.

The hearing examiner denied CSC's request for an immediate hearing on temporary rates and the parties presented the following proposed procedural schedule:

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

Date Event

October 02, 1985 Hearing on Temporary Rates
 October 04, 1985 Data Requests on the CSC
 Due
 October 18, 1985 Data Responses due from
 CSC
 November 4, 1985 Stipulation Meeting
 November 8, 1985 Testimony by Staff and
 Intervenors
 November 14, 1985 Hearing on Rates

An Order of Notice for the hearing on temporary rates on October 2, 1985, was issued on September 24, 1985, for publication to ensure adequate notice of the temporary rate issue in this docket.

The Commission has reviewed this schedule and believes that it is reasonable and therefore will accept it as such. The Commission additionally concurs with the Examiner's ruling. We find the scheduled date for hearing the merits of temporary rates does not continue for an unreasonable period of time the establishment of such rates and that it will give CSC an adequate opportunity to provide the information desired by staff and the intervenors.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the procedural schedule for this docket be as follows:

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

Date Event

October 02, 1985	Hearing on Temporary Rates
October 04, 1985	Data Requests on the CSC Due
October 18, 1985	Data Responses due from CSC
November 4, 1985	Stipulation Meeting
November 8, 1985	Testimony by Staff and Intervenors
November 14, 1985	Hearing on Rates

By Order of the Public Utilities Commission of New Hampshire this second day of October, 1985.

FOOTNOTES

¹491,000,000 pounds less 10,000,000 pounds.

²The Commission assigned its Executive Director and Secretary as examiner for this hearing pursuant to RSA 363:17.

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NH.PUC*10/03/85*[61219]*70 NH PUC 837*Mad River Power Associates

[Go to End of 61219]

70 NH PUC 837

Re Mad River Power Associates

DE 85-263, Order No. 17,885

New Hampshire Public Utilities Commission

October 3, 1985

PETITION for a license to construct and maintain a pole line river crossing; granted.

APPEARANCES: For the Petitioner, Joseph S. Ransmeier, Esquire.

By the COMMISSION:

REPORT

On July 15, 1985 Mad River Power Associates, a limited partnership organized and existing under the laws of the State of New Hampshire, filed with this Commission a petition seeking authority to construct and maintain a pole line river crossing over the waters of the Mad River at the site of the Campton Dam hydroelectric project in Campton, New Hampshire.

The Commission issued an Order of Notice on August 28, 1985 directing all interested parties to appear at public hearings on September 18, 1985 at 2:00 p.m. at the Commission's Concord offices. Notices were sent to John C. Ransmeier, Esquire, for publication; Christopher Kersting, New Hampshire Aeronautics Commission; Mr. James Carter, Chief of Land Management DRED; Robert Danos, Director of Safety Services, Department of Safety; Commissioner John P. Chandler, New Hampshire Department of Public Works and Highways; and the Attorney General's office. An affidavit of publication was received in the Commission's offices on the date of the hearing, confirming that publication was made in the Concord Monitor and the Laconia Evening Citizen on September 3, 1985.

No one appeared in opposition to the petition.

Mr. Vernon McFarland testified for the petitioner that Mad River Power Associates is the licensee for the development of a hydroelectric project situated at the Campton Dam in Campton, New Hampshire. Mad River proposes to construct, own, operate, and maintain a line of poles with related wires, cables, fixtures, and appurtenances crossing the Mad River at a point approximately 550 feet southerly of the Campton Dam and 400 feet southerly of the bridge by which New Hampshire Route 175 crosses the river. The petitioner offered as an exhibit a drawing No. 010-1, dated July 5, 1985, which described in detail the location and characteristics of the crossing. The

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line will be erected and maintained on the petitioner's property on the easterly side of Mad River, and on land of Moody Doyle and Reinhold Anderson and Inge Anderson on the westerly side of the river. The overhead line will meet all construction requirements of the National Electric Safety Code.

Two alternative crossing locations were considered by the petitioner and rejected for reasons of practicality and economics. Southwesterly of the crossing are overhead lines of Public Service Company of New Hampshire, but assessibility to that crossing would involve extended overhead pole lines parallel to the river on both the easterly and westerly banks. A second alternative across the Route 175 bridge at the Campton Dam was rejected on the basis that it would require another road crossing at an intersection. An underwater crossing was rejected as being uneconomical.

Testimony revealed that boating traffic is unlikely in the vicinity of the petitioner's proposed crossing.

The Commission finds that approval for this license to construct and maintain a river crossing over the waters of the Mad River at the site of the Campton Dam hydroelectric project in Campton, New Hampshire to be in the public interest.

Our order will issue accordingly.

ORDER

Based upon consideration of the foregoing Report, which is made a part hereof; it is

ORDERED, that the Commission finds that approval for this license to construct and maintain a river crossing over the waters of the Mad River at the site of the Campton Dam hydroelectric project in Campton, New Hampshire to be in the public interest.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1985.

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NH.PUC*10/09/85*[61220]*70 NH PUC 839*Mountain Springs Water Company

[Go to End of 61220]

70 NH PUC 839

Re Mountain Springs Water Company

DR 85-5, Third Supplemental
Order No. 17,891

New Hampshire Public Utilities Commission

October 9, 1985

ORDER denying motion for rehearing of water rate case.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Report and Second Supplemental Order No. 17,822 (70 NH PUC 720) in this docket which, inter alia, adjudicated the issues raised by the tariff filing of Mountain Springs Water Company; and

WHEREAS, on September 9, 1985, Mountain Springs Water Company filed a Motion for Rehearing; and

WHEREAS, on September 13, 1985, Mountain Lakes District filed an objection to the Motion for Rehearing; and

WHEREAS, the Motion for Rehearing contains no evidence, proffer of evidence or argument which was not fully considered in reaching the findings and conclusions of Report and Second Supplemental Order No. 17,822; and

WHEREAS, the Commission's independent review of the record revealed no reason to disturb the findings and conclusion of Report and Second Supplemental Order No. 17,822; it is therefore

ORDERED, that the September 9, 1985 Motion for Rehearing of Mountain Springs Water Company be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1985.

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NH.PUC*10/09/85*[61221]*70 NH PUC 840*Concord Steam Corporation

[Go to End of 61221]

70 NH PUC 840

Re Concord Steam Corporation

DR 85-304, Supplemental
Order No. 17,893

New Hampshire Public Utilities Commission

October 9, 1985

ORDER establishing temporary steam rates.

Rates, § 630 — Temporary rates — Steam heating — Factors affecting authorization.

A steam utility was granted rate relief, through the establishment of temporary rates, to mitigate the effect of a substantial loss in sales due to a mild winter and conservation measures; the commission required that the temporary rates be collected under bond subject to refund pending final determination of permanent rates.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

Concord Steam Corporation (CSC or Company) filed a petition for a step increase on May 10, 1985 in accordance with a Stipulation Agreement approved by the Commission in Report and Order No. 16,408 (68 NH PUC 334). Pursuant to RSA 378:6 the Commission suspended said petition pending investigation on May 27, 1985.

On September 17, 1985 CSC filed a petition for temporary rates and further petitioned that the merits of the temporary rates be reviewed during a procedural hearing scheduled on

September 24, 1985. CSC's request for litigation during the September 24, 1985 hearing was denied by the Commission and a hearing date of October 2, 1985 was scheduled on temporary rates. (See Commission Report and Order No. 17,884 [70 NH PUC 835].)

CSC's petition for temporary rates requests that the Commission adopt the proposed permanent increase in rates, filed on May 10, 1985, as temporary rates pending resolution of the permanent rate issue. This would mean an increase in annual revenues of \$297,500 (10.3%). CSC requested that the temporary rates be made effective as of July 1, 1985, the same date the proposed permanent rates were to become effective.

CSC presented two witnesses at the duly noticed hearing on October 2, 1985: Mr. Roger Bloomfield, President and Treasurer of CSC, and Mr. Richard LeClair of Nathan Wechsler and Company, Certified Public Accountants.

Mr. Bloomfield testified to the

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merits of the proposed increase which included projected 1985 expenditures (increases and decreases from actual 1984 expenditures); allocations of expenditures applicable to the cogenerating division of CSC¹⁽³⁴⁰⁾; an estimate of sales in 1985; a three page schedule displaying historical sales for 1983, 1984, and 1985 to date; a calculation of rate base and a return of nine percent (9%) on said rate base²⁽³⁴¹⁾; a report of proposed rate changes; and copies of certain pages from CSC 1984 NHPUC Annual Report which Mr. Bloomfield considers particularly significant for his presentation.

Mr. LeClair produced copies of CSC's unaudited financial statements for the year ending June 30, 1985. These statements include a statement of income and a calculation of rate base with supporting schedules and notes.

CSC's Income Statement displays an operating loss of \$70,026 as of June 30, 1985. CSC's witness represents that although the projected sales for the period ending December 31, 1985 is 350,000,000 pounds, the sales for the current year ending June 30, 1985 was only 307,000,000 pounds. The witness believes that the decrease of sales in 1985 was caused by warmer than usual weather during the 1984-85 heating season and a conservation program initiated by the New Hampshire State Hospital during that same period. This accounts for the significant loss of revenue during the fiscal year ending June 30, 1985 which has required CSC to borrow funds in order to sustain its operating obligations.

The CSC witnesses further represent that the banks which hold CSC's major debt service have indicated that they are concerned with the Company's present financial position. Also, banks which have previously offered CSC short term lines of credit are not currently willing to loan money to CSC. As a result, Mr. Bloomfield has personally advanced funds to CSC to cover the company's cash needs.

CSC represented that if the Commission were to base temporary rates on the financial information presented during the proceedings CSC would require an annual increase in revenues of approximately \$450,000. However, the proposed temporary rates are filed at the requested permanent rate level of \$9.05 per thousand (M) pounds of steam which is equivalent to an

increase in annual revenues only of \$297,500 or 10.3 percent.

Further, during the hearings CSC indicated that they would be willing to revise the effective date originally requested in the Temporary Rates Petition of July 1, 1985 to September 1, 1985. CSC contends that this will make it easier to administer the increase on billings, and will benefit the customers during the period which CSC has offered to forego the increase (July — August 1985).

Commission Analysis

Based on the evidence provided the Commission believes that rate relief is required. However, the Commission has many concerns in establishing temporary rates in this docket.

Chief among these concerns is the substantial loss in sales over a relatively short period of time. CSC has

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explained this loss in sales as 1) weather related, and 2) due to conservation.

In addition CSC has stated that the loss in steam sales from the originally forecasted sales, approved by this Commission in DR 82-239, which triggered this petitioned step increase, was caused by a loss of customers and the New Hampshire State Hospital's decision to abandon their electric generating facilities. All of which were not anticipated when developing the forecasted sales in DR 82-239.

Cognizant of this recent drop in steam demand and relevant impact on revenues, the Commission recommends that the Company assess the impacts of a permanent rate increase as proposed, in order to determine the possible adverse effects of such a price increase on projected steam demand. Concurrently the Company will be required to demonstrate, during the permanent rate proceeding, what cost saving measures the Company has adopted at its steam production facilities as well as in its overall administrative duties to mitigate the rate increase. This rate increase potentially will impact future steam demand, with resultant loss of revenue leading to another request for rate relief.

The Commission needs assurance that this increase is not a solution to a short term problem³⁽³⁴²⁾ which carries with it additional problems for the future. To provide this assurance we will require that the permanent rate increase be adjusted for effects of weather and known and measurable future increases in steam sales.

The issue on the effective date of temporary rates has been addressed by this Commission on numerous occasions. As a matter of law the Commission may, when justified, establish temporary rates effective on the date the petition for temporary rates was filed. However, unless retroactive rates are justified, the Commission normally fixes temporary rates to be effective on the date of the authorizing order.

The principal reason for this precedent is to insure adequate notice to ratepayers of pending rate changes. See *Re Pennichuck Water Works*, 120 N.H. 562, 419 A.2d 1080 (1980). Customers make decisions based on knowledge of rates and increases or decreases thereof. Without proper notification of a rate change customers will be hindered when making financial decisions in a

business or personal environment.

In the instant proceeding, however, CSC has established a need to fix temporary rates retroactively to October 1, 1985.

This represents a date which provides reasonable notification to ratepayers⁴⁽³⁴³⁾ and adequately preserves CSC's allowed rate of return as required under RSA 378:27 and 29.

Based on the record, the Commission will fix temporary rates at the requested \$9.05 per M pounds. Said rates are to be collected under bond and are subject to refund pending final determination of permanent rates.

The Commission also provides notice that the scope of the proceedings of

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the permanent rates will include a review of the allocation process between the steam utility and cogeneration businesses.

Our order will issue accordingly. October 9, 1985

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Steam Corporation's proposed temporary rates of \$9.05 per thousand (M) pounds be, and hereby is, approved for all service rendered on or after October 1, 1985; and it is

FURTHER ORDERED, that said temporary rates be collected under bond subject to refund pending final determination of permanent rates.

By Order of the Public Utilities Commission of New Hampshire this ninth day of October, 1985.

FOOTNOTES

¹Note: Parts of the cogeneration operation are not within the purview of this Commission (See RSA 362-A:2) and as such are considered nonutility operations.

²Previously allowed rate of return in DR 82-239.

³As the New Hampshire Assistant Attorney General pointed out at the October 2, hearing, CSC earned a profit up until December 31, 1984. It is only in the last few months that CSC has shown a net loss.

⁴The petition for permanent rates were [sic] filed on May 10, 1985. CSC did not file a petition for temporary rates until September 17, 1985. Following the suspension of rates a customer would not be officially noticed of a change in rates until a) the date CSC formally petition's for temporary rates, or b) the date the rates are permitted to go into effect under bond, i.e., six months after the purposed effective date of the permanent filing. RSA 378:6.

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70 NH PUC 843

Re Northeast Hydrodevelopment Corporation

DR 85-176, DR 85-186

Re Beaver Brook Hydro Corporation

DR 85-188

Re Main Street Hydro Associates

DR 85-189

Supplemental Order No. 17,896

New Hampshire Public Utilities Commission

October 11, 1985

ORDER approving petitions of small power producers for long term rates.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, pursuant to RSA 365:28, the Commission issued Supplemental Order No. 17,863 (70 NH PUC 834) suspending the long term rate petitions of Northeast Hydro Development (NHC), Beaver Brook Hydro Corporation (BBHC), and Main Street Hydro Associates (MSHA); and

WHEREAS, the conditions for approval of the long term rate petitions of NHC, BBHC and MSHA as stated in the Report accompanying Order 17,863 require:

1.) NHC, BBHC, and MSHA provide documentation establishing George K. Lagassa as a duly authorized agent having the capacity to bind NHC, BBHC, and MSHA to the terms and conditions of their long term rate petitions;

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2.) the insurance coverage provided by NHC's, BBHC's and MSHA's interconnection agreements be maintained at a level of three million dollars; and

WHEREAS, NHC, by letter dated September 11, 1985 and BBHC and MSHA, by letter dated September 20, 1985, notified the Commission that they have met the above stated conditions; and

WHEREAS, those letters establish George K. Lagassa as the duly authorized agent having the capacity to bind NHC, BBHC and MSHA to the terms and conditions of their long term rate

petitions; and

WHEREAS, those letters represent that NHC, BBHC and MSHA have agreed to maintain three million dollars in general liability insurance as an interconnector; it is hereby

ORDERED, that NHC's, BBHC's and MSHA's long term rate petitions are approved.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1985.

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NH.PUC*10/11/85*[61224]*70 NH PUC 845*Mountain Springs Water Company

[Go to End of 61224]

70 NH PUC 845

Re Mountain Springs Water Company

Intervenor: Mountain Lakes District

DR 85-358, Order No. 17,899

New Hampshire Public Utilities Commission

October 11, 1985

ORDER opening docket for the purpose of establishing the rights and duties of a water utility and its customers pending resolution of the issues involved in the purchase of the water utility's plant.

Payment, § 33 — Restrictions on denial of service for nonpayment — Water utility.

In response to customer complaints, and to the imminent purchase of a water utility's assets, the utility was ordered to refrain from disconnecting any customer for nonpayment so long as the customer renders payment of \$32.93 on or before November 1, 1985 and renders the sum of \$115.89 as payment for services to be rendered in October, November and December of 1985.

By the COMMISSION:

ORDER OF NOTICE

ORDER

WHEREAS, the New Hampshire Public Utilities Commission (Commission) has received notice that the Grafton County Superior Court has adjudicated the valuation proceeding between the Mountain Springs Water Company, Inc. (MSWC) and the Mountain Lakes District pursuant to RSA 38:9; and

WHEREAS, the Commission has received notice that the Mountain Lakes District will vote

on October 12, 1985 as to the purchase and acquisition of the plant of MSWC pursuant to RSA 38:1 et seq.; and

WHEREAS, the Commission has received notice that MSWC has rendered to its customers in early September, 1985 an annual water bill pursuant to, inter alia, the Commission's decision in Re Mountain Springs Water Co., 70 NH PUC 720 (1985); and

WHEREAS, the Commission has received notice that the early September, 1985 water bills were dated October 1, 1985 and that payment in full was requested by October 1, 1985; and

WHEREAS, the Commission has received notice that customers who did

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not render payment in full by October 1, 1985 were served with disconnect notices, such disconnection to take place as of October 15, 1985; and

WHEREAS, the Commission has received a written complaint, dated October 8, 1985, from those customers of MSWC who have received disconnect notices; it is

ORDERED, that, on the Commission's Motion, Docket No. DE 85-358 be, and hereby is, opened pursuant to, inter alia, RSA 363-B:1 and 2, 365:5, 374:1-4, 378:6, 7 and 9 for the purpose of establishing the rights, duties and responsibilities of MSWC and its customers pending resolution of the issues involved in the purchase and acquisition of the plant and property of MSWC by Mountain Lakes District; and it is

FURTHER ORDERED, that a hearing on Docket No. DE 85-358 be held before the Commission at its office in Concord, 8 Old Suncook Road, Building #1 in said State at ten o'clock in the forenoon on the twenty-sixth day of November, 1985; and it is

FURTHER ORDERED that Mountain Lakes District notify all persons desiring to be heard to appear at said hearing, when and where they may be heard on the issues in Docket No. DE 85-358, 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 November 8, 1985, said publication to be designated in an affidavit to be made on a copy of this Order of Notice and filed with this office on or before November 26, 1985; and it is

FURTHER ORDERED, that the provision at page 21 of the tariff of MSWC requiring annual billing be, and hereby is, suspended until further Order of this Commission; and it is

FURTHER ORDERED, that pending the hearing of November 26, 1985 and any Commission action resulting therefrom no customer shall be disconnected for nonpayment of their bill so long as that customer renders payment on or before November 1, 1985 of \$32.93 and the sum of \$115.89 which shall represent payment for service to be rendered for the months of October, November and December, 1985. Thereafter the Commission shall, based upon the record in this proceeding, determine how future payments shall be made.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1985.

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NH.PUC*10/11/85*[61225]*70 NH PUC 847*New Hampshire Electric Cooperative, Inc.

[Go to End of 61225]

70 NH PUC 847

Re New Hampshire Electric Cooperative, Inc.

DE 85-277, Order No. 17,901

New Hampshire Public Utilities Commission

October 11, 1985

ORDER appointing a guardian ad litem to represent potential adverse interests to an electric cooperative's petition for condemnation of land.

By the COMMISSION:

ORDER

WHEREAS, the New Hampshire Electric Cooperative, Inc. (NHEC) filed on July 29, 1985, a petition for condemnation of land now or formerly of Franconia Investment Associates of the Town of Lincoln, New Hampshire, situated between Route 112 and the Pemigewasset River, shown on a plan entitled "parcel F, Franconia Investment Associates — Lincoln, N. H. to be deeded to New Hampshire Electric Cooperative" as surveyed by Thaddeus Thorne — Surveys, Inc., Center Conway, N. H. 03813 surveyed May 3, 1985 and drafted May 6, 1985, said plan being on file with the Commission for inspection, and said tract of land being lawfully described in a quit claim deed from Franconia Investment Associates to the New Hampshire Electric Cooperative, Inc., dated June 5, 1985 and recorded in the Grafton County Registry of Deeds on June 28, 1985 at Book 1548, Page 962; and

WHEREAS, NHEC represents that there are possible parties with potential adverse interest who will not appear at the proceedings in this docket; and

WHEREAS, NHEC has requested, pursuant to RSA 371:5, that the Commission appoint a guardian ad litem to represent the interests of parties of potential adverse interests who do not appear; and

WHEREAS, NHEC has recommended, without objection from any other known party, that Attorney Russell Hilliard be appointed as said guardian; and

WHEREAS, the Commission finds that it would be in the public interest to grant the requested relief; it is

ORDERED, that Russell F. Hilliard is hereby appointed, pursuant to RSA 371:5, guardian ad litem to represent the interests of any owner of the parcel in question whose residence is unknown or uncertain who does not appear in this proceeding; and it is

FURTHER ORDERED, that in accordance with RSA 371:5, NHEC give notice to all such owners by causing to be published once a copy of this

Order in a newspaper of general circulation in Grafton County, New Hampshire no later than October 18, 1985; and it is

FURTHER ORDERED, that all such owners who have not yet appeared in these proceedings and who would like to be heard on the petition, so advise the Public Utilities Commission in writing by October 25, 1985.

By order of the Public Utilities Commission of New Hampshire this eleventh day of October, 1985.

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NH.PUC*10/15/85*[61223]*70 NH PUC 844*Exeter and Hampton Electric Company

[Go to End of 61223]

70 NH PUC 844

Re Exeter and Hampton Electric Company

DE 85-332, Order No. 17,898

New Hampshire Public Utilities Commission

October 15, 1985

ORDER authorizing an electric utility to continue its electric service protection program.

By the COMMISSION:

ORDER

WHEREAS, on September 4, 1985, Exeter and Hampton Electric Company (E & H or Company) filed a Petition for Extension of Waiver of Application of PUC 303.08(K) (2), (3) and (6); and

WHEREAS, the Commission required E & H to prepare and submit an evaluation of the Electric Service Protection Program (ESP) for the period 1984 — 1985; and

WHEREAS, the Commission has reviewed the filing and the program data submitted in accordance with Order No. 17,248, dated October 12, 1984 (69 NH PUC 603); and

WHEREAS, after a review of the filing and the program results, the Commission finds that the Company's efforts were constructive and continued implementation of the ESP program should be encouraged; and it is therefore

ORDERED that the Company work with Staff in order to update the information previously required in Commission Order No. 17,248 related to the program evaluation process, with such

information to be filed with the Commission no later than December 31, 1985; and it is

FURTHER ORDERED, that the Company will be and hereby is authorized to continue the ESP program in the interim subject to the same conditions imposed in Order No. 17,248; and it is

FURTHER ORDERED, that Commission regulations at PUC 303.8(k)(2), (3) and (6) be, and hereby are waived as they apply to Exeter and Hampton Electric Company until December 1, 1986.

By Order of the Public Utilities Commission this fifteenth day of October, 1985.

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NH.PUC*10/17/85*[61226]*70 NH PUC 848*D.J. Pitman

[Go to End of 61226]

70 NH PUC 848

Re D.J. Pitman

DR 85-171, Order No. 17,904

New Hampshire Public Utilities Commission

October 17, 1985

ORDER suspending long term rates of a small power producer.

By the COMMISSION:

ORDER

WHEREAS, the Commission issued Order No. 17,851 (70 NH PUC 775) which approved Nisi the long term rate petition of D.J. Pitman for the Wadleigh Falls hydroelectric project; and

WHEREAS, Public Service Company of New Hampshire (PSNH) filed comments and exceptions to Order No. 17,851 on October 1, 1985; and

WHEREAS, the PSNH comments and exceptions warrant further review by the Commission; it is therefore

ORDERED, that pursuant to RSA 365:28 Order No. 17,851 be, and hereby is, suspended until further order of the Commission.

By Order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1985.

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NH.PUC*10/17/85*[61227]*70 NH PUC 849*Northern Utilities, Inc.

[Go to End of 61227]

70 NH PUC 849

Re Northern Utilities, Inc.

DR 85-322, Order No. 17,906

New Hampshire Public Utilities Commission

October 17, 1985

ORDER approving special contract rates for gas service.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 71 with Public Service Company of New Hampshire, effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration, this Commission is of the opinion that special circumstances exist relative thereto which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective as of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1985.

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NH.PUC*10/18/85*[61228]*70 NH PUC 850*Pennichuck Water Works, Inc.

[Go to End of 61228]

70 NH PUC 850

Re Pennichuck Water Works, Inc.

Intervenor: Anheuser-Busch, Inc.

DR 85-2, Second Supplemental
Order No. 17,911

New Hampshire Public Utilities Commission

October 18, 1985

ORDER authorizing an increase in water rates; request for temporary rates approved.

Rates, § 596 — Water — Two-step design — General metered service.

The general metered service rates of a water utility were restructured consistent with the results of a cost of service study, except that the consumption charges would consist of a two-step design rather than a three-step design recommended by the study; the commission's water engineer had proposed a flat consumption charge but accepted the two-step design because it represents movement toward a flat rate. [1] p.853.

Rates, § 247 — Temporary rate recoupment — Rate surcharge — Water.

A water utility was permitted to recover by surcharge, in accordance with state statute RSA 378:29, the difference between its existing rates, which had been previously deemed temporary rates, and the rates finally approved in its rate case. [2] p. 853.

Rates, § 596 — Water — Rate settlement — Grounds for approval.

A water rate settlement was accepted by the commission based on its findings that the terms and conditions of the settlement were amply supported by the record and that the overall revenue requirement and corresponding rate levels contained therein were just and reasonable; nevertheless, the rates were suspended pending a decision on the effect of currently undecided special contract rates on the utility's overall revenue requirement. [3] p. 853.

Return, § 26.4 — Factors affecting reasonableness — Cost of common equity — Discounted cash flow method — Water utility.

The cost of common equity of a water utility was set at 13.17% based on the discounted cash flow (DCF) methodology; the commission's knowledge of and experience with other methods had lead it to conclude that the DCF methodology is the most reliable and consistent method in terms of application and results; accordingly, the commission disagreed with the utility's contention that exclusive reliance on the DCF method was inappropriate and rejected an argument supporting the use of another method. [4] p. 860.

Return, § 26.4 — Factors affecting reasonableness — Cost of common equity — Discounted cash flow method — Proxy sample — Water utility.

The commission rejected a claim by a water utility that the discounted cash flow (DCF) analysis used in setting its cost of common equity was flawed because of differences in size and equity ratio between the utility and the sample used as a proxy for the utility; the commission found that the companies used as a proxy for the utility were the best available approximate for the utility's cost of common equity. [5] p.861.

Return, § 26.4 — Factors affecting reasonableness — Cost of common

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equity — Discounted cash flow method — yield component — Spot price — Water utility.

The commission rejected a claim by a water utility that the discounted cash flow (DCF) analysis used in setting its cost of common equity was flawed because a single day or "spot" price, rather than a 12 month average was used to calculate the yield component of the DCF formula; the spot price used in the DCF formula was found to best represent the expected future price of equity. [6] p. 862.

Return, § 26.4 — Factors affecting reasonableness — Cost of common equity — Discounted cash flow method — Flotation costs — Risk assessment — Water utility.

The commission declined to make any adjustments to the results of a discounted cash flow analysis to account for flotation costs or risk; the water utility had not established with any degree of certainty that it would be issuing any common equity during the next two years, and risk had already been analyzed and accounted for by investors in the market price they are willing to pay for common stock. [7] p. 862.

Return, § 26.4 — Factors affecting reasonableness — Cost of common equity — Pretax interest coverage — Water utility.

A claim by a water utility that the cost of common equity should be calculated so as to ensure a certain level of pretax interest coverage was rejected; the commission held that pretax interest coverage levels result from choices by utility management and should play no part in the commission's cost of equity determination. [8] p. 863.

APPEARANCES: Gallagher, Callahan and Gartrell by John B. Pendleton, Esquire and James L. Kruse, Esquire on behalf of Pennichuck Water Co., Inc; Ransmeier and Spellman by Dom S. D'Ambrosio, Esquire; Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 1, 1985, Pennichuck Water Works, Inc. (Pennichuck), a public utility engaged in gathering and distributing water to the public in Nashua and Merrimack, New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of \$1,457,979 (27%) to be effective April 1, 1985. Along with the revised tariff pages Pennichuck filed a Petition For Temporary Rates pursuant to RSA 378:27 requesting that temporary rates be set for all service rendered after April 1, 1985.

By Order No. 17,487 issued on March 12, 1985, the Commission suspended the effective date of the tariff revisions. An Order of Notice was issued on March 13, 1985 setting a hearing for April 2, 1985 to address the issue of temporary rates and the procedural aspects of the permanent rate increase request. Thereafter, the Commission issued Report and Order No. 17,619 on May 28, 1985 (70 NH PUC 405) which denied Pennichuck's request for temporary rates and established a procedural schedule for the rate case. In addition, Order No. 17,619 also granted Anheuser-Busch, Inc.'s (AB) Petition To Intervene with respect to the issues of revenue allocation and rate design issues.

On May 30, 1985, Pennichuck filed a Motion For Rehearing pursuant to RSA 541:3 and, on June 14, 1985, filed a Supplemental Motion For Rehearing wherein it requested as alternative relief that temporary rates be set for all service rendered on or after June 3, 1985. In response thereto, the Commission Report and Order No. 17,700

on July 1, 1985 (70 NH PUC 595) which inter alia granted Pennichuck's request to set temporary rates as of June 3, 1985.

Hearings were held before the Commission on September 4 and 9, 1985.

II. SETTLEMENT AGREEMENT

At Pennichuck's request, the parties met on a number of occasions prior to the commencement of the hearings in an effort to narrow the issues to be litigated. Those meetings resulted in agreement by all the parties on all revenue requirement and rate structure issues with the exception of an appropriate cost rate for Pennichuck's common equity. That agreement is contained in a document entitled "Settlement Agreement" (Exhibit 4), the hi

ghlights of which follow:

A. Revenue Requirements

Written testimony regarding the appropriate rate base and level of operating expenses was submitted prior to the settlement conferences by Charles J. Staab, Treasurer of both Pennichuck and its parent company, Pennichuck Corporation (Exhibit 2) and Daniel D. Lanning, the Commission's Assistant Finance Director (Exhibit 5). Mr. Lanning and Stephen J. Densberger, Vice President of both companies, testified at the September 4, 1985 hearing in support of the Settlement Agreement. Mr. Lanning explained in great detail Staff's position on the rate base and expense issues presented by Pennichuck's filing and how the Settlement Agreement varied therefrom (Transcript, Volume I, pp. 23 to 40). A comparison of these two documents reveals that nearly all of Staff's original positions on rate base and expense items were included in the Settlement Agreement. The rate base, income statement and tax effect contemplated by the Settlement Agreement are as follows:

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

Rate Base

Plant in Service	25,796,072
Less:	
Accumulated Depr.	4,942,169
Contrib. in Aid	1,895,962
Customer Advances	1,309,812
NET Plant	17,648,129
Add:	
Cash Working Cap.	448,923
Materials/Supplies	244,682
Less:	
Customer Deposits	170,650
Unamortized ITC	1,289,172
Deferred Taxes	763,009
Rate Base	16,118,903

Income Statement

Operating Revenue	5,393,399
Operating Expenses:	
Production	708,451

Trans. & Distr.	531,034
Customer Acc.	99,875
Adm. & General	534,565
Taxes:	
FIT	507,429
N.H.E.P. Taxes	109,264
Property Taxes	623,352
Other	82,455
Depreciation	572,604
 Total Rev. Deduct.	 3,769,029
 Net Operating Income	 1,624,370

Tax Effect Calculation To Be Utilized In Determining Revenue Deficiency

.4932

With the exception of the cost of Pennichuck's common equity, all cost

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of capital issues were also agreed upon by Pennichuck and the Commission Staff including the appropriate capital structure and cost rates for long term debt, preferred stock and short term debt as follows:

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

Component	Ratio	Cost Rate	Weighted Cost
Common Equity	.322		
Preferred Stock	.081	10.32	.84
Long Term Debt	.572	10.71	6.13
Short Term Debt	.025	9.50	.23

B. Rate Structure

[1] The settlement Agreement proposes a restructuring of Pennichuck's general metered service rates (G-M) consistent with the cost-of-service study (Study) performed by John R. Palko, Vice President of Associated Utility Service, except that the consumption charges will consist of a two-step design instead of the three-step design recommended by the Study.¹⁽³⁴⁴⁾ Testifying in support of the rate structure provisions of the Settlement Agreement were Stephen J. Densberger on behalf of Pennichuck and Robert B. Lessels, the Commission's Water Engineer, on behalf of the Commission Staff. Mr. Lessels' prefiled testimony proposed that the Commission direct Pennichuck to employ a flat consumption charge for all water consumed by its G-M customers. Mr. Lessels proposed a flat charge because it was "accepted by the Commission in the most recent cases involving Hampton Water Works, Manchester Water Works, Hudson Water Company and Derry Water Works." (Transcript, September 4, 1985 hearing, p. 59). However, he has accepted and supports the two-tier design in this proceeding because it is moving towards a flat charge (Transcript, September 4, 1984 hearing, p. 62). That issue will be further addressed in Pennichuck's next rate case.

C. Rate Case Expense Recovery and Temporary Rate Recoupment

[2] The Settlement Agreement proposes that the difference between Pennichuck's temporary rates (its existing rates) and the level of revenue approved in this docket be recovered by

surcharge in accordance with RSA 378:29. The parties agreed therein that the said surcharge shall be calculated so as to apply to customers' bills rendered on or after October 1, 1985 and to continue thereafter, concluding with bills rendered on September 30, 1986. In addition, Pennichuck is to recover its rate case expenses by an additional corresponding surcharge during the same period.

D. Commission Analysis of Settlement Agreement

[3] After a complete review, we find that the terms of Settlement Agreement are amply supported by the record and that the overall revenue requirement and corresponding rate levels contained

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therein are just and reasonable. Accordingly, we will accept the Settlement Agreement and the accompanying attachments as set forth in Exhibit 4. It is important to note that by the agreement of the parties, the income statement in the Settlement Agreement does not reflect certain revenues to be obtained from AB. Our concerns in this regard and an appropriate method of resolving this inconsistency are detailed below.

Pennichuck supplies water to the (AB) brewery in Merrimack under a Special Contract (Special Contract) approved by the Commission in 1969.²⁽³⁴⁵⁾ Under the Special Contract, AB pays an annual fixed charge and a consumption charge of 50% of the lowest or "tail" block of a three block rate design. In conjunction with this rate case, Pennichuck and AB filed a petition on May 17, 1985 seeking approval of a proposed Amendment to the Special Contract which would eliminate the fixed charge but require AB to pay 70% of the tail block with an annual minimum charge of \$90,000 whether or not AB takes any water (DE 85-161). According to the petition, the Amendment is intended to bring the revenues derived from AB more in line with Pennichuck's cost of service requirements as contained in the recently completed Study.

As stated above, the rate structure portion of the Settlement Agreement contemplates that Pennichuck's general metered (G-M) service rates will be restructured consistent with schedule C-6 of the Alternate F tariff design contained in the Study except that consumption charges will consist of a two block rate design instead of the current three block rate design which the Study recommended be continued. The Amendment to the Special Contract is therefore inconsistent with the rate design proposed by the Settlement Agreement. Accordingly, Pennichuck and AB have agreed that the proposed Amendment is void and will be renegotiated.

To make the Special Contract consistent with the Settlement Agreement, AB and Pennichuck will propose a new Amendment that will be the same as the one originally proposed with the exception of the percentage figure contained in paragraph 3. That figure will be revised so that when applied to the last block of the two block design proposed in the Settlement Agreement, it will yield the revenue allocation set forth in Schedule C-6 of Alternate F in the Study. However, this cannot be accomplished and a new amendment presented for approval until a final revenue determination is reached in this proceeding. Thus, because AB's revenue allocation has yet to be determined, the parties only included Pennichuck's test year revenues in the income statement contained in the Settlement Agreement and did not make a proforma adjustment for the revenue increase that will result from the AB Special Contract proceedings. The revenue requirement

(and resulting deficiency) determined below is therefore overstated.

To allow rates to take effect based upon an overstated revenue requirement would result in overpayments by Pennichuck's customers thereby necessitating a refund after the Commission

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issues a decision on the proposed Amendment to the Special Contract. In addition, there is the issue of recoupment of temporary rates back to June 3, 1985. Allowing recoupment under rates based upon overstated revenue requirement would also necessitate some future adjustment.

Further, the matter of when the proposed Amendment to the Special Contract will take effect will not be determined until the Commission hears the matter and reaches a decision. That date is also crucial to any refund/ recoupment determination. At the September 4, 1985 hearing, Pennichuck represented that it would insist that the proposed Amendment take effect for all service rendered on or after June 3, 1985. However, AB was not present at the hearing and their position in this regard is not known. The effective date of the proposed Amendment will presumably be an issue in the upcoming proceeding.

While some of the above-described "timing" problems were discussed at the September 4, 1985 hearing in response to questions by the Commission, no satisfactory recoupment/refund mechanism was included in the Settlement Agreement whereby the Commission's concerns could be resolved. Indeed, without knowing AB's position relative to the effective date of the proposed Amendment no such mechanism could be formulated. However, even if AB's position could be ascertained, we would not be inclined to allow rates based upon an overstated revenue requirement to take effect. Such a course of action could potentially necessitate several tariff adjustments and create the possibility of confusion among Pennichuck's customers. Thus, to forestall these potential effects, we will not allow the level of rates approved herein to become effective until a decision has been rendered on Pennichuck's and AB's petition to amend the Special Contract.

So as to not enlarge the temporary rate recoupment period (from June 3, 1985 forward), we will immediately issue an Order of Notice scheduling a hearing in the near future on the proposed Amendment to the Special Contract to be filed after the issuance of this Report and Order. That Order of Notice will also set deadlines for the filing of written testimony and further data requests. Once the proceeding is concluded the Commission will make every attempt to issue a Report and Order shortly thereafter. That Report and Order will, inter alia, direct Pennichuck to file revised schedules reflecting Pennichuck's revenue requirement including the additional revenue to be derived from AB as a result of the Commission's decision on the proposed Amendment and revised tariff pages reflecting the rate structure approved herein based upon the revenue contained in those revised schedules. The said tariff revisions will become effective upon the issuance of a further Commission order so stating and recoupment of the difference between temporary rates and the approved rates shall be allowed for service rendered from the date of the further Commission order back to June 3, 1985.

In addition, Pennichuck shall also file at that time the temporary rate and rate case expense surcharge calculations in sufficient detail to allow for appropriate analysis. Pursuant to the Settlement Agreement, those surcharges were to have applied to all bills rendered on or after

October 1, 1985. The use of that date contemplated a final

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order in this proceeding by October 1, 1985. Because this decision will not take effect by that time, those surcharges shall be recovered over an 11 month period as contemplated in the Settlement Agreement which shall begin with the first billing subsequent to the effective date of the rates approved herein.

Lastly, we note that suspending the effective date of the accompanying Order will not cause Pennichuck any adverse financial consequences. With temporary rates in effect from June 3, 1985, Pennichuck will be able to recover "recoupment of any deficiency in return" from that time forward (RSA 378:29) and thus will not experience any revenue loss as a result of our decision herein. We now turn to the issue of Pennichuck's cost of capital.

III. COST OF CAPITAL

The only litigated issue in this proceeding is an appropriate cost rate for Pennichuck's cost of common equity. Because the parties did not agree on this issue, Pennichuck's overall cost of capital remains to be determined.

Pennichuck presented the testimony and exhibits of Paul R. Moul, Vice President of Associated Utility Services, Inc., an independent public utility consulting firm specializing in rate of return studies. Mr. Moul's original testimony proffered a 16.75% cost rate for common equity while his supplemental testimony, submitted at the time of hearing, posits a 15.75% cost rate. Staff, through the testimony and exhibits of Dr. Sarah Voll, the Commission's Chief Economist, argues that 13.17% is a reasonable cost of common equity for Pennichuck.

A. Position of the Parties

Mr. Moul utilized two separate methodologies to arrive at his cost rate recommendation, the Risk Rate Differential Approach (RRD) and the Discounted Cash Flow method (DCF). The 15.75% cost rate advocated by Mr. Moul is the midpoint between his RRDdetermined 16% rate and DCF rate of 15.5%.³⁽³⁴⁶⁾

RRD, otherwise known as the Risk Premium Approach, is based upon the premise that common equity is riskier than debt and, accordingly, bears a higher cost. This approach involves determining the historic spread between the return on debt and the return on common equity — so-called "risk premium" — and adding it to either the current or some other representative debt yield to derive the cost of common equity.

Mr. Moul's application of this approach is set forth in great detail at pages 15 to 29 of his prefiled testimony (Exhibit 2) and in his supplemental testimony (Exhibit 7); it need not be repeated here. In brief, he calculated the "risk rate differential" by reference to a comparison of holding period returns computed over long time periods. That comparison led Mr. Moul to conclude that 4% was an appropriate risk rate differential for Pennichuck. Adding that 4% risk premium to a 12% yield which Mr. Moul considers to be Pennichuck's debt attraction rate (Supplemental Testimony

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of Mr. Moul, Exhibit 7, p. 2) results in a 16% cost of common equity.

The DCF method, like RRD, relies upon stock market transactions and estimates of investor expectations. As Mr. Moul stated on page 29 of his testimony, the "DCF theory presumes that into perpetuity the cost rate of common equity capital, the investors' discount rate, is equal to the sum of the market-determined dividend yield and the expected growth rate of dividends." The basic DCF equation utilized by Mr. Moul (and Dr. Voll) is as follows:

$$k \text{ (equity cost rate)} = D/P + g$$

In this equation, D/P, also known as the yield, consists of D, the annual dividend on one share of common stock, and P, the price of one share of common stock. The g signifies the growth rate anticipated in the dividends per share.

Because Pennichuck is not a publiclytraded company and there is thus no market for its common stock shares, Mr. Moul based his DCF analysis on the investor-required market-determined cost rate for a barometer group of nine water companies (Barometer Group). These companies are as follows:

California Water Service
 Connecticut Water Service, Inc.
 Elizabethtown Water Company
 The Hydraulic Company
 Indianapolis Water Co.
 Middlesex Water Co.
 San Jose Water Works
 Southern California Water Company
 United Water Resources, Inc.

Therefore, Mr. Moul's D, P and g calculations, explained in detail below, are averages of the 9 Barometer Group companies.

In formulating the Barometer Group's yield (D/P) of 8.2% (Exhibit 7a, Schedule 2, Page 1 of 2), Mr. Moul computed the monthly yields of each individual company for the period August 1984 to July 1985 by "annualizing the current quarterly dividend per share and relating it to the monthly high-low average price per share of common stock." (Exhibit 7a, Schedule 2, page 1 of 2.)⁴⁽³⁴⁷⁾ Mr. Moul then adjusts the 8.2% yield by one-half the g (discussed below) to account for the expectation of a dividend increase during the initial investment period. This adjustment factor of 3.25% (6.5% x .5) "assumes that the two dividend payments will be at the existing rate and two dividend payments will be at the expected higher rate during the initial investment period" (Exhibit 2, Testimony of Mr. Moul, p. 32). The application of this adjustment is as follows: 8.2% (1.0325) = 8.5%.

Mr. Moul's g of 6.5% is derived from an analysis of historic and projected growth rates for the Barometer Group's dividends and earnings per share. This is set forth in detail at pages 36-40 of Mr. Moul's prefiled testimony (Exhibit 2) and need not be repeated here. In short, he calculates the Barometer Group's 5 year earnings and dividends per share average growth to be 8.7% and the Value Line average projected growth to be 7.8%.⁵⁽³⁴⁸⁾ At page 40, he concludes

as follows:

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Based upon historic performance and published forecasts, the indicated growth rate patterns shown in the supporting calculations detailed on Schedules 8 and 9, the relatively low level of near term forecast inflation and continued economic expansion, it is indicated that a prospective growth rate of at least 6 1/2% for the Barometer Group of Nine Water Companies is a reasonable expectation.

The 6.5% therefore represents Mr. Moul's best judgment as to the Barometer Group's expected growth rate.

Adding the 8.5% adjusted yield to the 6.5% g results in a DCF cost of common equity of 15%. To this, Mr. Moul adds .5% as a risk adjustment in recognition of what he considers to be Pennichuck's greater prospective risk due to its small size and greater financial leverage compared to the Barometer Group. Therefore, this adjustment to the DCF-determined 15% rate results in a cost of common equity of 15.5%. Taking the midpoint between 15.5% and the 16.0% RRD rate discussed above, Mr. Moul argues that 15.75% is an appropriate cost of common equity for Pennichuck.

Mr. Moul also contends in his prefiled testimony at page 42 (Exhibit 2) that an adjustment should be made to recognize flotation costs. However, he stated that the .5% adjustment was sufficient to cover those costs as well as an adjustment for risk.

As stated above, Dr. Voll also used the DCF method in arriving at her 13.17% recommendation. However, unlike Mr. Moul, she utilized no other method. While the methodology employed is the same, Dr. Voll varied from Mr. Moul in its application. A brief summary of her calculation follows.

Dr. Voll also utilized a group of water companies (Sample) as a proxy for Pennichuck. Her Sample of 7 includes most of those found in Mr. Moul's Barometer Group with the exception of the three California companies, California Water Service, Southern California Water Company and San Jose Water Works. Dr. Voll excluded all western water companies because their operations appear to her to be "qualitatively different from those companies in New Hampshire." (Testimony of Dr. Voll, Exhibit 9, page 11). In addition, Dr. Voll included Consumers Water Company which is not a member of Mr. Moul's Barometer Group.

For this calculation, Dr. Voll used the annualized dividends as projected in the Turner Reports as of May 24, 1985 because quarterly dividend information on water companies is not available at the Commission. That projected annualized dividend is the current dividend (as of May 24, 1985) times four. The average of the Sample's annualized dividends contained in the Turner Report as calculated by Dr. Voll is \$1.85 which she divided by 27.80, the average common stock price of the Group on May 24, 1985, to arrive at a dividend yield of 6.58%.

Dr. Voll's growth figure of 6.58% is approximately the same as that calculated by Mr. Moul. However, their methodologies are dissimilar. Dr. Voll's estimate is a three-to-one weighted average of dividend growth per share (75%) and the earnings per share (25%) of the Sample. The dividend growth and earnings growth are calculated as the mean of their 5 year and 10 year

growth rate. Dr. Voll selected this weighting system with its greater

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emphasis on dividend growth because, in her opinion, investors are more concerned with their dividends than with a company's earnings. (Testimony of Dr. Voll, Exhibit 9, page 12). The actual calculation is set forth in detail in Schedule 4 of Dr. Voll's testimony. Thus, Dr. Voll's DCF calculation is as follows:

$$k = 1.85/27.80 + 6.58 = 13.17\%^{6(349)}$$

Unlike Mr. Moul, Dr. Voll does not recommend any adjustment to the results of the DCF methodology. At page 13, she states as follows:

Applying further adjustments to this result implies that the analyst must take into account factors affecting the Company's finances which have been overlooked by the investor. In general, I believe that is an inappropriate premise.

In addition, Dr. Voll argues that flotation costs and market pressure are irrelevant because the stock shares are not openly marketed. She also contends that there is no reason to be concerned about dilution should the issue sell below book value because the next proposed equity issuance is a preemptive offering, one in which stock is sold only to present shareholders. Testimony of Dr. Voll, Exhibit 9, page 13.

In its brief, Pennichuck argues that Dr. Voll's application of the DCF method is flawed and does not accurately portray Pennichuck's cost of common equity. Specifically, in support thereof, Pennichuck cites the following:

(a) the use by Dr. Voll of a single methodology to arrive at a cost rate of Pennichuck's common equity capital; (b) the use by Dr. Voll of single day's ("spot") price; (c) Dr. Voll's failure to utilize forward-looking to dividend yields; (d) Dr. Voll's refusal to recognize flotation costs associated in issuing new common equity capital; (e) Dr. Voll's failure to recognize the rather striking differences between Pennichuck and the Sample to which she compared Pennichuck in particular with regard to the greater risk represented by the Company; (f) Inadequate recognition by Dr. Voll of the financial standards necessary to provide a profile consistent with an investment grade quality A bond rating at a time when the Company faces the need for substantial additional capital.

Pennichuck agrees with Dr. Voll that there is no precise method available for determining a utility's cost of common equity. However, it takes issue with her exclusive use of the DCF method in formulating her recommendation. While Pennichuck does not advocate the use of more than one methodology in the normal instance, it argues that in this particular instance reliance on the DCF method is inappropriate for the following reasons:

a.) "striking" differences, particularly in size and equity ratio, between Pennichuck and Dr. Voll's Sample;

b.) the DCF method does not adequately take into account

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Pennichuck's greater risk as compared to Dr. Voll's Sample;

c.) the inadequacy of the spread between Dr. Voll's DCF 13.17% calculation and Moody's A rated bond yield (13.12%) at the time such calculation was made; and

d.) the confusion caused by efforts to determine a cost rate for Pennichuck, an operating subsidiary of Pennichuck Corporation, on the basis of investors' perception of the parent which is engaged in other activities and which is compounded by a lack of reliable information for trades of Pennichuck Corporation's common stock.

For these reasons, Pennichuck argues that a second methodology such as Mr. Moul's RRD approach should have been employed.

Regarding Dr. Voll's use of a single day's (or "spot") price to calculate the yield as opposed to the Mr. Moul's average prices, Pennichuck contends that the use of a single day creates the danger of aberrational prices for a particular company. Moreover, it takes the position that a single price is not consistent with the use of a dividend projection over a one-year period and therefore violates the "matching principle".

Pennichuck's major dispute with Dr. Voll regarding her application of the DCF method concerns her calculation of the dividend (D) component. It takes issue with Dr. Voll's testimony that in taking the Turner Report current dividend and annualizing it she did the same thing Mr. Moul did "in taking the past dividend times half the growth rate." (Transcript, September 9, 1985 hearing, page 103). Pennichuck argues that Mr. Moul did not take the past dividend but rather took the current dividend and, in recognition that it would be expected to grow at the midpoint during the year, adjusted it by 1/2 the growth rate "in an effort to present a forward looking model more directed at the period during which the rates will be in effect." (Brief, pp 16-17). Pennichuck goes on to state: "This rationale recognizes that for half the year, the quarterly dividend will be increased ... " (Brief, p. 17).

Regarding Dr. Voll's argument in support of her refusal to make any adjustment for flotation costs, Pennichuck contends that it fails to take into account "(i) that stock subject to preemptive rights issues is normally made available to the public if the current shareholders do not subscribe to all of the offering and (ii) that the Company would be expected to incur costs in the rights issue as it had in its prior issues" (Brief, p. 21).

Pennichuck also takes issue with Dr. Voll's refusal to make a risk adjustment to her DCF calculation. It argues that such an adjustment is necessary because of the greater risk presented by Pennichuck's common stock due to Pennichuck's smaller size and greater financial leverage relative to the Dr. Voll's Sample and the Barometer Group.

Lastly, Pennichuck contends that Dr. Voll's 13.17% recommendation will not produce an adequate pretax interest coverage. See Exhibit 13. It argues that pretax interest coverage of at least 2.9 is necessary to provide Pennichuck with an investment grade quality A bond rating and that only Mr. Moul's 15.75% cost rate will provide that coverage.

B. Commission Analysis

[4] We begin by noting that

determining a utility's cost of common equity is not an exact science. While there is no precise method, there are several formulas available for measuring a utility's cost of equity capital including DCF, RRD, the Capital Asset Pricing Model and the Comparable Earnings Standard, the application of which require the exercise of considerable judgment. This Commission has, in the past five years, come to rely almost exclusively on the DCF method. Our knowledge of and experience with the other methodologies leads us to conclude that, in our judgment, DCF is the most reliable and consistent method in terms of its application and results. Thus, we disagree with Pennichuck that Dr. Voll's exclusive reliance on DCF is inappropriate and we reject Pennichuck's argument that in this particular instance another method should be employed. We therefore will determine Pennichuck's cost of common equity by applying the DCF method. Given this conclusion, it is not necessary for us to address Mr. Moul's RRD results.

As with choosing an appropriate methodology, a substantial measure of judgment must be exercised in applying a particular methodology. This is evident from the above descriptions of Mr. Moul and Dr. Voll's cost of common equity recommendations. While both experts applied the same basic DCF formula, their results differ by over 250 basis points.

After review, we will accept Dr. Voll's recommendation of 13.17% as the appropriate cost of common equity for Pennichuck. We disagree with Pennichuck's contention that Dr. Voll's application of the DCF method is flawed. We will address each of its arguments in turn.

[5] With regard to Dr. Voll's sample, we find the companies included therein to be an appropriate proxy for Pennichuck. Compared to Pennichuck, their total revenues are indeed much greater. However, in terms of publicly traded water companies, they are the smallest available. Because the DCF method relies upon market transactions, these companies best approximate the cost of common equity for a small, publiclytraded water company. In addition, we agree with Dr. Voll that the California companies should be excluded from any Pennichuck proxy group because of their qualitatively different operations.

Pennichuck takes issue with Dr. Voll's dividend calculation. In so doing, Dr. Voll took the current dividend as of May 25, 1985 as reported in the Turner Reports and annualized it. Mr. Moul, contrary to Pennichuck's assertion, did not likewise annualize the current dividend. Exhibit 7a, Schedule 2, Page 1 of 2 clearly shows that in computing the August 1984 to July 1985 monthly yields, he utilized the existing dividend as of each month which in August, 1985 was actually a "past" dividend in that it differed from the existing dividend as of August 1985. Dr. Voll, on the other hand, did not utilize any dividends from the past four quarters. The only dividend she employed was the existing dividend as of May 25, 1985.

Thus, it is clear that Mr. Moul and Dr. Voll did the same thing. Assuming as they both do that the calculation is being made at the midpoint in the year, taking the current dividend (as of May 25, 1985) and annualizing it yields the same result as taking the past four dividends and adjusting them by one-half a year's growth rate. All other things being equal, both D calculations should yield the same results. They differ in

this case because of the different proxy companies and time periods involved.

[6] Pennichuck also disputes the use of a single day or "spot" price. It argues that a 12 month average should be utilized because the use of a spot price presents the danger of aberrational prices and constitutes a violation of the "matching principle". We disagree. There is no ratemaking principle like the fundamental test year revenue and expense matching principle which requires that the cost of equity be matched to the test year. The DCF method does require that prices and dividends be matched, preferably on a forward looking basis. Dr. Voll's use of a current price is appropriate in the context of a "mid-year" analysis as her dividend adjustment of annualizing the current dividend also produces a "midyear" figure for the dividend (the total of two quarters backward-looking and two quarters forward looking). It is clearly inappropriate to use as Mr. Moul has done, a mid-year analysis for the dividend and a price component that is averaged over the past year (four quarters backward looking).

More importantly, the cost of equity analysis should result in an estimate of the cost of equity in the future and the real issue is therefore which price best represents the price that will be in effect in the coming year. Our review of the testimony and exhibits leads us to conclude that the end of May price presented by Dr. Voll is best representative of the prices we can expect in the coming year. Further, modern investment theory⁷⁽³⁵⁰⁾ concludes that the current stock price provides a better indication of the expected future price than any other price. Therefore, the most relevant stock price is the one that was most recent at the time the analysis of the components of the cost of equity (including dividends and growth) was done.⁸⁽³⁵¹⁾ A stock price dating back to the previous year, such as Mr. Moul's, is not representative of either current market conditions or current investor expectations, and therefore should not be used to derive the company's cost of equity.

Both Mr. Moul and Dr. Voll arrived at approximately the same g calculation albeit by different methodologies. Because their results are the same, it is unnecessary for us to determine which method is more appropriate. Suffice to say that we find 6.58% to be a reasonable estimate of growth to be employed in a DCF calculation of Pennichuck's cost of common equity.

[7] Two final points merit our attention. First, we decline to make any adjustment to Dr. Voll's DCF results to account for flotation costs or risk. Pennichuck has not established with any certainty that it will be issuing any common equity. While testimony in this

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proceeding indicates that Pennichuck has definite plans to issue equity by the end of this year, the testimony in its recently completed financing docket seems to indicate otherwise. At the September 19, 1985 hearing in DF 85-299, Charles J. Staab, Pennichuck's Treasurer, states at page 41 that an equity issuance is being contemplated ("giving serious thought") for either next year or the year after. Thus it does not appear to us that Pennichuck has any concrete plans to issue equity in 1985 or 1986.

Additionally, we decline to make any "risk" adjustment as recommended by Mr. Moul. This risk has already been analyzed and accounted for by investors in the market price they are willing to pay for common stock. However, assuming arguendo that risk adjustments are

appropriate, we see no reason to make one under the circumstances of this case. Mr. Moul argues that because of its smaller size and somewhat higher financial leverage when compared to either the Sample or Barometer Group, Pennichuck is a riskier company and that the DCF results should therefore be adjusted by .5. Smallness, according to Mr. Moul, results generally in liquidity problems and difficulty in dealing with rapid changes in capitalization. We are not convinced that smallness per se makes a company more risky. Moreover, our review of the record reveals that Pennichuck has no such liquidity or capitalization problems. Nor do we feel that Pennichuck's slightly higher financial leverage position, all other things being equal, results in any significant risk.

Our conclusion is strengthened by our review of the cost of equity analysis of Pennichuck Corporation itself. Both Dr. Voll and Mr. Moul agree that since the Company's stock is not freely traded, the results of a company specific DCF analysis are not sufficiently reliable to provide the basis of a cost of equity finding. However, that analysis results in a cost of equity estimate of 12.62% which at least provides an indication that investors do not consider Pennichuck more risky than either the barometer or sample companies.⁹⁽³⁵²⁾

[8] Lastly, we reject Pennichuck's contention that a cost of common equity should be calculated so as to insure a certain level of pretax interest coverage. The level of coverage results in large part from management's choice of a capital structure. It plays no part in the Commission's determination of a company's cost of common equity. In the instant case, the coverage ratios of the operating water company were worsened when management created the holding company/subsidiary relationship by assigning only equity to the parent holding company. More recently, Pennichuck's management choose to issue additional debt rather than equity in its August 1985 financing and as we noted in *Re Pennichuck Water Works, Inc.*, 70 NH PUC 828, at "the Company witness expressed no urgency in issuing further equity." If Pennichuck is dissatisfied with its coverage ratios, it should adjust its capital structure accordingly (with Commission approval) rather than expect this Commission to compensate for low equity ratios by increasing the allowed return on common equity.

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C. Conclusion

Inserting a 13.17% cost of common equity in the above-stated capital structure results in an overall cost of capital of 11.44%.¹⁰⁽³⁵³⁾ We find this to be a just and reasonable return within the so-called "zone of reasonableness" as required by the principles set forth in *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed.333, 64 S.Ct. 281 (1944) and *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). These principles have been accepted by this Commission and the New Hampshire Supreme Court. See e.g., *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 31 PUR4th 333 402 A.2d 626 (1979).

IV. COMPUTATION OF REVENUE DEFICIENCY

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

Pro Forma

Test Period
Ending 9/30/84

1.	Rate Base	\$16,118,903		
2.	Rate of Return	11.44%		
3.	Income Required (L1 x L2)	1,844,002		
4.	Adjusted Net Operating Income	1,624,370		
5.	Deficiency	219,633		
6.	Tax Effect	.4932%		
7.	Revenue Deficiency (5 divided by L6)	\$	445,321	

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the tariff revisions filed by Pennichuck Water Works, Inc. on March 1, 1985 reflecting an increase in gross annual revenues of \$1,457,979 (27%) be, and hereby are, rejected; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall instead be allowed to collect additional revenues of \$445,321; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file revised tariff pages reflecting said revenue increase after the issuance of a Report and Order in DE 85-161, the docket regarding the proposed amendment to the special contract between Pennichuck Water Works, Inc. and Anheuser-Busch, Inc.; and it is

FURTHER ORDERED, that an

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Order of Notice will be issued forthwith scheduling a hearing on the petition to approve the proposed amendment to the aforementioned special contract and setting deadlines for the filing of written testimony and further data requests; and it is

FURTHER ORDERED, that the Report and Order to be issued in connection with DE 85-161 will, inter alia, direct Pennichuck Water Works to file revised schedules in this docket reflecting the additional revenue to be derived from Anheuser-Busch as a request of the Commission's decision on the proposed amendment to the special contract and revised tariff pages reflecting the rate structure approved in the foregoing Report based upon the revenue levels contained in those revised schedules; and it is

FURTHER ORDERED, that the said tariff revisions to be filed after the issuance of a Report and Order in the AB docket will become effective upon the issuance of a further Commission order so stating and recoupment of the difference between temporary rates and the approved levels shall be allowed for service rendered from the date of that further Commission order back to June 3, 1985.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1985.

FOOTNOTES

¹As noted above, AB was granted intervention status only with respect to rate structure issues, namely revenue allocation and rate design. AB is a signatory to the Settlement Agreement in that regard. It did not take part in the hearings.

²RSA 378:18, entitled Special Contracts for Service, provides as follows: Nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest, and the commission shall by order allow such contract to take effect.

³15.75% is 1% lower than Mr. Moul's original recommendation of 16.75% as set forth in his prefiled testimony (Exhibit 2). 16.75% was likewise the midpoint between a RRD rate of 17% and a DCF rate of 16.5%. The lowering of Mr. Moul's recommendation resulted primarily from his inclusion of certain 1985 data in each of the calculations.

⁴In his original prefiled testimony, Mr. Moul computed the Barometer Group's yield to be 9.2% based upon the same computation using the time period February, 1984 to January, 1985.

⁵The projected growth rates in earnings and dividends per share are those of United Water Resources. It is the only barometer Group Company regularly reported in Value Line.

⁶As Dr. Voll explains on p. 13 of her testimony (Exhibit 9), the formula as shown does not exactly produce the 13.17% because of rounding in the computations of average price and average dividends.

⁷The cornerstone of modern investment theory is the Efficient Market Hypothesis as described in most college level investment textbooks. See, for example, F.K. Reiley, Investment Analysis and Portfolio Management (Hinsdale Ill: Dryden Press, 1979); WF Sharpe, Investments, 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1981); and R. Brealey and S. Myers, Principles of Corporate Finance 2nd ed. (NY McGraw-Hill, 1984).

⁸It is necessary to be cautious in updating only parts of the analysis. Mr. Moul's supplemental testimony updated the price and dividend results of his and Dr. Voll's barometer and sample companies. However, it is clear that growth expectations also change over time and changes in one component of the analysis may be balanced by changes in another. See the discussion re: United Water Resources, I Tr. 126-129.

⁹The estimate is derived by using the current dividend (\$2.68), an average of a current price of \$40.00, the 1984 average price of \$27.25 (\$33.625) and the average of the five year growth rates of dividends and earnings (4.65): $\$2.68 / \$33.625 + 4.65 = 12.62\%$. I Tr. 119-123, II Tr. 48-49, and 99-100.

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

Component	Cost	Weighted	
Ratio	Rate	Cost	
Common Equity	.322	13.17	4.24
Preferred Stock	.081	10.32	.84
Long Term Debt	.572	10.71	6.13
Short Term Debt	.025	9.50	.23

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NH.PUC*10/24/85*[61229]*70 NH PUC 865*Northeast Hydrodevelopment Corporation

[Go to End of 61229]

70 NH PUC 865

Re Northeast Hydrodevelopment Corporation

DR 85-185, DR 85-187,
Supplemental Order No. 17,916

New Hampshire Public Utilities Commission

October 24, 1985

ORDER denying motion for rehearing of prior order that rejected, without prejudice, the long term rate filing of a small power producer.

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Cogeneration, § 5 — Qualifying status — Small power production — Long term rate filings — Contested licensing proceedings.

In the case of contested licensing proceedings, the commission will accept the long term rate filing of a small power producer only after the Federal Energy Regulatory Commission has selected the project developer.

(MCQUADE, commissioner, dissents, p. 867.)

By the COMMISSION:

On September 23, 1985, Northeast Hydrodevelopment Corporation (NHC) filed late Motions for Rehearing of this Commission's July 18, 1985 Order Nos. 17,753 (70 NH PUC 645) and 17,754 (70 NH PUC 646) in which the Commission rejected without prejudice its long term rate filings for its Goffs Falls-Pine Island and Buck Street Dam projects pursuant to Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984).

As stated in our Orders, the grounds for rejecting NHC's rate filings were that NHC had not been granted licenses by the Federal Energy Regulatory Commission (FERC) to develop either Goffs Falls-Pine Island or Buck Street Dam. Further Anne Warner was filing a competing license application to develop Goffs Falls and Jason Hines a preliminary permit application to develop the Buck Street Dam. Thus, as stated in our Orders, until the FERC resolves the competitive license questions, NHC does not have a clear right to develop either site.

As part of the long term rate filing, the developer must represent that beginning in a specified

year he will sell the output from a project of a stated size to Public Service Company of New Hampshire and provide reliable service over the life of the obligation. Representations must be based on fact, not speculation, and NHC has not presented convincing evidence that it can fulfill these representations for either site. While, as stated, in NHC's motion for rehearing, the FERC regulations may favor NHC in the competitive process, it is this Commission's experience that until the FERC renders a definitive decision on a contested license application, a developer has no surety that he will obtain the right to develop the proposed sites. Without that surety, NHC is in no position to make the above representations before this Commission.

NHC has stated that rejection by this Commission of a long term rate filing in the absence of a license may lead to the rejection by the FERC of its license applications on the grounds that the project is infeasible. It is the experience of this Commission that the FERC requires only the assurance of the availability of a purchase power arrangement whether a utility contract or a Commission rate rather than a fully executed arrangement. Certainly, the FERC has granted licenses in the past without such definite arrangements.

Finally, NHC's suggestion that a long term rate granted by this Commission adds weight to the license application implies that the Commission's rate order could become an element in the FERC's choice between two applicants. It is Commission policy not to inject itself into the license procedure before the FERC. Therefore in the case of a contested proceeding, the Commission accepts long term rate filings only after the FERC has selected the developer.

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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 Northeast Hydrodevelopment Corporation Motions for Rehearing in dockets DR 85-185 and DR 85-187 be, and are hereby denied.

By Order of the Public Utilities Commission of New Hampshire this 24th day of October, 1985.

Dissenting Opinion of Commissioner Paul R. McQuade

I disagree with my fellow Commissioners in their denial of Northeast Hydrodevelopment Corporation's Motions for Rehearing. In accordance with my earlier dissent in DR 85-236 and DR 85-239 concerning Thermo-Electron Energy Systems, I believe the public has a right to be fully heard by this Commission. This case involves the economic interest of a private utility and has been decided without a public hearing. Therefore, I think that it would be appropriate to allow the Company to present its views to the Commission in a formal hearing.

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NH.PUC*10/28/85*[61230]*70 NH PUC 867*Manchester Water Works

[Go to End of 61230]

70 NH PUC 867

Re Manchester Water Works

DE 85-360, Order No. 17,925

New Hampshire Public Utilities Commission

October 28, 1985

ORDER nisi authorizing a water utility to extend its service area.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed May 6, 1985, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Bedford; 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

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WHEREAS, the Board of Selectmen, Town of Bedford, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this 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 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 November 21, 1985; and it is

FURTHER ORDERED, that Manchester Water Works 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 November 4, 1985 and designated in an affidavit to be made on a copy of this Order and filed with this office; 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 Bedford in an area herein described, and as shown on a map on file in the Commission offices:

Beginning at a point on Rundlett Hill Road north of the intersection of Donald Street at the limits of the present franchise area; thence, along Rundlett Hill Road to a point, 1,530 feet north of the center line of Donald Street; thence, easterly and then southerly to the present franchise limits on Sandstone Drive; thence, westerly to the point of beginning.

and it is

FURTHER ORDERED, that such authority shall be effective on November 22, 1985, 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 twentyeighth day of October, 1985.

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NH.PUC*11/01/85*[61231]*70 NH PUC 868*Mountain Springs Water Company, Inc.

[Go to End of 61231]

70 NH PUC 868

Re Mountain Springs Water Company, Inc.

Intervenor: Mountain Lakes District

DR 85-358, Supplemental Order No. 17,927

New Hampshire Public Utilities Commission

November 1, 1985

ORDER prohibiting a water utility from disconnecting service without adequate notice to customers.

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Payment, § 2 — Rules and regulations — Termination of service — Notice requirement.

Utility service may not be terminated unless the customer is sent written notice postmarked at least 12 days in advance of the termination. [1] p. 869.

Payment, § 2 — Rules and regulations — Termination of service — Timing of notice.

In accordance with commission rules, a water utility was prohibited from issuing written notice of intent to disconnect service prior to the time that a customer has failed to render payment on a bill when due. [2] p. 869.

SUPPLEMENTAL ORDER, 17,927

WHEREAS, the Commission issued Order No. 17,899 (70 NH PUC 845) which, inter alia, opened this docket and provided interim due dates for the rendering of bill payments to Mountain Springs Water Company, Inc. (MSWC); and

WHEREAS, Order No. 17,899 established November 1, 1985 as the due date for the initial

bill payments to MSWC; and

WHEREAS, Mountain Lakes District filed a complaint on October 30, 1985 which claims, inter alia, that MSWC has issued disconnect notices showing the date of November 4, 1985 as the date of disconnect; and

[1] WHEREAS, N.H. Admin. Rules, PUC 603.08 (a)(2)d. provides, inter alia, that service may not be terminated unless the customer is sent written notice postmarked at least 12 days in advance of the termination; and

[2] WHEREAS, N.H. Admin. Rules, PUC 603.08 (a)(2)a. provides, inter alia, that grounds for disconnection of service do not exist until a customer fails to render payment by the due date; and

WHEREAS, N.H. Admin. Rules, PUC 603.08 read together with Order No. 17,899 would not allow disconnection of water service by MSWC prior to November 13, 1985; and

WHEREAS, this Order does not waive any customer rights to a hearing prior to termination of service pursuant to PUC Rules; it is hereby

ORDERED, that MSWC be, and hereby is, prohibited from terminating water service unless the customer has been sent written notice of the intent of MSWC to disconnect, postmarked at least 12 days in advance of the date of the proposed termination; and it is

FURTHER ORDERED, that MSWC be, and hereby is, prohibited from issuing written notice of disconnection prior to the time that a customer has failed to render payment on a bill when due, and in no event may such written notices of disconnection be issued prior to November 1, 1985, unless the Commission provides otherwise in a supplemental order; and it is

FURTHER ORDERED, that MSWC may file comments or exceptions to the instant Order and may request a hearing; and it is

FURTHER ORDERED, that if MSWC files a request for a hearing, such a hearing will be scheduled forthwith.

By order of the Public Utilities Commission of New Hampshire, this first day of November, 1985

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NH.PUC*11/06/85*[61232]*70 NH PUC 870*Concord Natural Gas Corporation

[Go to End of 61232]

70 NH PUC 870

Re Concord Natural Gas Corporation

DR 85-346, Order No. 17,928

New Hampshire Public Utilities Commission

November 6, 1985

ORDER setting winter cost of gas adjustment rate.

Automatic Adjustment Clauses, § 53 — Cost of gas adjustment rate — Overand undercollections — Commission review — Trigger mechanism.

In setting a winter cost of gas adjustment rate the commission required the inclusion of a trigger mechanism that allows for commission review of the rate if overor undercollections exceed 10% of the total cost of gas during the cost of gas adjustment period.

APPEARANCES: For Concord Natural Gas Corporation, David W. Marshall, Esquire.

By the COMMISSION:

REPORT

On September 30, 1985 Concord Natural Gas, a public utility engaged in the business of supplying gas in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1985-1986 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1985. That cost of gas adjustment was to be \$0.0220 net of the franchise tax.

An Order of Notice was issued setting the date of the hearing for October 28, 1985 at the Commission offices in Concord, which was subsequently continued to October 29, 1985.

During the hearing on October 29, 1985, Concord presented revised tariff pages reflecting a decrease in the cost of natural gas from Tennessee Gas Pipeline and various errors discovered in a PUC Staff audit. The revised rate of \$(0.0077) per therm, excluding the Franchise Tax, is a decrease of \$0.0923 from the prior winter period rate of \$0.0846 per therm.

Based on an average usage of 150 therms per month, this reduction represents a decrease of \$13.85 per month on a typical bill.

This substantial drop in the CGA rate is due to the decreased cost of natural gas and petroleum related products (LPG). As will be discussed further in this report we anticipate further reductions in overall gas costs in the near term.

One issue discussed through

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crossexamination by the Commission and its staff concerns Concord's proposed increased allotment of natural gas from Tennessee Gas Pipeline. This increase potentially could be available to Concord within the upcoming CGA period. If this increased natural gas allotment does become available it will effectively decrease the overall cost of gas for this winter period by displacing the more costly supplemental fuel.

It is imperative then that Concord refile its CGA when and if this increased allotment of gas is available. Therefore we will require Concord to refile when the added allotment of gas becomes available.

To address another matter, Concord has forecasted a twenty percent increase in sales for the

winter period. This is based on a significant growth in customers and normalization of weather effects (prior winter period being warmer than normal). The Commission will accept their forecast based on the evidence provided and expects, if such growth is to be sustained, that Concord will provide a long range supply forecast in the next CGA proceeding.

The final issue to be discussed involved the proposed trigger mechanism. Concord originally objected to a trigger mechanism which will signal a potential change in the CGA rate if a monthly reconciliation reveals an over/undercollection of any value less than 15% of the total cost of gas. However, as staff pointed out in cross-examination, Concord's analysis of a trigger did not incorporate costs for the entire period, it looked at an individual month within the period. This is not the way that a trigger mechanism would operate. The trigger would look at the actual to date gas costs added to the projected gas costs remaining in a period compared to the actual to date over-/undercollection added to the projected over-/undercollection in a period. Thus, the trigger mechanism will encompass an entire six month period utilizing known gas costs and over-/undercollection figures for the actual experience to day and projected gas costs and over-/undercollection figures for the remainder of the period.¹⁽³⁵⁴⁾

The Commission will set the trigger at ten percent of the total gas costs during a CGA period. Determination of the trigger will be made by adding the over-/undercollection of the CGA which is known for a period to the forecasted over-/undercollection for the remaining portion of the period. This is to be divided by the total known gas costs for the same period plus the forecasted gas costs for the remaining portion of that period. The trigger mechanism is initiated when this quotient is greater than ten percent.²⁽³⁵⁵⁾

When the trigger mechanism is initiated all parties to the CGA will have ten (10) days to petition for a change in the CGA rate. After receiving the petitions the Commission will determine: 1) whether a change in the CGA rate is appropriate; and 2) whether a hearing on the change is necessary.

To assure an expeditious and

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adequate review of the data used in determining the trigger, we will mandate that the gas utilities utilizing the semiannual CGA are to file the required monthly reconciliations of the CGA on or before the twentieth (20th) day of a month. Said reconciliation is to be for the immediate preceding month.

We will accept the CGA rate testified to by Concord's witness during the October 29, 1985 hearing. This rate is to be adjusted for the refunds excluded in the revised filing as well as interest thereon.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 47th Revised Page 21 of Concord Natural Gas Corporation tariff, NHPUC No. 13 — Gas, providing for a Cost of Gas Adjustment of \$0.0220/therm for the period

November 1, 1985 through April 30, 1986, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation's 48th Revised Page 21 of its tariff, NHPUC No. 13 - Gas providing for a cost of gas adjustment credit of \$(0.0077) be, and hereby is, rejected; and it is

FURTHER ORDERED, that 49th Revised Page No. 21 providing for a cost of gas adjustment credit of \$(0.0078) be, and hereby is, accepted effective on all bills issued on or after November 1, 1985; and it is

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by a one time publication in newspapers having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this sixth day of November, 1985.

FOOTNOTES

¹Upon the Commission's request Concord refiled their calculation of the appropriate level to initiate the trigger. Based on the revised calculations, utilizing an entire CGA period, Concord continues to recommend a fifteen (15) percent trigger level. The Commission, however, must establish a standard trigger level for all gas companies which utilize a semi-annual CGA. Whereas all gas companies but Concord have testified to a ten (10) percent trigger level it is therefore appropriate to establish said trigger at the level which best represents the majority.

²The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)] \div [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

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NH.PUC*11/06/85*[61233]*70 NH PUC 873*Keene Gas Corporation

[Go to End of 61233]

70 NH PUC 873

Re Keene Gas Corporation

DR 85-350, Order No. 17,929

New Hampshire Public Utilities Commission

November 6, 1985

ORDER setting winter cost of gas adjustment rate.

Automatic Adjustment Clauses, § 49 — Cost of gas adjustment — Collection reconciliation — Franchise tax revenues.

A gas utility was ordered to exclude franchise tax revenues from the reconciliation of its cost

of gas adjustment (CGA) in future filings; the commission found that utilizing franchise revenues in the cost of gas adjustment artificially increases the recovery of gas costs through the CGA and hampers the ability of the CGA to make the utility whole in the recovery of gas costs. [1] p. 874.

Automatic Adjustment Clauses, § 53 — Cost of gas adjustment rate — Overand undercollections — Commission review — Trigger mechanism.

In setting a winter cost of gas adjustment rate the commission required the inclusion of a trigger mechanism that allows for commission review of the rate if over- or undercollections exceed 10% of the total cost of gas during the cost of gas adjustment period. [2] p. 874.

APPEARANCES: John DiBernardo for Keene Gas Corporation

By the COMMISSION:

On October 1, 1985, Keene Gas Corporation (Keene) filed its winter period 1985-1986 Cost of Gas Adjustment (CGA) for effect November 1, 1985. The request was for a rate of \$0.1367/therm, excluding the State Franchise Tax, which is a decrease from the rate of \$0.1432/therm allowed by the Commission for the 1984-1985 winter period. In addition to this amount, \$0.4214 is included in Base Rates for the Cost of Gas.

A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on October 29, 1985.

Through testimony and cross-examination of Mr. John DiBernardo, Company witness, it was determined that: a) estimated sales will remain steady for winter 1985-1986; b) the franchise tax was improperly included in the CGA reconciliation; c) company use, lost and unaccounted for product was less than ten percent (10%).

The Company stated that the zero percent growth factor this winter will remain in effect due to the limitations of the production plant and the distribution system. The Commission accepts

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the zero percent growth factor based on this assertion.

However, this acceptance is done with a certain amount of reservation. The Commission has approved a franchise area for Keene, absent any safety and/or economic restraints, potential customers requesting service within said area should be served by the utility. We expect Keene to make every effort to comply with this obligation.

[1] In a separate issue, Keene has calculated the over/under recovery of gas costs using the revenue charged to customers for recovery of franchise tax as part of the revenue from the CGA. This is improper. The franchise tax revenues are to be booked as miscellaneous revenue and used solely for payment of the company's Franchise tax obligations. Utilizing these revenues in the CGA reconciliation artificially increases the recovery of gas costs through the CGA and hampers the ability of the CGA to make Keene whole in recovery of said gas costs.

Future filings are to exclude the Franchise tax revenues from the reconciliation of the CGA.

[2] Finally, a majority of the gas companies utilizing the semi-annual CGA mechanism have agreed to accept a "trigger mechanism" on the CGA. This trigger identifies excessive over or under collections of gas costs during a CGA period. It will signify a need to adjust the rate in effect to prevent adverse financial impact on a utility which may be required to carry an excessive undercollection until the next corresponding CGA period, or allow the customers to recover excessive overcollections immediately. It also will adjust the CGA rate so continued over-/undercollections will not be perpetuated.

The Commission will set the trigger at ten percent of the total gas costs during a CGA period. Determination of the trigger will be made by adding the over or under collection of the CGA which is known to the forecasted over/ under collection for the remaining portion of the period. This is divided by the total known gas costs plus the forecasted gas costs for the remaining portion of the period. If the resulting quotient is greater than ten percent, the trigger is initiated.¹⁽³⁵⁶⁾

When the trigger mechanism is initiated, all parties to the CGA will have ten days to petition for a change in the CGA rate. After receiving the petitions the Commission will determine: 1) whether a change in the CGA rate is appropriate; and 2) whether a hearing on the change is necessary.

To assure an expeditious and adequate review of the data used in determining the trigger, we will mandate that the gas utilities utilizing the semiannual CGA are to file the reconciliations required in previous Commission orders on or before the twentieth (20th) day of a month. This reconciliation will present the data from the immediate preceding month.

The Commission finds that Keene Gas Corporations CGA rate of \$0.1367/ therm is just and reasonable and therefore accepts such as filed.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing report which is made a part hereof; it is hereby ORDERED, that 7th Revised Page 26

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of Keene Gas Corporation, Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of \$0.1381/ therm for the period November 1, 1985 through April 30, 1986 be, and hereby is, approved; and it is

FURTHER ORDERED, that the Revised Tariff Pages approved by this Order become effective with all billings issued on or after November 1, 1985; 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.

By Order of the Public Utilities Commission of New Hampshire this sixth day of November, 1985.

FOOTNOTE

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)] \div [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

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NH.PUC*11/06/85*[61234]*70 NH PUC 875*Northern Utilities, Inc.

[Go to End of 61234]

70 NH PUC 875

Re Northern Utilities, Inc.

DR 85-347, Order No. 17,930

New Hampshire Public Utilities Commission

November 6, 1985

ORDER setting winter cost of gas adjustment rate.

Rates, § 373 — Gas — Off-system sales rate — Intervention in out of state proceeding.

A natural gas distribution and sales utility was ordered to notify the commission when adjustments to the pricing for offsystem sales are filed with the Massachusetts Department of Public Utilities so that the commission would have an opportunity to intervene in the proceedings on behalf of the utility's New Hampshire ratepayers. [1] p. 876.

Automatic Adjustment Clauses, § 49 — Cost of gas adjustment rate — Effect of the introduction of thermal billing.

A commission decision requiring the introduction of thermal billing for natural gas service was found to require a corresponding adjustment to the utility's cost of gas adjustment rate. [2] p. 877.

Automatic Adjustment Clauses, § 49 — Cost of gas adjustment rate — Effect of refund received from wholesaler.

A natural gas distribution and sales utility was required to pass through to ratepayers a refund expected to be received from its wholesaler, and to report that refund in its subsequent cost of gas adjustment proceedings. [3] p. 877.

Automatic Adjustment Clauses, § 53 — Cost of gas adjustment rate — Overand undercollections — Commission review — Trigger mechanism.

In setting a winter cost of gas adjustment rate the commission required the inclusion of a trigger mechanism that allows for commission review of the rate if overor undercollections exceed 10% of the total cost of gas during the cost of gas adjustment period. [4] p. 877.

APPEARANCES: For Northern Utilities, Inc., Leboeuf, Lamb, Leiby & MacRae by Elias G. Farrah, Esquire.

By the COMMISSION:

REPORT

On October 1, 1985 Northern Utilities, Inc. (Northern), a public utility engaged in the business of supplying gas service in the state of New Hampshire, filed with this Commission certain revisions to its tariff providing for a

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1985-1986 winter cost of gas adjustment (CGA) for effect November 1, 1985. That cost of gas adjustment was to be a credit of \$(0.0554) per therm, excluding the Franchise Tax.

An Order of Notice was issued setting a hearing date of October 28, 1985 at the Commission offices in Concord. This hearing was subsequently continued until October 29, 1985.

On October 25, 1985 Northern revised its proposed CGA rate to a credit of \$(0.0927) per therm. This reduction was caused by a decrease in the cost of natural gas from Northern's wholesale supplier, Granite State Gas Transmission.

The revised rate is a decrease of \$0.0718 from the prior winter period rate of \$(0.0209) per therm. Based on an average usage of 150 therms per month, this reduction represents a decrease of \$10.77 per month on a typical bill.

This substantial drop in the CGA rate is due to the decreased cost of natural gas and petroleum related products (LPG), which contribute heavily to the overall cost of gas.

During the hearing on October 29, 1985, the following issues were discussed: a) Northern's sales forecast for the 1985-1986 winter period; b) "offsystem" sales by Bay State Gas Company to Northern; c) the inventory financing trust, Bay Nor, used by Northern to finance stored gas and gas products; d) a refund from Tennessee Gas Pipeline (Granite State Gas Transmission's gas supplier) which was not passed through to Northern in this CGA period; e) a "trigger mechanism" on the CGA; and f) the effect "thermal billing" will have on the CGA.

A few of these issues merit further discussion.

[1] The pricing for off-system sales by Bay State Gas Company is an issue which may need closer scrutiny by this Commission. Off-system sales are sales made by Bay State to other gas utilities both inside Massachusetts (Bay State Gas Company's principle place of operation) and outside that state. The product sold can be in many forms, i.e., LNG, natural gas, propane.

These off-system sales transactions are made with most gas utilities in New Hampshire. In fact, Bay State offsystem sales have been the sole source of LNG to New Hampshire utilities for a number of years. This includes Northern utilities.

The pricing of the off-system sales is established and approved by the Massachusetts Department of Public Utilities (DPU). This is a firm price charged to all off-system customers. Logically, the DPU's concern when approving this price is that consumers on Bay State's system

are not subsidizing the offsystem sales.

Northern Utilities is a subsidiary of Bay State. The contracts for off-system sales between Bay State and Northern are transacted in Bay State's Canton, Massachusetts office by personnel employed by both utilities. This creates some concern about an arms length transaction when developing the contract for off-system sales among these two utilities.

Our concern is for Northern's customers. We will depend on our auditors to continue their review of these transactions and will require Northern to notify this Commission when adjustments to the pricing for the off-system sales are filed with the DPU. This will give the Commission an opportunity to intervene, if necessary, on behalf of Northern's ratepayers.

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[2] Staff inquired about "thermal billing" and the effect it may have on the current CGA filing. Northern's witness acknowledged that when the Commission approves rates based on thermal heating units it will be required to refile the CGA.

Currently Northern bills its New Hampshire and Maine divisions on an identical thermal value basis. In reality the thermal values of gas sold are not the same for both divisions. Gas produced for Maine customers predominantly contains a higher heating value.

In Northern's last rate case the cost of gas for these two divisions have been mixed.

This means that Maine customers are using gas with higher thermal value yet paying the same price for gas as New Hampshire customers. The Commission's decision on thermal billing will correct this and therefore requires a corresponding adjustment to the CGA. We will require this revised filing on the first day of December, 1985.

[3] The next issue pertains to a refund from Tennessee Gas Pipeline ordered by the Federal Energy Regulatory Commission (FERC) in their Opinion No. 240-B (33 FERC 61,005). Northern states that this refund will not be immediately passed on to them by their wholesaler Granite State Gas Transmission (Granite). This is because Granite is petitioning the FERC for permission to net this refund against a surcharge from Tennessee Gas Pipeline, previously approved by the FERC. The net amount will be reflected in some future rate filing and passed onto the customers at that time.

Whether or not the FERC approves Granite's petition we expect the refund approved in Opinion No. 240-B to be passed back to ratepayers, with interest. Northern is to report on this in subsequent CGA periods. If this petition is not approved by the FERC, it is to be incorporated in the adjustment to the CGA for therm billing, mentioned above.

[4] The final issue to be discussed involves the proposed trigger mechanism. The Commission will set the trigger at ten percent of the total gas costs during a CGA period. Determination of the trigger will be made by adding the over-/undercollection of the CGA which is known for a period to the forecasted over-/undercollection for the remaining portion of the period. This is to be divided by the total known gas costs for the same period plus the forecasted gas costs for the remaining portion of that period. The trigger mechanism is initiated when this quotient is greater than ten percent.¹⁽³⁵⁷⁾

When the trigger mechanism is initiated all parties to the CGA will have ten (10) days to petition for a change in the CGA rate. After receiving the petitions the Commission will determine: 1) whether a change in the CGA rate is appropriate; and 2) whether a hearing on the change is necessary.

To assure an expeditious and adequate review of the data used in determining the trigger, we will mandate that the gas utilities utilizing the semiannual CGA are to file the required monthly reconciliations of the CGA on or before the twentieth (20th) day of a month. Said reconciliation is to be for the immediate preceding month.

The Commission finds that Northern's CGA rate of \$(0.0927) per therm

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is just and reasonable and therefore accepts such as filed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that 55th Revised Page 22A of Northern Utilities, Inc., Tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment of \$(0.0554)/ therm for the period November 1, 1985 through April 30, 1986, be, and hereby is, rejected; and it is

FURTHER ORDERED, that 56th Revised Page 22A of Northern Utilities, Inc., Tariff, NHPUC No. 6 — Gas, providing for a cost of gas adjustment of \$(0.0927)/therm for the period November 1, 1985 through April 30, 1986 be, and hereby is, accepted effective on all bills issued on or after November 1, 1985; 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.

By Order of the Public Utilities Commission of New Hampshire this sixth day of November, 1985.

FOOTNOTE

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)] \div [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

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NH.PUC*11/06/85*[61235]*70 NH PUC 878*Manchester Gas Company

[Go to End of 61235]

Re Manchester Gas Company

DR 85-349, Order No. 17,931

New Hampshire Public Utilities Commission

November 6, 1985

ORDER setting winter cost of gas adjustment rate.

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Automatic Adjustment Clauses, § 65 — Administrative review — Cost of gas adjustment — Reporting requirement.

A natural gas distribution company's receipt of propane on consignment from one of its suppliers without entering a contract covering the transaction was found to be inappropriate; the company was required to submit, prior to the next cost of gas adjustment period, a report on the details of the transaction including an explanation of why the revenues from the transaction were recorded as non-utility revenue. [1] p.879.

Automatic Adjustment Clauses, § 6 — Cost of gas adjustment — Revisions to rate filing — Failure to take offered discounts — Staff audit.

A natural gas distribution company's cost of gas adjustment rate filing was revised to reflect discounts offered but not taken when making payments to propane vendors; the commission expects all utilities to take discounts when offered unless evidence can be provided which proves this is not a prudent business practice; the failure to take the discount was discovered through a staff audit. [2] p. 879.

Automatic Adjustment Clauses, § 53 — Cost of gas adjustment rate — Overand undercollections — Commission review — Trigger mechanism.

In setting a winter cost of gas adjustment rate the commission required the inclusion of a trigger mechanism that allows for commission review of the rate if overor undercollections exceed 10% of the total cost of gas during the cost of gas adjustment period. [3] p. 879.

 APPEARANCES: For Manchester Gas Company, David Marshall, Esquire; and, for the New Hampshire Public Utilities Commission, Daniel D. Lanning, Assistant Finance Director; James L. Lenihan, Rate Analyst; Richard G. Marini, Gas Safety Engineer.

By the COMMISSION:

REPORT

On October 1, 1985, Manchester Gas Company, a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1985—1986 Winter Cost of Gas Adjustment for effect November 1, 1985.

That cost of gas adjustment was to be \$0.4646 net of the franchise tax.

An Order of Notice was issued on October 3, 1985 setting the date of the hearing as of October 28, 1985 at the Commission offices in Concord. The hearing was subsequently continued until October 29, 1985.

On October 29, 1985, Manchester Gas submitted a revised cost of gas adjustment of \$0.0052 per therm. The revised rate is a decrease of \$0.0321 from the prior winter period rate of \$0.0373 per therm.

Based on an average usage of 150 therms per month, this reduction represents a decrease of \$4.82 per month on a typical bill.

[1-3] The Company stated that the reasons for the revision to its filing were: 1) the reduction in the purchased cost of gas from Tennessee Gas Pipeline; 2) a correction to the cost of propane to reflect discounts not taken when making payments to propane vendors, discovered through a PUC staff audit; and 3) inclusion of actual refund figures that became available after the original filing.

During the hearings on October 29, 1985, the following issues were discussed: a) Manchester's forecasted sales; b) pricing of LPG inventory; c) the receipt of propane on consignment from one of Manchester's LPG suppliers, Gas Supply East; d) foregone propane invoice discounts; and e) the "trigger Mechanism".

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A number of these issues shall be discussed herein.

Staff questioned Manchester's witness about a receipt of LPG inventory from a particular supplier during the summer of 1984. Gas Supply East, a firm which regularly supplies Manchester with propane, issued propane to Manchester on a consignment basis during that period. This inventory was held by Manchester and was used by Gas Supply East to supply customers other than Manchester.

For the use of their storage facilities Manchester was given one cent a gallon and was guaranteed propane during the winter period. However, this agreement was not put into the form of a contract.

This is not appropriate business practice. Questions left unanswered from this transaction include insurance liability for the product, was there reasonable compensation for storage, and how often does Manchester, or other EnergyNorth, Inc. subsidiaries enter into this type of transaction? It was also brought out through cross-examination that the revenue from the storage fee was recorded as non-utility revenue by Manchester. These questionable items need a response. We will require a full report on this transaction, with answers to these questions, from Manchester prior to the beginning of the next CGA period.

The next issue to discuss involves foregone discounts from propane purchases. The PUC staff audit revealed a number of propane invoices which offered discounts that Manchester had not taken. This is contrary to what the Commission believes is proper practice.

The Commission expects all utilities to take discounts when offered unless evidence can be

provided which proves this is not a prudent business practice. We therefore accept the revised filing which includes these discounts.

The final issue to be discussed involves the proposed trigger mechanism. The Commission will set the trigger at ten percent of the total gas costs during a CGA period. Determination of the trigger will be made by adding the over/under collection of the CGA which is known for a period to the forecasted over/under collection for the remaining portion of the period. This is to be divided by the total known gas costs for the same period plus the forecasted gas costs for the remaining portion of that period. The trigger mechanism is initiated when this quotient is greater than ten percent.¹⁽³⁵⁸⁾

When the trigger mechanism is initiated all parties to the CGA will have ten (10) days to petition for a change in the CGA rate. After receiving the petitions the Commission will determine: 1) whether a change in the CGA rate is appropriate; and 2) whether a hearing on the change is necessary.

To assure an expeditious and adequate review of the data used in determining the trigger, we will mandate that the gas utilities utilizing the semiannual CGA are to file the required monthly reconciliations of the CGA on or before the twentieth (20th) day of a month. Said reconciliation is to be for the immediate preceding month.

The Commission finds that Manchester's CGA rate of \$0.0052 per therm is just and reasonable and therefore accepts such as filed.

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Our Order will issue accordingly.

ORDER

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

ORDERED, that 19th Revised Page 26, superseding 18th Revised Page 26 of Manchester Gas Company tariff, NHPUC No. 13—Gas, providing for a Cost of Gas Adjustment of \$0.0052 per therm for the period November 1, 1985 through April 30, 1986, be, and hereby is, accepted; and it is

FURTHER ORDERED, that a public notice of this cost of gas adjustment be given by one time publication in newspaper having general circulation in the territories served.

By Order of the Public Utilities Commission of New Hampshire this sixth day of November, 1985.

FOOTNOTE

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)]\ divided\ by\ [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

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NH.PUC*11/07/85*[61237]*70 NH PUC 885*Wolfeboro Railroad Company, Inc.

[Go to End of 61237]

70 NH PUC 885

Re Wolfeboro Railroad Company, Inc.

DF 85-314, Order No. 17,936

New Hampshire Public Utilities Commission

November 7, 1985

ORDER imposing a fine on a railroad company for failure to file an annual report.

By the COMMISSION:

ORDER

WHEREAS, RSA 374:5 requires every public utility to file with the Commission reports containing facts and statistics as required by the Commission; and

WHEREAS, Commission Rules No. Puc 607.06 and 609.05 require, inter alia, public utilities to file annual reports containing specific facts and statistics with the Commission; and

WHEREAS, RSA 374:17 provides, inter alia, that any public utility which does not file said reports with the Commission at the time specified by the Commission shall forfeit the sum of \$100 per day unless excused by the Commission; and

WHEREAS, Wolfeboro Railroad Co., Inc. did not file an F-16 Annual Report for the year ended December 31, 1984 by March 31, 1985 as required by the above-stated Commission rules; and

WHEREAS, on September 3, 1985, the Commission issued an Order of Notice opening this docket for the purpose of determining whether Wolfeboro Railroad Co., Inc. should be fined in an amount not to exceed \$100 per day; and

WHEREAS, the Order of Notice scheduled a hearing for September 23, 1985 for the purpose of allowing Wolfeboro Railroad Co., Inc. an opportunity to show cause why it should not be fined \$100 per day for its failure to file the required annual report; and

WHEREAS, Wolfeboro Railroad Co., Inc. failed to appear at said hearing; it is hereby

ORDERED, that Wolfeboro Railroad Co., Inc shall forfeit \$100.00 to the Commission by Tuesday, November 12, 1985 pursuant to RSA 374:17 for its

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failure to file the above-described annual report; and it is

FURTHER ORDERED, that Wolfeboro Railroad Co., Inc. shall forfeit \$100.00 to the Commission each week thereafter until the report is filed and/or the Commission issues a further Order.

By order of the Public Utilities Commission of New Hampshire this seventh day of November, 1985.

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NH.PUC*11/08/85*[61238]*70 NH PUC 886*Public Service Company of New Hampshire

[Go to End of 61238]

70 NH PUC 886

Re Public Service Company of New Hampshire

Intervenors: Conservation Law Foundation of New England, Inc., Seacoast Anti-Pollution League, Campaign for Ratepayers' Rights, and Office of Consumer Advocate

DF 84-200, 15th Supplemental
Order No. 17,939

New Hampshire Public Utilities Commission

November 8, 1985

ORDER, on remand from state supreme court, setting forth probable range of customer rates that would result from completion of Seabrook unit I nuclear plant.

Security Issues, § 54 — Authorization — Factors considered — Ratemaking effects.

On remand from the state supreme court, the commission set forth specific findings, expressed in dollars and percentages of existing rates, on the reasonably probable range within which actual customer rates would be set if the Seabrook unit I nuclear plant were completed; the commission determined that the specific rate findings have no effect on the validity of the conclusions set forth in the Seabrook financing order; the supreme court had remanded the financing order based on its finding that without a determination of the range within which rates would probably be set, the commission's findings were incomplete and failed to satisfy the requirements on state statute RSA 369:1 and 4.

Security Issues, § 54 — Authorization — Factors considered — Rate-making effects.

Statement, in dissenting opinion, that (1) full cost rate support from the level of investment approved in the Seabrook financing order was not consistent with the public good; (2) the commission could adopt rate making standards that would ensure that the company's future rates would be consistent with the public good and at the same time provide a lawful return on the company's prudent; used and useful investment, and (3) significant amounts of additional debt beyond the level approved in the financing order could not be supported by reasonable rates. p. 912.

Security Issues, § 54 — Authorization — Factors considered — Rate-making effects.

Statement, in dissenting opinion, that the state financing statute, as interpreted by the state

supreme court, requires the commission to adopt some standard for reviewing the reasonableness of projected customer rates which would result from the completion of the Seabrook unit I nuclear plant; the dissenting commissioner suggested that projected NEPOOL rates provide an appropriate standard for judging the reasonableness of rates. p. 914.

APPEARANCES: As previously noted.

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By the COMMISSION:

REPORT

I. INTRODUCTION

On April 18, 1985, the Commission issued its Report and Ninth Supplemental Order No. 17,558 in this docket, Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349 (1985) conditionally granting requested financing authority to Public Service Company of New Hampshire (PSNH) pursuant to RSA Chapter 369. Timely Motions for Rehearing were filed by Intervenors Conservation Law Foundation of New England, Inc. (CLF), Seacoast Anti-Pollution League (SAPL), Campaign for Ratepayers' Rights (CRR) and the Consumer Advocate. Those Motions were denied in Report and Tenth Supplemental Order No. 17,601 (70 NH PUC 367). CLF, SAPL, CRR and the Consumer Advocate then filed Appeal Petitions with the New Hampshire Supreme Court. Subsequently, the Commission held further hearings on the conditions in Order 17,558 and issued Report and Fourteenth Supplemental Order No. 17,861 (70 NH PUC 787) (September 13, 1985) which granted PSNH's request to lift the conditions in Order 17,558, subject to a stay imposed by the New Hampshire Supreme Court. Thereafter, briefs were filed in the appeal pursuant to a schedule established by the Court and the matter was orally argued on October 29, 1985.

In its Remand Order of October 30, 1985 the Supreme Court held that the Commission did not address with sufficient specificity the affect on PSNH's future rates of the investment in Seabrook Unit I upon completion with findings of fact sufficient for genuine appellate review. Re Seacoast AntiPollution League, 125 N.H. 708, 718, 484 A.2d 1196, 1203 (1984). The Supreme Court stated that the Commission's analysis of projections of future rates necessary to support the Company's investment upon completion of Seabrook Unit I did not establish the reasonably probable range within which actual customer rates must be set in order to assure the Company a lawful return on investment. The Court further stated that without a determination of the range within which rates will probably be set, the Commission's findings are incomplete and fail to satisfy the requirements of RSA 369:1 and 4. The Court concluded:

(1) specific findings, expressed in dollars and as percentages of the existing rates, of the reasonably probable range within which the actual customer rates will be set if Unit I is completed as authorized by the commission; and

(2) determinations of the effect of such findings on the validity of the conclusions stated in the commission's Report and Order dated April 18, 1985.

Herein, we issue our Supplemental Report addressing the Court's mandate.

II. Reasonably Probable Range

In its October 30, 1985 Order, the Court recognized that the Commission had defined an array of rates that could be applicable under varying assumptions. (See e.g., 70 NH PUC at p. 238, 66 PUR4th at p. 416. The Court went on to state:

"The commission did not, however,

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make any findings of fact about the reasonably probable range within which actual customer rates must be set in order to assure the company a lawful return on investment."

The Court provided that in the absence of such specific findings of fact, the Commission's Order was incomplete and failed to satisfy RSA 369:1 and :4. (See also, *Re Seacoast Anti-Pollution League*, 125 N.H. at p. 718, 484 A.2d 1196.)

The Court correctly observed that Order 17,558 contained no findings on the reasonably probable range of rates; we had understood our responsibility to be an assessment of ratepayer and investor exposure when evaluating financing petitions. In the context of exposure, we identified the range of rates that may be adopted in a subsequent rate proceeding without establishing the reasonably probable range within which actual customer rates must be set in order to assure the company a lawful return on its investment. We found that the financing is consistent with the public good at the projected level of rates under an array of scenarios with varying assumptions resulting in substantial increases in rate levels more than double current rates. In this Report, we have, on the basis of the present record, made findings of a range of reasonably probable rates. It must be emphasized that, of necessity, we have confined our analysis to the present record which contains evidence of the rates necessary to support a capital structure which includes PSNH's Seabrook investment under various alternative assumptions. The present record does not contain evidence on the issue of prudence and, thus, we cannot prejudge where such a record to be developed in the future, will lead us. We will assume, without pre-judging, that it is not probable that rates will be established below an amount consistent with PSNH's financial survival. However, the reasonably probable lower limit of rates or "floor" cannot be established on this record without a determination of prudent investment, which will be considered in a subsequent rate proceeding. We believe this assumption is proper in view of the Court's language recognizing that "rates may not be determined specifically and 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 over the 35 year life Seabrook found in Order 17,558 (70 N.H. at pp. 228, 229, 66 PUR4th at pp. 406, 407). Findings and conclusions in those rate investigations leading to 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, inflation, cost of capital,

demand growth, other costs and energy markets will govern the evidence to be developed in those multiple future records.

A. Specific Findings in Dollars and as Percentages of the Existing Rates of the Reasonably Probable Range

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Within Which the Actual Customer Rates Will be Set if Unit I is Completed as Authorized by the Commission

From the array of projections of future rates necessary to support the Company's future capital investment, we have selected representative projections from scenarios establishing the approximate limits of the reasonably probable range of rates subject to a prudency investigation. (Exhibits 99A, 99B and 124D) We conclude that the level of reasonable rates will probably fall within the upper levels of this range (Tables 1-5, Graph 3 infra). Rates resulting from the rate base exclusion scenarios offered by Witness Trawicki (Tables 4 and 5) will determine the operative lowest level of rates which may be set compatibly with the survival of the Company, assuming that a subsequent prudency determination supports the exclusion. (Exhibits 119J and 119M, Schedules 9 and 11, Exhibit 95).

To produce a reasonable return, the level of rates must produce revenue equal to the total of projected operating expenses plus a reasonable return on projected capital investment on rate base. The return is the product of a prescribed rate applied to the cost less depreciation of the Company's property that is "used and useful in the public service", RSA 378:27, 28. The rate base includes the depreciated cost of plant in service plus working capital. The recovery of the cost of money invested in plant during the construction period is not recoverable by an allowance for construction work in progress under the Anti-CWIP statute, RSA 378:30-a, and therefore, the capitalized cost of money incurred during construction is added to the investment and to the rate base when the plant begins operation as a used and useful addition to the Company's total rate base. The capitalized value of the cost of money is referred to as Allowance for Funds Used During Construction (AFUDC). During the construction of the plant, capitalization of AFUDC is an accounting entry indicating future income but does not produce any cash flow compelling the payment of interest and any dividends on investment from real earnings or from produced or invested funds. (Re Public Service Co. of New Hampshire, 125 N.H. 46, 49, 50, 60 PUR4th 16, 480 A.2d 20 [1984].)

The capital investment of PSNH in Seabrook I is determined from the total cost of the project including past and prospective construction plus the financing costs for sunk and prospective investment (AFUDC). The total cost of the project was estimated by Commission Order 17,558 at 4.6 billion dollars. PSNH's share of this total cost ranges from 1.6 billion dollars (based on 35.5694% of 4.6 billion dollars) to 1.8 billion dollars considering higher financing costs by PSNH than the average financing costs of the joint owners implicit than the average financing costs of the joint owners implicit in the 4.6 billion dollar estimate. To determine the reasonably probable range of rates Scenarios 99A, 99B and 124D used PSNH's capitalization, financing costs and rate of return to determine PSNH's estimated total costs for its share of Seabrook I to completion. Estimated revenues were determined from the PSNH 1984 load forecast, and

expenses were based upon the costs associated with the construction and operation of PSNH's total plant less depreciation over the 20 year time frame of the

scenarios. The estimated revenues include an allowance to produce a return on investment equal to the weighted cost of capital. The estimated per KWH for each year of the forecast in these exhibits at 22-23 is derived from total prime sales revenue divided by total prime megawatt hours for each year. This end result for various scenarios in terms of total prime sales cents/KWH is depicted in the table at 70 NH PUC at p. 238, 66 PUR4th at p. 416.

The \$525,000,000 financing approved by the Commission is predicated on costs to go of \$1 billion. (Actual financing requirements have been reduced to \$345,000,000) Exhibit A-49 at 3. Based on \$600,000,000 cash costs to go as of August 1, 1985, (70 NH PUC at p. 804, Exhibit A-49 at 3, 5) PSNH's cost to complete is \$213,416,520 (70 NH PUC at p. 803). The \$525,000,000 financing authorization will provide sufficient capital to cover general contingencies for a later commercial operating date than December, 1986, for changes in the weighted costs of capital, imposition of revised construction specifications or retrofitting by the NRC, and any downward revision of demand. Exhibits 99A and 99B do not include the loss of UNITIL. The downward revision of demand resulting from UNITIL's loss to the extent that such demand cannot be fully restored will increase costs and rates in these scenarios. 124 D includes loss of UNITIL, and therefore any downward revision of demand is less likely than in 99A or 99B. However, sharp increases in rates may result in transfer of load off system or conservation induced reduction in demand. Scenario 99A and Scenario 99B do not write off Seabrook Unit II during the forecast period. Exhibit 124D writes off Seabrook II against retained earnings increasing the potential risk of future investment and pressure for a higher rate of return.

B. Analysis Of Reasonably Probable Range Within The Actual Customer Rates Will Be Set If Seabrook Unit I Is Authorized By The Commission.

Based on the record, the following tables, Table 1 — Exhibit 99-A, Table 2 — Exhibit 99-B and Table 3 — Exhibit 124-D, establish the upper limit of the reasonably probable range within which the actual customer rates and must be set in order to assure the Company a lawful rate on its investment upon completion of Seabrook Unit I. Table 1 (Exhibit 99-A, the Company's base case) projects the annual rate level in per KWH from 1984 to 2003 based on the major assumptions summarized in Table 1. Exhibit 99-B, Table 2, projects per KWH from 1984 to 2003 based on the same major assumptions as in Exhibit 99-A, except that Exhibit 99-B does not reflect phase-in and, therefore, there is no accrual of deferred revenues. Table 3, Exhibit 124-D, is a no-phase-in scenario requested by the Commission, which varies from Exhibit 99-B in the following respects (summarized below Table 3).

1. Seabrook Unit I availability factor is 60% compared to an availability factor in Exhibit 99-B of 59%, rising to a mature availability factor of 72%.

2. Unit II is written off as of October 31, 1986 with no recovery from ratepayers and all Unit II expenditures are expensed and the accrual of AFUDC on Unit II is discontinued beginning March 1, 1984;

Exhibit 99-B assumes no write-off or recovery of Unit II during the forecast period.

3. Reflects total loss of UNITIL load; Exhibit 99-B assumes continuance of full UNITIL load.

Exhibits 99-A, 99-B and 124-D assume a rate of return on rate base equal to the weighted cost of capital annually. The annual weighted cost of capital used to determine the requisite level of revenues to produce a reasonable rate of return on projected rate base over the 20-year period, 1984-2003, may be summarized as follows:

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

Exhibit 99-A Exhibit 99-B Exhibit 124-D

1984	15.96	15.97
1985	17.36	17.36
1986	17.33	17.33
1987	17.32	17.03
1988	17.27	17.06
1989	17.29	16.81
1990	17.24	16.83
1991	17.05	16.54
1992	16.96	16.42
1993	16.37	16.17
1994	16.24	15.73
1995	15.54	14.98
1996	15.51	14.85
1997	15.32	14.66
1998	14.67	14.32
1999	14.02	13.97
2000	13.65	13.67
2001	13.34	13.35
2002	12.88	13.12
2003	12.63	12.86

SOURCE: Exhibit 99-A at 23-24; average 15.70%. Exhibit 99-B at 23-24; average 15.45%. Exhibit 124-D at 23-24; average 15.54%.

The capitalization used to determine the annual weighted cost of capital and the rate base to be supported by revenues calculated to produce a reasonable rate of return is summarized for the selected years of 1987, 1994 and 2003 at 70 NH PUC at p. 244, 66 PUR4th at p. 422. The rate base generally equates to the capitalization. See 70 NH PUC at pp. 245, 246, 66 PUR4th at p. 423; for capitalization, see Exhibits 99-A, 99-B and 124-D, pp. 21-22. In Order No. 17,558, the Commission found that the capitalization and capital structure fall within a zone of reasonableness for the purpose of rate determination. (70 NH PUC at pp. 245, 246, 66 PUR4th at p. 423.)

The major assumptions in the rate forecast of Exhibits 99-A, 99-B and 124-D have been substantially verified by Commission findings in its Order 17,558:

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1. Seabrook Unit I in-service date of December 31, 1986. (The Commission found an estimated commercial operating date of October 31, 1986. [70 NH PUC at p. 223, 66 PUR4th at p. 402.]

2. Seabrook Unit I total project cost of \$4.6 Billion. (The Commission found the probable cost to be \$4.6 to 4.7 Billion.)

3. The \$525,000,000 financing is predicated at \$1 Billion construction cost to go. (Commission found that the amount of the proposed financing based on the construction cost to go is reasonable and in the public good. [70 NH PUC at p. 223, 66 PUR4th at p. 402.]

4. Projected rate levels in Exhibits 99-A, 99-B and 124-D are based on an estimated construction cost to go of \$882,000,000 as of January 1, 1985.

1(359)

5. The average weighted cost of capital of 15.70% in Exhibit 99A, 15.45% in Exhibit 99-B and 15.54% in Exhibit 124-D is consistent with the Commission's finding that weighted 15.4% average cost of capital was reasonable. (70 NH PUC at p. 229, 66 PUR4th at pp. 407, 408.)

6. The 1984 load forecast rate was reasonable for forecasting purposes, including the UNITIL load. (70 NH PUC at p. 206, 207, 66 PUR4th at pp. 387, 388.)

The added assumptions in Exhibit 124-D results in a projected rate level higher than Exhibit 99-B. Since Exhibit 124-D's exclusion of the UNITIL load projects reduced revenues and its 60% capacity factor assumption results in less revenue and higher costs from the addition of Seabrook Unit I to the rate base than the higher capacity factor of Exhibits 99-A and 99-B, the expenses and capital investment to be supported by revenues increase under Exhibit 124-D. The write-off of Seabrook Unit II and Pilgrim Unit II with no recovery from ratepayers also increases costs and the required revenues to yield a reasonable return on rate base.

Neither the assumption of full UNITIL load in Exhibits 99-A and 99-B nor the loss of the UNITIL load in Exhibit 124-D reflect the more likely event that only part of the UNITIL load will be lost to PSNH. In Order 17,558 we found that PSNH is unlikely to lose 100% of the sales that otherwise would have been committed to the UNITIL companies and we accepted Mr. Trawicki's assumption of the loss of the capacity portion of sales to UNITIL prior to the termination date of the all requirements contract as the most likely scenario. (70 NH PUC at pp. 233, 234, 66 PUR4th at p 412. See also, 70 NH PUC at p. 380.) We have reproduced in the following tables (Tables 1, 2 and 3) projections of the upper limit of the reasonably probable range within which the actual customer rates will be set if Seabrook Unit I is completed as authorized by the Commission. The tables incorporate our specific findings

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expressed in dollars and as percentages of the existing rates of this range.

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

TABLE 1

PSNH PROJECTIONS OF RATE LEVELS IN NOMINAL PRICES

SCENARIO PSNH BASE EXHIBIT 99-A

PHASE-IN

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
1992
1993
1994
1995

1996
1997
1998
1999
2000

2001
2002
2003

Assumptions

1. Seven Year Phase-In at 15% per year (Exhibit 99-A g 33).
2. Seabrook I in-service date October 31, 1986 at a total project cost of 4.6 billion.
3. Rate of return on the rate base is equal to the weighted cost of capital annually.
4. Total project expenditures average \$5 million/ week from December 1984 through March 1985; full construction beginning April 1, 1985. based pm \$882 million to go as of January 1, 1985.
7. No preferred stock dividends are paid form 1984:02 through 1986:04. Payment of preferred stock dividends resume in 1987 and dividends are repaid during 1987. No preferred stock redemptions from 1984-1986: redemptions resume in 1987. Preferred stock redemptions in arrears are repaid during 1987. It is assumed that common stock dividends resume in 1987.
8. PSNH funds its full 35.56942% share of Seabrook Unit I plant and initial core nuclear fuel through April, 1985. Unit I construction expenditures as of May 1, 1985 as paid by the Seabrook I Construction Escrow Account. (PSNH continues to pay

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nuclear fuel costs.) PSNH pays its full share of all capitalized additions and nuclear fuel expenditures (initial core and reloads) following Unit I in-service date.

9. All Unit II expenditures are expensed and the accrual of AFUDC on Unit II is discontinued. beginning 3/1/84. Seabrook Unit II is cancelled on 10/31/86. This scenario assumes no write-off or recovery of Unit II during the forecast period.

10. PSNH long-term debt can be issued at 18% in 1986; 16% for the years 1987-1991; 15% in 1992; 14% in 1993; 13% in 1994; 12% in 1995; 11% in 1996-2003. A 10 year maturity is assumed. The projected average prime rate is 13% for 1984-1986; 12% for 1987; 11% for 1988; 10.5% for 1989; 10% for 1990-2003. No wholesale (FERC) or retail rate increases during 1984 and 1985. (The 1984 retail refund is reflected.) Deferred revenues are accrued sufficient to provide total earnings on rate base equal to the overall cost of capital, assuming common equity on rate base earns 16.1% from 1984-1992.

11. Availability or capacity factor initial 59% rising to a mature capacity factor of 72%.

12. Other Assumptions pages 1-4, Exhibit 99A.

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

TABLE 2

PSNH PROJECTIONS OF RATE LEVELS IN NOMINAL PRICES

SCENARIO PSNH BASE-RS EXHIBIT 99-B

Year

1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003

Assumptions

Same as Exhibit 99-A; except No Phase-In and therefore no accrual of deferred revenues.

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

TABLE 3

REVISED PSNH PROJECTIONS OF RATE LEVELS IN NOMINAL PRICES

SCENARIO 1984 KD-NU-NR EXHIBIT 124-D

NO PHASE-IN

Year

1983
1984
1985
1986
1987
1988
1989
1990

1991
1992
1993
1994
1995
1996
1997
1998
1999
2000

2001
2002
2003

Assumptions

Same as Exhibit 99-B with following exceptions:

1. Seabrook Unit I availability factor to be 60%. 2. Reflects Unit II written off 10/31/86 with no recovery from ratepayers. 3. Reflects total loss of UNITIL load. 4. Common Stock dividends resume in 1988. 5. Seabrook Unit II is cancelled and written off in its entirety on 10/31/86 with no recovery from ratepayers; all Unit II expenditures are expensed and the accrual of AFUDC on Unit II is discontinued beginning 3/1/84. 6. Pilgrim Unit II is assumed to be written off in its entirety on October 31, 1986 with no recovery from ratepayer. 7. Other assumptions page 1-4, Exhibit 124-D.

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Each table shows in the period of 1984 to 2003 projected prime sales in per KWH, the percentage annual increase of the preceding year, the per KWH increase over 1985 and the percentage increase over 1985. In Table 1 the 15% phase-in over a 7-year period reduces the increase in rate levels that would otherwise occur until the year 1991. Rates increase from 8.49/ in 1985 to 17.65 per KWH in 1991, or approximately double (107% increase). Over the remainder of the period, from 1992 to 2003, rate levels are 22-23 in the years 2002 and 2003 increase further to 25 almost triple the rates in 1985. In contrast, Table 2 (reflecting no phase-in, but including all other assumptions in Table 1) shows rates nearly doubling in 1988 gradually increasing approximately another 50% through the year 2002. Over the period 1994 to the year 2000, rates are 2.3 times the rates per KWH in 1985. From 1985 to 1991 no phase rate levels range 1 to 5 higher per KWH than the rate level in the phase-in scenario. The reason for the differential is that during the phase-in period, the Company accumulates deferred revenues,

which by 1992 aggregates to \$2.65 Billion. (70 NH PUC at pp. 239, 240, 66 PUR4th at p. 417.) During the decade following 1992, i.e., 1993 — 2003, the Company recovers revenues and earns a return on the unrecovered balance, resulting in substantially higher revenue requirements in Exhibit 99-A than in Exhibit 99-B. The magnitude of the increased revenue requirement to the phase-in reflected in Exhibit 99-A compared to the rate shock (or no phase-in) in the scenario of Exhibit 99-B is \$2.9 Billion. (70 NH PUC at pp. 239, 240, 66 PUR4th at p. 417.) We have not determined in the present proceeding whether phase-in will be allowed or disallowed, or if allowed the kind of phase-in which will not unduly increase consumer rates over a selected time span. Accordingly, the phase-in and no phase-in rates expressed in per KWH established the upper limit of the reasonably probably range of rates.

Exhibit 124-D (no phase-in) reflecting the assumptions in Table 3 results in approximately the same level of rates between 1985 and 1988 as Exhibit 99-B (Table 2), but increase another 30% by 1990 before drifting slightly downward. In contrast, rates in Exhibit 99-B held steady through the year 1993. Rates remain higher in Exhibit 124-D than in Exhibit 99-B until 1995, and from 1995 until the year 2003 the rate levels are approximately the same within an order of magnitude of 1 per KWH. The comparison of the upper limit of the reasonably probable range of customer rates upon completion of Seabrook Unit I (Tables 1, 2, and 3) is expressed in graph form as shown below.

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[Graphic Not Displayed Here]

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While rate levels in Exhibit 99-A are lower than the rate levels in Exhibit 99-B and Exhibit 124-D until 1990, the substantial increase in per KWH to produce revenues to recover previously deferred revenues increases on average to a level one-third higher than the no phase-in scenarios until the year 2003.

Table 4 and Table 5 below depict Mr. Trawicki's price projections without phase-in based on the assumptions listed under each table. It should be noted that the total project cost used by Mr. Trawicki is \$4.5 Billion rather than \$4.6 Billion, that total project expenditures and full construction are at a different level and commence for full construction on January 1, 1985 rather than April, 1985, that the Seabrook Unit I in-service date is August 1, 1986 rather than October to December of 1986 and that base assumptions are the same as in PSNH's Newbrook filing.

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

TABLE 4

TRAWICKI NOMINAL PRICE PROJECTIONS WITHOUT PHASE-IN

TRAWICKI EXHIBIT 119-J (Schedule 9)
\$1.0 BILLION EXCLUSION FROM RATE BASE

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
1992
1993
1994
1995

1996
1997
1998
1999
2000

Notes on Rate Base Exclusion

A fixed amount is excluded from rate base at the time the Seabrook facility is placed in service.

The excluded amount is the maximum amount that, when excluded from rate base, given the case assumptions results in operating cash flows sufficient to pay operating expenses and required debt service and fund planned construction expenditures. Limited borrowings are assumed to eliminate the impacts of relatively large debt service and construction payments in certain years. Debt service requirements include interest and debt maturities. No dividends or preferred stock redemptions are assumed to be paid in the scenario.

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

TABLE 5

TRAWICKI NOMINAL PRICE PROJECTIONS WITHOUT PHASE-IN

TRAWICKI EXHIBIT 119-M (Schedule 11)
\$1.1 BILLION EXCLUSION FROM RATE BASE

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991

Assumptions

Same as Trawicki Exhibit 119-J with the following exception: 1. Demand (Prime Sales) is 1983 actual +8% increase in 1984 and then increased at 4% compounded in each year thereafter.

Tables 4 and 5 exclude from the rate base the flows sufficient to pay operating expenses and required debt service and fund planned construction expenditures. Thus the two tables show the lower level of rates which can be set compatible with the Company's survival. The rate levels are predicated on the original Newbrook financing of a Newbrook debt issue involving prefinancing of PSNH's Seabrook Unit I.

The Newbrook I plan was subsequently abandoned in favor of the current revised financing proposal of \$525 Million, which we approved in Order 17,558. Major assumptions incorporated in Tables 4 and 5 are:

\$4.5 Billion total cost with an inservice date of August 1, 1986.

PSNH share of total cost — \$1.7 Billion.

Availability factor — 72%.

1984 load forecast — Exhibit 95 at 13; Schedules 1 and 2.

Rate of return equal to weighted average cost of capital — 16-17%. 29 Tr. 5351.

No preferred or common stock dividends.

Essentially, Mr. Trawicki's Exhibit 119-J (Table 4) and Exhibit 119-M (Table 5) are "survival scenarios" showing the lowest level of rates necessary to produce adequate revenues to meet the Company's contractual obligations when due. Exhibit 95 at 11. The crux of the survival test is whether sufficient borrowing would be available to meet the irreducible minimum to pay obligations

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as they fall due and meet ongoing cash needs. (Exhibit 95 at 11). Mr. Trawicki concluded that the Commission may disallow investment up to a magnitude of \$1.0-1.1 Billion without impairing the ability of PSNH to earn operating costs, depreciation and other charges (Table 4 — \$1.0 Billion exclusion; Table 5 — \$1.1 billion exclusion). His conclusions would not be substantially modified based on the revised \$525 Million financing proposed (29 Tr. 7357).

In Table 4, rate levels increase by 50% in 1988, by 66% in 1991, and double by 1999. Table 5 rate levels increased by 33% in 1987 and by 50% in 1991. The following graph illustrates the relative rise in rates based on Table 4 and Table 5.

A comparison of the upper and lower limits of Tables 1-5 is presented in Graph 3 showing the wide disparity in projected rates to various assumptions.

We did not find in Order 17,558 nor did we find in this order that the projected rates in Tables 4 and 5 are the lower end of the reasonably probable range within which rates will be set. We do find, however, that based on the record the projected rates in Tables 4 and 5 are the minimum rates which could possibly be set if a substantial prudence investigation warranted the exclusion of \$1.0-1.1 Billion of PSNH's investment in Seabrook Unit I on the ground of

improvidence. Until a prudent investment rate base is determined, the level of rates to yield a reasonable return on an indeterminate rate base cannot be ascertained.

Substantial exclusions from rate base after a prudency review will result in a lower level of rates than the rate levels in Tables 1, 2 and 3 (represented by the three top lines in Graph 3). However, the level of rates, dependent on the evidence after a prudency investigation may be substantially higher than the "floor" on rates derived from Tables 4 and 5 (the two lower lines on Graph 3). See, "The Efficiency of a Future Prudency Determination", (70 NH PUC at pp. 374, 375).

It is relevant to our analysis of the lower end of the range of rates to cite our observation in Order 17,558; (70 NH PUC at p. 246, 66 PUR4th at p. 423):

There is substantial economic leverage to establish a rate level that will not be oppressive to consumers or the New Hampshire economy or which is unfair to stockholders in the event of disallowance of any portion of the capital investment on the basis of imprudence.

Our findings in Order 17,558 that the Seabrook Unit I proposed financing will serve the public good and that Seabrook Unit I should be constructed to completion were made considering that the rate levels reviewed in that order would probably be set at the upper limit of the range based on substantial evidence and reasonable assumptions in Exhibit 99-B, as well as Exhibit 99-A, if phase-in was adopted in a subsequent rate proceeding.

As detailed below, the validity of our conclusions in Order 17,558 is unaffected by our findings of the reasonably probable range within which rates will be set. Our conclusions in Order 17,558 were based on the same analysis and findings that the ultimate level of reasonable rates could be set at the

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[Graphic Not Displayed Here]

Page 901

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forecasted levels of Exhibits 99-A and 124-D. (See, Tables at 70 NH PUC at pp. 238, 244-246, 66 PUR4th at pp. 416, 422-424.)

We found in Order 17,558 that the array of rates postulated under various assumptions were within a zone of reasonableness to serve the public good, considering ratepayer exposure and return on investment, subject to a later determination in a rate proceeding to find prudent investment required to be supported by rates to assure the Company a lawful return on investment. See, Brief of State of New Hampshire, Amicus Curiae, New Hampshire Supreme Court, No. 85-252 and No. 85-253 at 31; 70 NH PUC at pp. 243-247, 66 PUR4th at pp. 421-424. We did not adopt Exhibit 174 (based on Intervenor's assumptions) in our calculus because it combined every pessimistic assumption identified by the Intervenor and the evidence did not

support a finding that the Request 10 (Exhibit 174) combination of assumptions is likely to occur. The level of projected rates under Exhibit 174 is substantially different from the projected level of rates in Exhibit 124-D. (70 NH PUC at pp. 240, 66 PUR4th at p. 418.)

Exhibit 126 is based on the 1985 forecast and adopts for a 10-year time frame the same assumptions as in Exhibit 124-D. Exhibit 126 shows rates almost doubling (8 to 15) per KWH in 1988-1989 and remain relatively constant through 1994 at 17 per KWH. (70 NH PUC at pp. 240, 66 PUR4th at p. 418.) The pattern of rate behavior in Exhibit 124-D shows rates increasing at a slightly higher level over the next decade than in Exhibit 126 (16-17 in 1988-1989 remaining through 1994 at 17-18).

If after a comprehensive prudency investigation the Commission finds that the Company's total investment in Seabrook Unit I was prudent and that the Company is entitled earn a reasonable return on the total rate base, rates will probably be set within the upper limit of the range in Tables 1, 2 and 3. If a phase-in is adopted, the upper limit of the reasonably probable range of rates will approximate the rates in Table 1. If phase-in is not adopted, the reasonably probable upper limit of the range of rates will be the rates in Tables 2 and 3.

Based on the record in this case, we find that such rates are reasonable in order to assure the Company a lawful return on its investment and that the public good is served by granting the authorized financing and completing Seabrook. A lower level of rates within the range of reasonable probabilities will be set if we find in a substantial rate proceeding that the prudent investment is less than the Company's total investment and rate base assumed in Exhibits 99-A, 99-B and 124-D. These conclusory findings are inherent in our analysis and finding of public good in Order 17,558 and Order 17,601.

It is of paramount importance that the precise level of rates cannot be determined until after a prudency investigation by this Commission. Forecasts are not immutable. When Seabrook goes on line actual operating experience with Seabrook and other PSNH generating plants will either verify or compel revision of our forecast of projected rates based on the present record.

It is an empty exercise in economics to establish a per se market standard for future sales of electricity, compelling departure from time honored

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principles of rate regulation. Electricity rate levels flow from revenues necessary to provide a reasonable rate on prudent investment — not the reverse process of first determining a rate level to derive the level of prudent investment to be substantiated by the rates. A finding in a prudency review that the market for electricity will not support the level of rates will be relevant to determine whether capital investment not fully recoverable by rates was prudent in the first instance. In this proceeding we cannot prejudge the prudency issue by imposing a cap on rates and rate base knowing that the prudency issue will be fully adjudicated in a future rate proceeding. (70 NH PUC at pp. 246, 247, 66 PUR4th at p. 424.

In Order 17,558, we compared real energy prices in constant 1984 dollars shown in the 1984 and 1985 assumptions of the load forecast. Graph; 70 NH PUC at p. 201, 66 PUR4th at p. 383; source of graph — Exhibit 130. Graph 2-3; 1985 Electric Load Forecast. We noted that in real dollars without the impact of inflation the rate levels do not skyrocket per se but rather

experience moderate increases in real prices. Over the 20-year time frame the increase in real prices retards energy growth in the 1987-1992 time period. Conversely, the decline in real prices after 1992 encourages energy growth causing higher growth rates in the last 10 years of the forecast compared to the first 10 years. (70 NH PUC at pp. 201, 202, 66 PUR4th at p. 383, 384.)

We now examine the real rate increases in Tables 1-5 which include an inflation factor of 5% to arrive at nominal prices.

Tables 6 & 9 deflate nominal rates in Tables 1-5 by an annual compound inflation rate of 5% and present a comparison of the real dollar increase with the nominal dollar increase. The forecasted rate levels in Table 1 in real dollars (Exhibit 99-A phase-in) show a gradual rise in rates increasing from 8 in 1984 to a maximum of 14 (an 84% increase over 1985) in 1993-1994 and decline through 2002. The rate levels in Table 7 (Exhibit 99-B, no phase-in) in real dollar terms increase from 8.23 in 1984 to 12-13 in 1987-1990 (67% increase) and then decline to an approximate 10 level in the time frame of 1993-1997 (30% increase over 1985) with a further decline to 9 between 1998 and 2003 (15-20% increase). Table 8 (Exhibit 124-D) shows an increase in real dollars from 8.23 to a rate level between 13 and 14 in the period 1987 to 1991 (70% increase), then declining to a level of 9 to 10 between 1994-2003 (30 to 30% [sic] increase). Table 9 shows the increase in per KWH in real terms compared to nominal dollars in Mr. Trawicki's Exhibits 119-M (Table 5) and 119-J (Table 4). Exhibit 119-M (Table 9) shows an increase from 8 in 1984 to 10 for the period 1987-1991. (25-30% increase) then declining to 9 in 1992-1994 (20% increase), and to 8 in 1995-2003. Mr. Trawicki's Exhibit 119M shows a real dollar per KWH increase of 1 (from 8 to 9), or a 10-15% increase through 1991.

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

TABLE 6

COST PER KWH IN NOMINAL AND REAL DOLLARS

PSNH EXHIBIT 99-A

PHASE-IN

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
1992
1993
1994
1995

1996
1997

1998
1999
2000

2001
2002
2003

(1) Calculated by deflating Nominal Dollars by an annual compound inflation rate of 5% (1984 = Year "0").

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's costs have different sensitivities to inflation.

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

TABLE 7

PSNH BASE-RS EXHIBIT 99-B
NO PHASE-IN

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
1992
1993
1994
1995

1996
1997
1998
1999
2000

2001
2002
2003

(1) Calculated by deflating Nominal Dollars by an annual compound inflation rate of 5% (1984 = Year "0").

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's have different sensitivities to inflation. Table p. 36 of m.s.

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

TABLE 8

1984 KD-NU-NR EXHIBIT 124-D

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
1992
1993
1994
1995

1996
1997
1998
1999
2000

2001
2002
2003

(1) Calculated by deflating Nominal Dollars by an annual compound inflation rate of 5% (1984 = Year "0").

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's costs have different sensitivities to inflation.

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

TABLE 9

COST PER KWH IN NOMINAL AND REAL DOLLARS

TRAWICKI EXHIBIT 119-J

TRAWICKI EXHIBIT 119-M

Year

1983
1984
1985

1986
1987
1988
1989
1990

1991
 1992
 1993
 1994
 1995

 1996
 1997
 1998
 1999
 2000

(1) Calculated by deflating Nominal Dollars by an annual compound inflation rate of 5% (1984 = Year "0").

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's costs have different sensitivities to inflation.

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III. The Effect of Rates on Order 17,558

The reasonably probable range of rates found above are higher both in real and nominal terms than present PSNH rates. The range is consistent with the findings and conclusions of Order 17,558 and, accordingly, we conclude that our findings above do not affect the validity of the Commission's conclusions stated in that Order. The basis of our analysis is the definition of reasonable rates in a regulatory context.

Reasonable rates have been defined as those rates " ... 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. Thus, a probabilistic determination of whether the rates will be reasonable based on the present record must go further than a quantification of the percentage increases over current rate schedules. Rather, the inquiry must be directed to resolving the issues of:

- 1) whether there is a need for the power (i.e., whether a new plant will be used and useful);
- 2) whether the proposed plant is the least cost means of meeting that need under the appropriate incremental cost standard;
- 3) whether all or a part of the costs of the plant were prudently incurred; and
- 4) whether the return on the cost of the property will be reasonable.

The findings and conclusions in Order 17,558, based on the substantial evidence of record in this proceeding, are sufficient to satisfy on a probabilistic basis issues 1, 2, and 4 above. The third issue — whether all or a part of the cost of investment was prudently incurred — was not an issue in this finance proceeding, *Re Public Service Co. of New Hampshire*, 122 NH 1062, 51 PUR4th 298, 454 A.2d 435 (1982), and thus the record will not support a probabilistic assessment of what costs, if any, will be excluded from rate base because they were imprudently incurred. The Court recognized that such a determination must be made in a subsequent proceeding when it stated "... rates may not be determined specifically and finally until the commission has made a comprehensive prudence determination ..." Order of October 30, 1985 at 1. We shall now address the assessment of the remaining issues carried out in Order 17,558

based on substantial evidence of record that allow us to make a probabilistic determination that the rates to support Seabrook will be reasonable, subject to a prudence review in a subsequent rate proceeding.

A. Need For Power

In Order 17,558, we found that Seabrook I is required to serve the public interest of New Hampshire consumers. (70 NH PUC at p. 211, 66 PUR4th at p. 391.

Order 17,558 contained an extensive analysis of the need for power. (70 NH PUC at pp. 195-213, 66 PUR4th at pp. 377-394.) We examined PSNH's capacity requirements through the study period by first defining the demand for electricity and then evaluating the supply alternatives for meeting that

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demand.

²⁽³⁶⁰⁾ After an evaluation of all record evidence, we accepted the PSNH 1984 load forecast (Exh. 31) as a suitable basis for determining demand in this proceeding (70 NH PUC at pp. 197, 198, 213, 66 PUR4th at pp. 380, 393, 394) because reasonable assumptions (including price elasticity assumptions) were analyzed under an up-to-date methodology. (70 NH PUC at pp. 195-197, 66 PUR4th at pp. 378, 379.) Further, we subjected the 1984 load forecast to various sensitivity analyses to determine how that forecast is affected by changes in certain key assumptions. See e.g., updated information in PSNH 1985 load forecast (Exhibit 130) which indicates that, if anything, the assumptions in the 1984 load forecast are conservative. See also, 70 NH PUC at pp. 197, 198, 66 PUR4th at p. 380 (Peak load growth in 1984 was 5.73% higher than forecasted). After determining PSNH's probable load requirements, we turned to an evaluation of PSNH's existing and planned capacity to determine whether it is sufficient to meet the projected demand. We found based on substantial evidence that in the absence of further capacity additions, PSNH will suffer a capacity deficiency within the next 10 years. See e.g., Exh. 67; 70 NH PUC at 207-210, 66 PUR4th at pp. 388, 389. Thus, substantial evidence in this proceeding compelled a finding that PSNH needs additional capacity. In the context of projecting future rates, the need for power findings form the basis for our confidence that Seabrook I is a necessary capacity addition and will be used and useful in the service of the public.

B. Supply Alternatives

Once we determine that additional supply is needed, we must go on to evaluate the alternatives available for meeting the probable demand. In this proceeding, we evaluated both the Seabrook completion alternative and the Seabrook cancellation alternatives from two interrelated perspectives: 1) whether they have the requisite physical or engineering capability of meeting the demand requirements; and 2) whether they are the most reasonable alternatives from the standpoint of cost under an incremental cost standard. Under both tests, substantial evidence lead us to find that Seabrook completion is the best alternative for meeting PSNH's capacity requirements. With respect to the first test (engineering), we found that Seabrook will provide

PSNH with 409 MW of safe reliable baseload capacity. Substantial evidence supported our determination that the alternatives of small power producers or cogenerators, Canadian energy and conservation do not compare favorably with Seabrook in terms of their ability to provide the requisite amount of baseload capacity. See e.g., 70 NH PUC at pp. 208-213, 66 PUR4th at pp. 389-394. With respect to the second test (economics), we initially defined the probable cost of the completion alternatives. See e.g., 70 NH PUC at pp. 219-223, 66 PUR4th at pp. 399-402 (cost and schedule); 70 NH PUC at pp. 223, 224, 66 PUR4th at pp. 402, 403 (capital additions); 70 NH PUC at pp. 224-226, 66 PUR4th at pp. 403-405 (capacity or availability factor); 70 NH PUC at pp.

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226-228, 66 PUR4th at pp. 405-406 (operating costs); and 70 NH PUC at pp. 228, 229, 66 PUR4th at pp. 406-407, (plant life). We then compared those Seabrook costs to the cost of the alternatives — including the Staszowski and Rosen cancellation generation expansion plans (Exhs. 4 and 46 respectively) (70 NH PUC at pp. 231-234, 66 PUR4th at pp. 409-412), cogeneration (70 NH PUC at pp. 234, 66 PUR4th at p. 412), and conservation (70 NH PUC at pp. 234, 235, 66 PUR4th at pp. 412, 413) — and found that Seabrook is the least cost alternative in all cases. The results under both the engineering and economic tests were subjected to sensitivity analysis to determine the effect of pessimistic assumptions on the result of the evaluation. See e.g., 70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409 (discount rate at higher end of range) and 70 NH PUC at pp. 231-234, 66 PUR4th at pp. 409-412 detailing Mr. Staszowski's 64 Net Present Value scenarios ranging from PSNH base case assumptions to utilization of the most pessimistic assumptions pertaining to factors such as Seabrook cost and availability, discount rates and loss of UNITIL. While the magnitude of Seabrook's overall benefits did change under the sensitivity assumptions, the end result was the same. (Id. 70 NH PUC at pp. 231-234, 66 PUR4th at pp. 409-412.) Accordingly, we concluded that Seabrook I is the least cost reliable means of meeting PSNH's supply requirements. (70 NH PUC at pp. 235, 66 PUR4th at p. 413.)

C. Prudent Investment

As noted above, we did not in this proceeding engage in an assessment of how much, if any, of PSNH's investment in Seabrook I was or will be prudently incurred. We do not believe that such an assessment may be made until the plant is completed. Thus, the rates at the high end of the range all assume that 100% of PSNH's Seabrook costs were prudently incurred. This is an appropriate assumption because it defines ratepayer exposure under reasonably probable assumptions. As noted, the low end of the range is based on the assumption that any rate base exclusions would not be inconsistent with PSNH's financial survival. Thus, if events bear out all of the assumptions found to have been reasonable by the Commission, it is the issue of prudence that will determine precisely where rates will be set within the reasonably probable range found herein.

D. Capital Costs

As the Court noted in its Order of October 30, 1985, the reasonably probable range of rates must be sufficient "... to assure the company a lawful return on investment." A critical element of

this analysis is the capital structure and the rate of return assumed in the rate scenarios. We recognize that this is an area of uncertainty because returns established in a rate case are forward looking judgments based on findings about contemporary circumstances in capital markets. *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). Nevertheless, in this proceeding, we examined the assumptions used to determine both the capital structure and the rate of return and we found them to be within reasonable ranges, given the limitations on available data. The capitalization ratios in the scenarios selected herein

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were identified and reproduced in Order 17,558 (70 NH PUC at p. 244, 66 PUR4th at p. 422.) Those capitalization ratios were found to be within a zone of reasonableness for prescribing rates. (70 NH PUC at pp. 243-246, 66 PUR4th at pp. 421-423.) The cost of capital was also identified and found to be within a reasonable range on the basis of substantial evidence. (*Id.*, 70 NH PUC at pp. 243-246, 66 PUR4th at pp. 421-423.) See also, 70 NH PUC at p. 229, 66 PUR4th at pp. 407, 408 citing the evidence of witnesses Trawicki, Plett, and Rosen. Thus, we have found on the basis of the present record that the return assumptions utilized in determining prospective rate levels are within a range of reasonableness and will allow the Company a lawful return on its investment.

IV. CONCLUSION

Pursuant to the Court's Order of October 30, 1985 we have herein set forth, based on the present record, our specific findings, expressed in dollars and percentages of existing rates, of the reasonably probable range within which actual customer rates will be set if Seabrook I is completed. We have also determined, for the reasons set forth above, that the specific rate findings have no effect whatsoever on the validity of the conclusions stated in Order 17,558.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the findings and conclusions set forth in the foregoing Report, be, and hereby are, adopted; and it is

FURTHER ORDERED, that this Order be filed with the New Hampshire Supreme Court forthwith.

By order of the Public Utilities Commission of New Hampshire this eighth day of November, 1985.

Separate Opinion of Commissioner Aeschliman

In reviewing the Court Order of October 30, 1985, I believe the Court intended that all of the Commissioners reconsider the Commission's Report and Order dated April 18, 1985 on remand. Following the remand review the Court directed the Commission to issue a supplemental report or reports. Since there continues to be substantial disagreement on the remand issue and since I believe my original opinion requires additional explanation in light of the remand, I have

prepared this report.

The Court indicates that the Commission "must address the effect on the Company's future rates of this and any further investment" (emphasis added) in deciding whether the proposed financing is consistent with the public good. I did perform this review and did make the following findings (1) that full cost rate support from the level of investment approved in this financing was not consistent with the public good; (2) that the Commission could adopt ratemaking standards that would ensure that the Company's future rates would be consistent with the public good and at the same time provide a lawful return on the Company's prudent, used and useful investment; and (3) that significant amounts of additional debt beyond the level approved in this financing could not be supported with reasonable rates. However, my decision

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does not specifically address the questions raised by the Court.

Since the kind of analysis that I used and I believe is necessary in determining whether the level of rates is reasonable is significantly different from the analysis of the majority; and since that difference goes to the crux of the remand issue, I believe it is important for me to address this point.

The following discussion explains why I think some standard is required for reviewing the reasonableness of rates; why I believe the standard I adopted is appropriate; how I evaluated the full cost rates in relation to that standard; how I determined that the rate-making standards I adopted would bring the full cost rates into a range of reasonableness; and how I determined that these rate-making standards would not bring the full cost rates into a range of reasonableness if further debt were required.

A Standard is required for determining the reasonableness of rates

Because any given level of rates is only reasonable or unreasonable relative to some standard of comparison, I believe the Commission must adopt some standard for reviewing the reasonableness of rates in order to satisfy the requirements of the financing statute as interpreted by the Court. While the Commission has discretion in determining an appropriate standard for review, it must adopt some standard and reasonably justify the standard it chooses.

Furthermore, I believe that the standard adopted must be more than simply a per se standard. It is not enough to say, as the majority decision does in effect, that rates based upon a future determination of prudent investment are reasonable per se. If such a finding were sufficient, then there would be no need to review the reasonableness of future rates in a financing case. Nor is it sufficient to find that rates are reasonable per se if they do not rise in real (inflation adjusted) or nominal terms by some percentage. Rates are only reasonable relative to comparable costs in the same market during the same period of time. Per se standards that have no market or time context simply are not meaningful.

It is also not sufficient to say that since you have found that the load forecast is reasonable, and that the plant is needed, that the level of rates that results is reasonable per se. It is necessary to test the results — the level of rates that result from a given level of investment — against an objective standard to see if in fact the results make any sense. This is really a process of

validating your economic analysis and if you cannot validate that analysis against an objective standard, it should tell you that there is something wrong with your economic analysis. The reason I have confidence in my economic analysis (Re Public Service Co. of New Hampshire, 70 NH PUC at pp. 294298, 66 PUR4th at pp. 464-468) is that when I tested the results — the level of rates — against an objective standard I came to the same conclusion, that the value of the investment at the higher plant cost was marginal.

A Market Context is Required

First, there must be a geographical context to capture the market conditions under which PSNH is operating. One can readily see that a comparison of PSNH's rates with rates in

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California, for example, is not very meaningful. Second, there must be an appropriate product context. Comparisons of rates with the general rate of inflation, for example, give some useful information about real price increases. However, that information is not sufficient by itself. What one really needs to know is how PSNH's price increases in real terms compare with electric rates of other comparable utilities and with other energy substitutes, not how the prices compare with the prices of autos and meat, for example.

A Time Context is Required

A time context is equally important for determining the reasonableness of rates. Rates may rise rapidly in nominal and/or real terms in one period of time and be reasonable, whereas a comparable increase in another time period would not be reasonable. For example, electric rates rose significantly in both nominal and real terms during the 1970's because of very rapid increases in oil prices and a high general rate of inflation. These factors affected all the NEPOOL utilities in a similar fashion. Conversely, in the 1960's electric rates were declining in real terms because of stable fuel prices and the realization of increasing economies of scale from large generating plants. Clearly, the real price increases that were reasonable in the 1970's would not have been reasonable in the 1960's.

The factors affecting prices during the 1980's and 1990's are different than those in either of the earlier periods. General inflation is expected to be significantly lower than the 1970's; the dependence of NEPOOL utilities on oil is lower than in prior periods; oil and other fuels used to generate electricity are experiencing relative price stability or declines in real terms; and there are no longer price reductions from improved economies of scale. In addition, the NEPOOL utilities will not be affected similarly by Seabrook, so that there will be greater differences in rates than experienced in prior periods. Because of the size of PSNH's Seabrook share relative to the size of the Company, PSNH will be affected much more by Seabrook rate shock than other NEPOOL utilities. Thus, historical comparisons are not a valid basis for determining the reasonableness of rates.

The NEPOOL Standard is Appropriate

The average projected NEPOOL rates do provide an appropriate standard for judging the reasonableness of rates, because this standard meets both the market and time context criteria. The NEPOOL standard is appropriate because it provides an objective norm of what other

utilities operating under similar conditions expect to charge in rates. The NEPOOL standard also provides a measure for judging market viability, because PSNH must sell excess capacity in the NEPOOL market and because large differentials in rates can be expected to have locational effects. (See 70 NH PUC at pp. 287-291, 66 PUR4th at pp. 456-461.) In addition, the projected NEPOOL rates on a composite basis capture to some extent the costs of alternative supply and conservation options used by other utilities which may also be available in PSNH's own franchise territory.

1(361)

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Applying the NEPOOL standard requires a determination of a level of variance from the standard that is unreasonable. I judged the differentials to be unreasonable if they exceeded 4 to 5/KWH. This judgment was based partly on Mr. Palast's testimony that a number of businesses could not sustain a rate differential of that magnitude or greater,

2(362) and partly on my own judgment that disparities reaching 50% or greater would trigger significant demand responses and would raise serious questions about the validity of the financial results in subsequent forecast years.

3(363) It should also be pointed out that what a disparity analysis does is compare real price differences. When the NEPOOL base is in the 10 to 12/KWH range, a disparity of 4 to 5/KWH is equivalent to a real price difference of 40% to 50%.

Applying the NEPOOL standard to full cost rates

The amount of financing approved in this case, \$525 million, will finance PSNH's share of \$1 billion additional Seabrook investment excluding AFUDC measured from January 1, 1985. I estimate that this equates to a total plant cost of about \$5.3 billion.

4(364) Although the Joint Owners no longer require prefinancing to this level and PSNH anticipates raising only \$345 million, the amount of financing authorized by the Commission was not reduced. Therefore, even though the Commission majority may think a lower level of investment is probable, they have authorized investment up to this amount, and it is necessary under the Court's direction to look at the level of rates required to support this amount of investment.

It is also appropriate to look at the lower level of rates required to support the amount of additional investment anticipated by PSNH to form a range of rates that may reasonably result from the approval of this financing. The Company's estimated additional investment is its share of \$882 million excluding AFUDC measured from August 1984. This equates to a total plant cost of about \$4.6 billion.

The following table provides the level of full cost rate support I judge to be probable for each of these levels of Seabrook investment. The figures are based on financial scenarios which use

other assumptions I consider to be reasonable. The two scenarios use the 1985 load forecast and assume no phase-in of rates. This table and subsequent tables are confined to five years for simplicity because this is the critical period in the rate shock scenarios when the differentials are the highest.

5(365)

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

Table 1

Full Cost Rates /KWH and NEPOOL Rates

6(366)

7(367),

8(368)

9(369)

1987

1988

1989

1990

1991

The rate differentials obtained by subtracting the NEPOOL Rates from the rates for each of the PSNH forecasts is summarized below in Table 2.

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

Table 2

Full Cost Differential from NEPOOL Rates /KWH

\$882 Million

Cost to Go

4.6 Billion

Plant Cost

1987

1988

1989

1990

1991

Since these differentials exceeded the standard I had adopted, I judged them to be unreasonable.

Excess Capacity Adjustment Reduces the Differentials and Establishes a Rate Ceiling

Then I estimated whether the rates could be lowered to a reasonable range by an excess capacity adjustment. There is no financial scenario which shows the effect of an excess capacity adjustment as set forth in my prior opinion. However, since the adjustment to rate base without UNITIL would be of a magnitude of \$500 million (70 NH PUC at pp. 303-305, 66 PUR4th at pp. 473, 474) it is logical to postulate that this adjustment would have roughly half the effect of the Trawicki \$1 billion exclusion. The technical appendix explains in detail how I estimated the effect of the Trawicki exclusion and then the effect of an excess capacity adjustment to obtain the following results.

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

Table 3

Maximum Rates/Excess Capacity
Adjustment /KWH

\$882 Million
Cost to Go
\$4.6 Billion
Plant Cost

1987
1988
1989
1990
1991

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Subtracting the NEPOOL rates from the maximum rates following an excess capacity adjustment yields the following differentials.

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

Table 4

NEPOOL Differential Following Excess
Capacity Adjustment /KWH

\$882 Million
Cost to Go
4.6 Billion
Plant Cost

1987
1988
1989
1990
1991

The differentials for the higher plant cost scenario reach about the maximum differential from the NEPOOL rates to meet the criteria for reasonableness under the standard I adopted.

Of course, these maximum probable rates could be reduced further following a prudency review. The lowest range of probable rates without rate phase-in can be estimated by subtracting the estimated full effect of the Trawicki rate base exclusion from the full cost rates. These results are summarized below.

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

Table 6

Lowest Probable Rates /KWH

\$882 Million
Cost to Go
4.6 Billion
Plant Cost

1987
1988

10(370)

1989

1990

1991

It is difficult to estimate the degree to which the lower projected rates could be modified by a rate phase-in. Because the Company is not meeting its coverage ratios with the full exclusion (70 NH PUC at pp. 290-292, 66 PUR4th at p. 462), it is unlikely that PSNH could raise significant debt to finance its cash requirements during a rate phase-in. At higher levels of recovery, the Company's financial condition might allow for some phase-in.

The kind of analysis I have presented also led me to conclude that if Seabrook could not be completed within the amount of financing provided that the Company could not support significant additions in debt consistent with reasonable rates. One can get a sense for this by looking at the prices in Exhibit 174, Request 10. (70 NH PUC at p. 289, 66 PUR4th at p. 460.) Rates in the 18-21 range for the years 1988-1991 are just too high to bring into a range of reasonableness, particularly in view of the fact that with additional debt less can be excluded and still enable the Company to pay its commitments.¹¹⁽³⁷¹⁾ In fact, these rates would be significantly higher without the tax effect of the Seabrook 2 writeoff. The various affects of Seabrook 2 exclusion and write-off are explained

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in the appendix. Since this analysis led me to conclude that I would not approve additional financing based upon the evidence in this record, I developed further conditions and restrictions to protect ratepayers in the event that PSNH could not complete Seabrook within the level of this financing. (70 NH PUC at pp. 305-308, 66 PUR4th at pp. 474-478.)

I have also prepared some tables to show percentage comparisons in accordance with the Court's instruction. Tables 7 and 8 provide percentage comparisons using the lowest rates I have projected and the highest rates under the ceiling I have set. Table 9 provides percent change data for the NEPOOL rates and Table 10 provides percent change data for the Trawicki rate base exclusion case. One can see that the percent changes from 1985 to 1991 for the PSNH rates of 89% and 99% respectively in nominal dollars and of 41% and 48% in real dollars, are considerably higher than the NEPOOL rate change of 40% in nominal dollars and 4.6% in real dollars for the same period. However, if I had been able to estimate the PSNH rates over the

whole period to 1999, the percent increases for the period 1991 to 1999 would be smaller than the NEPOOL increases.

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

TABLE 7

\$882 Million
Cost to Go
\$4.6 Billion
Plant Cost
Year

1984
1985
1986
1987
1988
1989
1990
1991

AVERAGE

Nominal
Percent Change 1985 to 1991:

(1) Assuming an annual compound inflation rate of 5%.

Source: Table 6

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

TABLE 8

\$1.0 Billion
Cost to Go
\$4.9 Billion
Plant Cost
Year

1984
1985
1986
1987

1988
1989
1990
1991

AVERAGE

Nominal
Percent Change 1985 to 1991:

(1) Assuming an annual compound inflation rate of 5%.

Source: Table 3

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

TABLE 9

Percent Change
NEPOOL

Year

1984
 1985
 1986
 1987
 1988
 1989
 1990
 1991
 1992
 1993
 1994
 1995
 1996
 1997
 1998
 1999

AVERAGE

Nominal \$

Percent Change 1985 to 1999:
 Percent Change 1985 to 1991:
 Percent Change 1991 to 1999:

(1) Assuming an annual compound inflation rate of 5%.

Source: Exhibit 3.

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

TABLE 10

Trawicki
 Rate Base
 Year

1984
 1985
 1986
 1987
 1988
 1989
 1990
 1991
 1992
 1993
 1994
 1995
 1996
 1997
 1998
 1999
 2000

AVERAGE

Nominal \$

Percent Change 1985 to 1999:
 Percent Change 1985 to 1991:
 Percent Change 1991 to 1999:

(1) Assuming an annual compound inflation rate of 5%.

Source: Exhibit 119

I have included the Trawicki rate base exclusion data in Table 10 to demonstrate the pattern of rate change over the forecast period. The actual Trawicki projected rates are too low because they are based on inclusion of the UNITIL load and because they are based on Seabrook availability of 72% rather than the 60% adopted by the Commission. (Exhibit 95 at 13.) However, they show that the increases that would be expected without any rate phase-in would be much smaller in the 1991-1999 time frame. This pattern would also be true for the excess capacity adjusted forecast because excess capacity continues to be very high until the end of this forecast period. (70 NH PUC at p. 296, 66 PUR4th at p. 466.) Consequently, I conclude that while the rates as projected are high in the earlier period, that the results for the forecast period as a whole would not be significantly higher than the NEPOOL forecast. However, I would not consider it valid to average huge differences over a 15 year period and come to a conclusion that the comparisons were reasonable without also looking at the differences within the period. The differences within that time period must also be reasonable as has already been discussed at length.

In summary, the major difference between my opinion and the majority opinion is that my opinion sets a rate ceiling estimated in Table 3 based upon a standard for evaluating the

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reasonableness of rates and an analysis of the financial forecasts.

Technical Appendix

Seabrook 2 Recovery

There was no financial forecast for the \$1 billion plant cost that did not also include Seabrook 2 recovery. Although I think it is important to consider Seabrook 2 recovery as a sensitivity in terms of ratepayer exposure, recovery of these costs must be excluded in determining reasonably probable rates because the Commission must assume the validity of the present law. The effect of Seabrook 2 can be isolated by comparing two other scenarios that have identical assumptions except for that assumption. Exhibit 98 includes 8 scenarios portraying different Seabrook 2 treatments. I compared Attachment VI which estimated full recovery with Attachment II which estimated no recovery and no write off. (Exhibit 98 Attachment VI at 18 minus Attachment II at 18.) This shows that recovery of Seabrook 2 costs increases rates as follows: 1986 — .19/KWH; 1987 — 1.56/KWH; 1988 — 1.76/KWH; 1989 — 1.26/KWH; 1990 — .80/KWH; 1991 — .87/KWH. I have adjusted the rates in Exhibit 167 Response 4, Attachment E at 20 by subtracting these amounts to arrive at the estimated rates in Table 1. It is significant to note that had I included the tax effect of a write-off in addition to subtracting the recovery effect alone the amounts deducted would be higher. This can be shown by comparing Exhibit 98 Attachment VI at 18 with Attachment IV at 18. Subtracting these two forecasts yields the following results: 1986 — .16/KWH; 1987 — 1.73/KWH; 1988 — 3.76/KWH; 1989 — 2.65/KWH; 1990 — .48/KWH; 1991 — .25/KWH. There are particularly large differences in 1987 and 1988. Because there is too much uncertainty about the timing of a writeoff and about

whether the tax benefit of the write-off would be passed on to ratepayers, I preferred to use the more conservative numbers.

Full Rate Base Exclusion

The relative impact of Mr. Trawicki's \$1 billion rate base exclusion also can be isolated by comparing two financial forecasts which are identical except for this assumption. This can be done by comparing Trawicki's case A (base case, rate shock) with case J (base case, rate shock, write-off). Exhibit 119. This yields the following results for the relevant years: 1987 — 2.2/KWH; 1988 — 3.3/KWH; 1989 — 2.7/KWH; 1990 — 1.9/KWH; 1991 — 1.3/KWH.

Excess Capacity Adjustment

I estimated the impact of the excess capacity adjustment to be roughly onehalf of the Trawicki rate base exclusion, which produced the following results for the relevant years: 1987 — 1.1/KWH; 1988 — 1.6/KWH; 1989 — 1.3/KWH; 1990 — .9/KWH; 1991 — .6/KWH. I conclude that these numbers are of the right order of magnitude because I have estimated the rate base exclusion without UNITIL to be about \$500 million. (70 NH PUC at p. 303, 66 PUR4th at p. 473.) I am aware that there are other differences that would result, but the major differences are offsetting. A Seabrook writeoff scenario would include lower

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depreciation than an excess capacity adjusted forecast. However, the excess capacity adjusted forecast would have a lower rate of return because the equity return component would be excluded for the portion of the Seabrook excess capacity that was still included in rate base, i.e., the cash costs and debt AFUDC. The one other difference that is not offset is the tax effect of the write-off, and consequently, the excess capacity rates would be understated when the tax write-off occurs. The effect of the write-off can be seen in 1988. While one would prefer to have an actual forecast, I think it is fair to conclude that the estimated excess capacity adjusted results are sufficiently valid for the purposes of this review.

FOOTNOTES

¹The financing of the project through completion of construction is now estimated at \$340 Million rather than \$525 Million. (See 70 NH PUC at p. 806.) As of August 1, 1985, the estimated construction cost to go was \$600 Million. (See 70 NH PUC at p. 804 n. 9.)

²The conservation alternative was evaluated in both the demand and the supply analysis because conservation affects demand through price elasticity and because a conservation program was offered as a supply alternative by Witness Lovins. This is an example of the complex interrelationship between the demand and the supply analysis which we recognized in the course of our evaluation in Order 17,558.

Separate Opinion of
Commissioner Aeschliman

¹For example, the Commission knows that large numbers of small power producers have filed for long term rates at the 10.5/KWH rate set in 1984. (Re Public Service Co. of New

Hampshire, 69 NH PUC 352, 61 PUR4th 132 [1984].)

²70 NH PUC at pp. 290, 291, 66 PUR4th at p. 460.

³See, 70 NH PUC at pp. 285-291, 66 PUR4th at pp. 456-461.

⁴70 NH PUC at p. 296, 66 PUR4th at p. 466.

⁵As explained in my prior opinion, the large differentials in the phase-in scenarios come in the later years 1991-1997, and the differentials are even larger because of the carrying costs during the rate phase-in. See 70 NH PUC at pp. 288-294, 66 PUR4th at pp. 458-464.

⁶Exhibit 95, Schedule 13 and Exhibit 119.

⁷There is some problem with the high cost scenario because it uses a lower total plant cost than I think is appropriate, i.e., \$4.9 billion vs. \$5.3 billion. (The \$4.9 billion figure is cited in Exhibit 167, staff data request set 5, response 4 at 2.) This occurs because the Company in these financial forecasts uses a plant completion date of October 31, 1986. Consequently, although the plant costs at the \$1 Billion to go level are included, AFUDC consistent with a longer schedule is not. This is a problem, but I do not think it is so significant as to invalidate the results of my analysis, because under the excess capacity adjustment the additional equity AFUDC would be excluded from rate base.

⁸Exhibit 167E Response 4, Attachment E at 20, assumes \$1 billion cost to go, No UNITIL, Unit 2 recovery and 60% capacity factor. I have adjusted the results to exclude Unit 2 recovery as explained in the appendix.

⁹Exhibit 126 at 20, assumes \$882 million cost to go, No UNITIL, No Unit 2 recovery, 60% capacity factor.

¹⁰The apparent reason that the anticipated rates in 1988 are lower than 1987 is the tax effect of a write-off in that year.

¹¹Under the Trawicki pessimistic case where a higher amount of financing is used, the possible exclusion drops to \$800 million. (Exhibit 95 at 31, and Schedule 10)

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NH.PUC*11/12/85*[61239]*70 NH PUC 922*White Mountain Profile Motel

[Go to End of 61239]

70 NH PUC 922

Re White Mountain Profile Motel

DX 84-6, Supplemental
Order No. 17,940

New Hampshire Public Utilities Commission

November 12, 1985

ORDER requiring a railroad company to appear and show cause as to the reasonableness of a

certain billing.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the White Mountain Profile Motel by letter filed on November 8, 1983, petitioned the Commission to investigate whether an annual bill to the White Mountain Profile Motel from the Boston and Maine Railroad (Railroad) in the amount of \$200, representing a 4,000% increase over the prior years billings of five dollars is justified; and

WHEREAS, in Order No. 16,864 the Commission ordered the Railroad to respond to the complaint in writing no later than February 15, 1984 explaining in detail why, in its opinion, the \$200 charge described above is just, reasonable and lawful; and

WHEREAS, the Commission has no record of the Railroad having complied with said Order; it is

ORDERED, that the Railroad appear before the Commission at 2:00 p.m. on December 19, 1985 to show cause why the Commission should not invoke the penalties and provisions of RSA 374:41, RSA 365:40 et seq. and RSA 374:17.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1985.

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NH.PUC*11/12/85*[61240]*70 NH PUC 923*Gunstock Glen Water Company

[Go to End of 61240]

70 NH PUC 923

Re Gunstock Glen Water Company

DF 85-311, Order No. 17,941

New Hampshire Public Utilities Commission

November 12, 1985

ORDER imposing fine on a water utility for failure to file an annual report.

By the COMMISSION:

ORDER

WHEREAS, RSA 374:5 requires every public utility to file with the Commission reports containing facts and statistics as required by the Commission; and

WHEREAS, Commission Rules No. Puc 607.06 and 609.05 require, inter alia, public utilities to file annual reports containing specific facts and statistics with the Commission; and

WHEREAS, RSA 374:17 provides, inter alia, that any public utility which does not file said

reports with the Commission at the time specified by the Commission shall forfeit the sum of \$100 per day unless excused by the Commission; and

WHEREAS, Gunstock Glen Water Co. did not file an F-16 Annual Report for the year ended December 31, 1984 by March 31, 1985 as required by the above-stated Commission rules; and

WHEREAS, on September 3, 1985, the Commission issued an Order of Notice opening this docket for the purpose of determining whether Gunstock Glen Water Co. should be fined in an amount not to exceed \$100 per day; and

WHEREAS, the Order of Notice scheduled a hearing for September 23, 1985 for the purpose of allowing Gunstock Glen Water Co. an opportunity to show cause why it should not be fined \$100 per day for its failure to file the required annual report; and

WHEREAS, Gunstock Glen Water Co. failed to appear at said hearing; it is hereby

ORDERED, that Gunstock Glen Water Company shall forfeit \$100.00 to the Commission by Thursday, December 12, 1985 pursuant to RSA 374:17 for its failure to file the above-described annual report; and it is

FURTHER ORDERED, that Gunstock Glen Water Co. shall forfeit \$100.00 to the Commission each week thereafter until the report is filed and/or the Commission issues a further Order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1985.

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NH.PUC*11/12/85*[61241]*70 NH PUC 924*Public Service Company of New Hampshire

[Go to End of 61241]

70 NH PUC 924

Re Public Service Company of New Hampshire

DR 82-333, Part B,
18th Supplemental
Order No. 17,942

New Hampshire Public Utilities Commission

November 12, 1985

ORDER requiring an electric utility to provide the commission with a "key" that would permit identification of billing data and usage patterns by customers.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Public Service Company of New Hampshire (hereinafter "PSNH" or "the Company") has agreed, in accord with Article V of the Settlement Agreement in the

above-captioned proceeding, to establish time-of-use rates for its largest general service customers; and

WHEREAS, the Company has agreed to provide the Commission billing data of large general service customers without identifying specific customers; and

WHEREAS, the Staff of the New Hampshire Public Utilities Commission (hereinafter "the Commission") has, as part of its investigation of the rate restructuring, requested that PSNH specifically identify the proffered billing data by customer, which constitutes confidential and proprietary information, and

WHEREAS, the Commission recognizes that disclosure of comparative billing information and the usage patterns of large general service customers, identified by customer, would compromise the requirements of customer confidentiality as well as the Company's position as a provider of a competitive service, it is

ORDERED, that PSNH shall, in order to permit the Commission to examine the effect of time-of-use rates on particular customers, provide the Commission a key designed to identify, from previously supplied but unlabeled information, the individual usage patterns and billing data of the 91 large general service customers proposed to be switched over to time-of-use rates, and it is

FURTHER ORDERED, unless and until otherwise ordered, the key, which

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permits identification of billing data and usage patterns by customer, is to be viewed only by the Commission and its Staff and shall not be copied or reproduced or further disseminated, nor shall it become a part of the public records of the Commission, and it is

FURTHER ORDERED, that upon completion of this proceeding, or pursuant to other pertinent order of the Commission, the documents subject to this Protective Order shall be returned forthwith to PSNH.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1985.

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NH.PUC*11/12/85*[61242]*70 NH PUC 925*Remedial Resource Recovery

[Go to End of 61242]

70 NH PUC 925

Re Remedial Resource Recovery

DR 85-342, Order No. 17,944

New Hampshire Public Utilities Commission

November 12, 1985

ORDER nisi approving petition of a small power producer for approval of its interconnection agreement and long term rate filing.

By the COMMISSION:

ORDER

WHEREAS, on October 3, 1985, Remedial Resource Recovery (RRR) filed a long term rate petition; and

WHEREAS, the petition requested inter alia a twenty-year rate order; and

WHEREAS the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to RRR's Petition of a Twenty Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 131, 69 PUR4th 365 (1985); it is therefore,

ORDERED NISI, that RRR's Petition for a Twenty-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet are approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order NISI shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 1985.

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NH.PUC*11/12/85*[61243]*70 NH PUC 926*New England Telephone and Telegraph Company

[Go to End of 61243]

70 NH PUC 926

Re New England Telephone and Telegraph Company

DR 84-95, Supplemental
Order No. 17,945

New Hampshire Public Utilities Commission

November 12, 1985

ORDER amending restrictions on unlimited business telephone service.

Discrimination, § 158 — Rates — Telephone business service — Grandfathered rates.

On rehearing of its order that mandated the introduction of measured service for all new business customers and restricted unlimited business telephone service to those customers that were previously authorized such service, the commission was persuaded by witnesses who testified that the advantages offered by a grandfathered rate structure were offset by the inequities that result when similar customers are given different telephone rates; accordingly, the commission ordered that all present and future business service customers be given the option of selecting, prior to July 1, 1986, either unlimited business service or measured business service; effective July 1, 1986, all customers who are then receiving unlimited business service will be transferred to measured business service rates.

By the COMMISSION:

REPORT

On September 4, 1985, the Commission issued Supplemental Order No. 17,837 (70 NH PUC 752) reopening, for the purpose of reconsideration, that portion of Docket DR 84-95 relative to measured business service for certain customers.

DR 84-95 was opened upon petition of New England Telephone and Telegraph Company on May 16, 1984, for the purpose of considering NET's proposed rate revisions to its tariffs No. 75 and 76 which would produce an increase in intrastate revenues of approximately \$33.5 million. Measured business service for all new customers was one of the issues considered in that proceeding. On that issue, the Commission found, in its Order No. 17,639 (70 NH PUC 505):

Further ordered, that unlimited business service be, and hereby is, restricted to those customers currently authorized such service in their present locations, new applicants for business services to be served only on a measured basis.

The company was required to give a one time publication of a summary of the impact of the Commission's action

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in the Union Leader, and to provide each subscriber with a notice of the Commission's order via a bill insert accompanying the first billing under the approved new permanent rates. The Commission ordered an annual increase in intrastate revenue of \$21.46 million to become effective with all bills rendered on or after June 15, 1985.

The effect of the Commission's order was, inter alia, to require all new business customers to take service under measured business rates only. Such customers had previously been given an option of either measured business service or unlimited business service. Existing customers were allowed to retain their unlimited business service rates at their existing location and to expand their facilities at their present locations. Existing customers who expanded into new locations were restricted to measured business service.

Customer reaction to the decision initiated a motion for a rehearing. Accordingly, the Commission held a further hearing on the matter on October 16, 1985, on the following issues:

1. Whether that portion of Order No. 17,639 relative to measured business service should be withdrawn.
2. Whether it should be relaxed to allow all existing customers to continue at existing rates, even if they move or increase their equipment.
3. Whether the Order should remain in force.
4. Whether the grandfathering policy established in this docket should be rescinded or amended.

Testimony was received by New England Telephone Company, certain representatives of the business community, and Commission staff.

Mr. James T. McCracken, Jr., District Manager, New England Telephone Company, defended the company's "supersedure" procedures which lead to the grandfathering provisions, as a transition mechanism which would familiarize customers with the new measured rate structure and allow for advance planning. Rather than forcing a flash cut to an all measured environment, the company felt it was important to make the business community fully aware that unlimited service was being phased out. The filing gave those businesses with extensive local usage the opportunity to adjust their calling habits and plan for additional telecommunication funding in their budget process. Mr. McCracken did not oppose a modification of the Commission's order which would redefine the supersedure procedures to include existing New Hampshire business customers being allowed unlimited service at new locations, so long as the transition was complete within a specified time frame. He testified that the company is developing plans for an all measured business environment which could be implemented within twenty-one months.

Customers representing a variety of business interests testified against the grandfathering provision. Sue Methot, representing Hampton Beach Regal Inn, testified that the policy would cause innkeepers to terminate a current policy of calling other motels for vacancies when no vacancies existed at their own motels. Kevin Gronden testified to the impropriety of grandfathering on the basis that similar customers would be given different rate treatment simply because they were in business when the new ruling went into effect,

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and he supported a position which would make the increase affect everyone at the same time. Sandy Smith Domira testified that she was never advised of the measured service program and that a longer transition period was necessary. She concurred the competition should not have an unfair advantage on the basis of an existing site location. Sally Burpee estimated a 366% increase in her realty office telephone bill over competition and supported equal treatment of all similar customers. She also supported an optional program whereby customers could select either unlimited business service or measured business service. William Caulfield anticipated a five-fold increase in realty office telephone bills as a result of moving to a new location. Ed Helo, Jr. supported equal rates for equal businesses. Jim Hall, representing a telemarketing

organization, envisioned a ten-fold increase in business service and recommended that small users support the costs of high users. Roger Rice supported equal treatment for all similar customers and the elimination of the grandfathering policy.

The Commission's Chief Engineer, Bruce B. Ellsworth testified in favor of continuing the grandfathering custom on the basis that grandfathering is a tool which allows existing customers the time to prepare for a change in rates or service and, in this case, allows those business customers the opportunity to prepare succeeding budgets for measured business service and to re-evaluate and, if necessary, modify their existing telephone systems. He recommended that those customers who are currently protected by the order continue to be so protected into the immediate future. He also recommended that current unlimited business customers should be allowed to expand those businesses into other locations without losing the benefit of unlimited service. Finally, he recommended that unlimited business customers be allowed to expand their own systems without losing the benefit of unlimited service. He recommended that a specific time period be set for all the existing customers identified under the grandfather clause to be transferred to measured business service, and he suggested that twelve months from the date of the instant proceeding, or the date of a decision in a companion docket DR 85-182 relative to NET's rate structure, whichever comes first, be set as the date on which all business customers should be transferred.

COMMISSION ANALYSIS

Facts and circumstances surrounding the reopening of this docket do not alter the Commission's basic position regarding measured business service. Rather, it reaffirms the Commission's earlier conclusion that measured business is in the public interest by virtue of the fact that it most accurately assures that the costs for providing service to business customers are supported and paid by those customers who are most responsible for those costs. The testimony and exhibits presented by the company, intervenors, staff witnesses and the general public at the instant hearing, however, lead the Commission to conclude that a temporary revision to its Order No. 17,639 is in the public interest. The Commission authorized the grandfathering of existing customers for the reasons basically outlined by both the company and staff witnesses. Grandfathering is

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a rate making mechanism which allows a class of customers to retain an existing rate structure at a time when there is convincing evidence that a different rate structure is more equitable and in the larger public interest, but a period of time is necessary to make a reasonable transition. In some cases, grandfathered customers retain that existing type of service indefinitely into the future when it is demonstrated that normal attrition will ultimately cause the superseded structure to retire itself.

In the instant case, we are persuaded by the witnesses who made the effort to testify, that the advantages offered by a grandfathered rate structure are offset by the inequities which result when similar customers are given different — albeit temporarily different — telephone rates. Accordingly, we will order that from the date of this order until July 1, 1986, that all present and future business customers may select either unlimited business service or measured business

service at their own option, at rates published in the company's tariff. That is to say, those customers who qualified for, and were involuntarily assigned, to mandatory measured business service as a result of the Commission's Order No. 17,639, and who now wish to avail themselves of unlimited business service may, by contacting the New England Telephone Company, be transferred to unlimited business service at no charge. Those customers who currently have measured business service and wish to remain with that service may do so.

Those customers who were involuntarily assigned to mandatory measured business service may, until December 31, 1985, apply to the company for a recalculation of their bills, and may be entitled to a refund if it can be determined that the unlimited business service rate would have been lower than the rate charged under the approved tariff.

Effective upon bills rendered on or after July 1, 1986, all eligible business customers who are, at that time, served by unlimited business service rates shall be transferred to measured business service rates.

We will require that the New England Telephone Company file a plan with this Commission by February 1, 1986, which will assure compliance with this order and which will further assure a zero revenue impact resulting from the order. We will further direct the company to notify and explain to all its effected customers the provisions and impact of this decision.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the provision of Order No. 17,639 pertaining to unlimited business be, and hereby is rescinded, and it is

FURTHER ORDERED, that all present and future business customers may select either unlimited business service or measured business service at their option at rates published in the company's tariff, and it is

FURTHER ORDERED, that those customers who qualified and were involuntarily assigned the mandatory measured business service as a result of the Commission's Order No. 17,639 and who now wish to avail themselves of unlimited business service may by contacting the New England Telephone Company be transferred to unlimited business service at no charge, and it is

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FURTHER ORDERED, that those customers who were so involuntarily assigned may, until December 31, 1985, apply to the company for a recalculation of their bills and may be entitled to a refund if it can be determined that the unlimited business service rate would have been lower than the rates charged under the approved tariff, and it is

FURTHER ORDERED, that all eligible business customers who are served by unlimited business service rates shall be transferred to measured business service rates upon all bills rendered on or after July 1, 1986, and it is

FURTHER ORDERED, that the New England Telephone Company shall file a plan with this Commission by February 1, 1986, which will assure compliance with this order and which

further assure a zero revenue impact resulting from this order, and it is

FURTHER ORDERED, that the New England Telephone Company shall notify and explain to all affected customers the provisions and impact of this decision.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November 1985.

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NH.PUC*11/13/85*[61244]*70 NH PUC 930*New England Power Company

[Go to End of 61244]

70 NH PUC 930

Re New England Power Company

DF 85-320, Order No. 17,946

New Hampshire Public Utilities Commission

November 13, 1985

ORDER increasing the short term borrowing authority of an electric utility.

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Security Issues, § 120 — Restrictions — Short term borrowing authority — Maximum level — Construction financing — Water utility.

An electric utility's short term borrowing authority — i.e., the amount of short term securities it may issue without first obtaining commission approval — was increased to \$300 million; the utility had requested the increased borrowing authority in order to be prepared for contingencies and to increase its ability to finance its construction expenditures through short term debt pending resolution of questions regarding its long term financing plans.

By the COMMISSION:

REPORT

On September 6, 1985, New England Power Company (the company) filed a petition for authority, without first obtaining the approval of the Commission, from time to time, to issue and renew its notes, bonds, and other evidences of indebtedness payable in less than twelve 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 borrowing) not in excess of \$300 million dollars. This request represents an increase from the previous authorization of \$195 million, which was authorized by Order No. 16,909 (69 NH PUC 129) (DF

84-31) of this Commission.

At the hearing held on October 10, 1985, Robert H. McLaren, the assistant treasurer of New England Power testified that the Company needed the higher level of short term borrowing authority to maintain the flexibility to meet all of its financing requirements by issuing short term debt, on the assumption that it will not have access to funds from long term financing during the period through December 31, 1987. He further testified that the Company was constrained by an order, dated April 4, 1985, by the Massachusetts Department of Public Utilities (MDPU) which conditioned approval of financing requests upon the provision of "binding assurances that the risk of further investment in Seabrook I would be borne by shareholders".

The Company estimates that through December 31, 1987, all of its internally generated funds will be used to finance its construction expenditures and sinking fund payments or to reduce the level of short term debt. The short term borrowing requirements could be increased to \$251 million because of increased construction costs and/or decreased cash flow resulting from (i) certain adverse regulatory rulings, (ii) passage of proposed tax legislation, and (iii) delays in major construction projects. Short term borrowing authority at a \$300 million maximum level has been requested in order to provide a twenty percent cushion above the level of short term borrowing projected for December 31, 1987, allowing the Company to be prepared for unforeseen contingencies. At the \$300 million level, short term indebtedness would represent twenty percent of the Company's total capitalization.

The Company presented a Balance Sheet as of June 30, 1985 and a Statement of Income for the twelve months ended June 30, 1985. In addition, a financial forecast for the period from July 1, 1985 to December 31, 1987 was presented. For the period it is estimated that the short term debt limit at December 31, 1987 would be \$26 million. Possible contingencies could

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amount to \$225 million, resulting in a short term level of \$251 million. Exhibit 2(d) presents the sources and application of funds for the period from July 1985 through December 1987. That exhibit indicates that the level of short term debt would be well within the present authorization of \$195 million. Company witness Mr. McLaren testified the level of short term borrowing could be raised by \$43 million on December 31, 1986, and \$225 million by the end of 1987. The Company estimates that the contingencies could be made up of the following elements:

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

\$ millions

1. Adverse Regulatory Rulings or
Legislation 140
2. Passage of Proposed Tax
Legislation 50
3. Delays in Construction Projects 35

While this Commission recognizes that the aforementioned contingencies may occur, we are concerned that the Company will have to defer issuing any long term debt until the conditional approval by the Massachusetts Department of Public Utilities (MDPU) is lifted. There is a distinct possibility that interest rates could rise during the time frame that is contemplated in this

petition. The result would be a higher cost of capital to all of the Company's customers, including Granite State Electric Company. The company witness testified that it would review the appropriateness of issuing permanent long-term financing at the time that it can do so on an unrestricted basis. This Commission believes that it may not be appropriate to wait to issue debt until such a time as interest rates have increased. If that were to occur, it would be our obligation to intervene in a future rate case at the Federal Energy Regulatory Commission to make the case for a lower cost of capital for New Hampshire customers.

This Commission finds that the level of short-term indebtedness in the amount of \$300 million will provide the Company with the flexibility needed to fund the construction, maturities and sinking fund, and the contingencies. We also find that the proposed construction expenditures are in the public good.

Our Order will issue accordingly.

ORDER

WHEREAS, By Order No. 16,906 (69 NH PUC 129) (DF 84-31) of this Commission dated February 15, 1984, New England Power Company was authorized, without first obtaining the approval of the Commission, to issue and renew, from time to time, its bonds, notes and other evidences of indebtedness payable 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 borrowing) not in excess of \$195,000,000; and

WHEREAS, New England Power Company requests that its short-term borrowing authority be increased to a maximum level of \$300 million; and

WHEREAS, New England Power Company estimates that through December 31, 1987, all of its internally generated funds will be used either to finance its construction expenditures and sinking fund payments or to reduce the level of short-term debt; and

WHEREAS, New England Power Company estimates that its short-term borrowing requirements at December

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31, 1987, could be increased to \$251 million because of increased construction costs and or decreased cash flow resulting from (i) certain adverse regulatory rulings or legislation, (ii) passage of proposed tax legislation, and (iii) delays in major construction projects; and

WHEREAS, New England Power Company estimates that short-term borrowing authority at a \$300 million maximum level will provide a 20% cushion above the level of short-term borrowing projected for December 31, 1987, allowing the Company to be prepared for unforeseen contingencies; and

WHEREAS, New England Power Company requests this higher maximum level of borrowing authority in order to be prepared for contingencies and to increase its ability to finance its construction expenditures through short-term debt while questions remain regarding its long-term financing plans; and

WHEREAS, this Commission, after investigation and consideration finds that such request is consistent with the public good; it is

ORDERED, that New England Power 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 evidences of indebtedness payable in 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 borrowing) not in excess of \$300,000,000; and it is

FURTHER ORDERED, that on or about January First and July First of each year said New England Power 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 evidence of indebtedness.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1985.

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NH.PUC*11/14/85*[61245]*70 NH PUC 934*Nuclear Emergency Planning

[Go to End of 61245]

70 NH PUC 934

Re Nuclear Emergency Planning

DE 85-380, Order No. 17,947

New Hampshire Public Utilities Commission

November 14, 1985

ORDER certifying assessment against electric utility for costs of radiological emergency response planning.

Atomic Energy — Radiological emergency response planning — Cost assessments — Commission authority.

State statute RSA 107-B, which sets forth commission jurisdiction over the assessment of costs related to civil defense radiological emergency response plans for nuclear power plants, does not provide the commission with the authority to conduct an independent evaluation of civil defense cost data or to challenge its scope or amount; the authority of the commission is limited to determining whether the costs contained in the request for assessment are related to preparing the emergency response plan and providing the equipment and material necessary to implement it.

By Iacopino, Chairman:

REPORT

On November 5, 1985, the New Hampshire Civil Defense Agency ("Civil Defense") submitted a request for an assessment against New Hampshire Yankee Nuclear Power Corporation, Division of Public Service Company of New Hampshire, of the estimated costs of the continued preparation and implementation of the radiological emergency response plans for the Seabrook Station Nuclear Power Plant. The request totals \$957,370 and includes the following costs:

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

Personnel Services \$ 90,000
 Current Expenses 109,000
 Equipment 75,000
 Other Personnel Services 125,000
 Benefits 19,000
 In-State Travel 21,000
 Out-of-State Travel 24,500
 Consultants 130,000
 Rent 14,870
 Audit 2,000
 Vehicle Lease 12,000
 Local Training Costs 125,000
 Training - State Dept's 45,000
 Indirect Costs 25,000
 Dept. of Public Health 140,000
 \$957,370

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 civil defense agency shall, in cooperation with the affected local units of government, initiate and

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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 equipment and materials to implement it. (Emphasis added.)

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 *Hollingsworth v. New Hampshire Civil Defense Agency*, 122 N.H. 1028, 453 A.2d 1288 (1982), the New Hampshire Supreme Court upheld then chairman's finding that the statute did not provide the chairman with authority to conduct an independent evaluation of Civil Defense's cost data or to challenge its

scope or amount. The Court stated as follows (122 N.H. at p. 1033):

We agree with the chairman's interpretation of his limited role under RSA chapter 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.I (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). (Emphasis added.)

As chairman, I therefore must determine whether the costs contained in the request are related to "preparing the plan and providing equipment and materials necessary to implement it."

The preparation of a nuclear emergency response plan began in 1981 after the passage of RSA 107-B. Report and Order No. 15,412 dated January 5, 1982 (67 NH PUC 10) (DE 81-304) approved in part Civil Defense's request for an assessment of certain costs associated with the preparation of the Plan.¹⁽³⁷²⁾ Report and Order No. 17,078 dated June 18, 1984 approved Civil Defense's request for the total assessment made for that fiscal year.

According to Civil Defense's request and the data submitted therewith, the Plan is still being prepared and will not be complete until the required federal regulatory approvals are secured and an operating license secured. The process necessary to effect the issuance of an operating license involves a series of approvals from various federal agencies as follows:

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1. Recommendation of approval of formally submitted State Radiological Emergency Response Plans by the Federal Emergency Management Agency (FEMA) to the Nuclear Regulatory Commission (NRC).

2. Concurrence between NRC and FEMA staff of adequacy and effectiveness of State Radiological Emergency Response Plans developed by the NHCDA and a submission by the NRC staff to the Atomic Safety and Licensing Board as one determinant in the issuance of an operating license.

Civil Defense submits that the abovestated costs represent the personnel and equipment costs necessary to complete the preparation of the Plan and obtain the requisite approvals.

Pursuant to RSA 107-B:1, I have reviewed Civil Defense's request and supporting data. I find that the costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it, subject to the following changes. Current expenses are reduced from 109,000 to 104,000 and training for local officials is reduced from 125,000 to 120,000. As stated above, these costs include both equipment and personnel costs. I therefore will approve the assessment of \$947,370.

Finally, it should be noted that my findings herein were made without a public hearing. There is no hearing requirement in RSA 107-B:1.

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 \$947,370 be assessed against New Hampshire Yankee Nuclear Power Corporation, Division of Public Service Company of New Hampshire, pursuant to RSA 107.-B.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1985.

FOOTNOTES

¹This was the only previous occasion in which the statute has been invoked by Civil Defense.

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NH.PUC*11/15/85*[61246]*70 NH PUC 937*Claremont Gas Light Company

[Go to End of 61246]

70 NH PUC 937

Re Claremont Gas Light Company

DR 84-380, Supplemental Order No. 17,949

New Hampshire Public Utilities Commission

November 15, 1985

ORDER directing gas distribution utility to adopt cost of gas adjustment clause providing for semi-annual estimate of purchased gas costs instead of monthly recovery of historical gas costs.

Automatic Adjustment Clauses, § 3 — Jurisdiction and powers — States — Gas utilities — Electric utilities.

There is no legal requirement directing the commission to implement a periodic fuel adjustment clause outside the context of a formal rate case; however, pursuant to plenary ratemaking authority under state law, RSA 378:7, the commission has approved cost of gas adjustment clauses for gas utilities and fuel cost adjustment clauses for electric utilities. [1] p.942.

Automatic Adjustment Clauses, § 52 — Billing, collections, and adjustments — Cost determination — Estimates and forecasts.

In the absence of volatile gas costs, it was not necessary to allow a gas distribution utility to retain a cost of gas adjustment clause (CGA) providing for the monthly recovery of historical gas

costs instead of switching to a CGA providing for a semi-annual estimate of purchased gas costs. [2] p.942.

Automatic Adjustment Clauses, § 53 — Billing, collections, and adjustments — Cost determination — Over and undercollections.

It was held that a cost of gas adjustment clause (CGA) that provided for the monthly recovery of historical gas costs was seriously flawed and inferior to a CGA that provided for a semi-annual estimate of purchased gas costs, because the monthly CGA contained no reconciliation mechanism to measure the amount of under or overcollections during a particular month. [3] p.943.

Automatic Adjustment Clauses, § 52 — Billing, collections, and adjustments — Cost determination — Estimates and forecasts.

The lack of a dedicated gas supplier or long term fixed price gas contracts was not sufficient to justify the retention of a cost of gas adjustment clause (CGA) that provided for the monthly recovery of historical gas costs instead of a changeover to a CGA that provided for a semi-annual estimate of purchased gas costs. [4] p.943.

Automatic Adjustment Clauses, § 52 — Billing, collections, and adjustments — Cost determination — Estimates and forecasts.

A gas distribution utility was directed to adopt a cost of gas adjustment clause (CGA) that provided for a semi-annual estimate of purchased gas costs in place of a CGA that had provided for the monthly recovery of historical gas costs. [5] p.943.

Automatic Adjustment Clauses, § 7 — Energy cost recovery — Reasonableness — Rationale.

Discussion of the practical rationale for fuel cost adjustment clauses. p.942.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire on behalf of Claremont Gas Light Company; Larry M. Smukler, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On February 20, 1985, the Commission, upon its own motion, issued Order No. 17,456 (70 NH PUC 69) which opened this docket to determine whether Claremont Gas Light Company (Claremont) and PetrolaneSouthern New Hampshire Gas Company, Inc. (Petrolane) should be directed to utilize a semi-annual cost of gas adjustment (CGA) instead of the current monthly historical CGA and scheduled a hearing thereon for March 25, 1985. By letter dated March 25, 1985, Petrolane notified the Commission that it had no objection to adopting the semi-annual CGA.

Thereafter, on June 17, 1985, the Commission issued Report and Order No. 17,660 (70 NH

PUC 530) which held that because of several procedural defects, the March 25, 1985 hearing could not form the basis of a decision on the merits. By an Order of Notice of even date, the Commission scheduled a new adjudicative hearing to consider de novo whether Claremont should be ordered to utilize the semi-annual CGA. That hearing was continued until September 18, 1985 at the request of Claremont. At the September 18, 1985 hearing, Herbert Lieberman, Claremont's vice president, presented testimony and exhibits on behalf of Claremont's position that the monthly historical CGA should be retained. Testifying in support of Staff's position that Claremont should be ordered to utilize the semi-annual CGA were Daniel D. Lanning, Assistant Finance Director and James L. Lenihan, Rate Analyst.

II. POSITION OF THE PARTIES

Prior to the 1970's, fuel costs were treated like any other operating expenses in setting electric and gas utilities' rates. Like salaries, wages, depreciation, taxes, etc., test year fuel costs were adjusted for known and measurable changes and the proformed amount was included as an allowable expense to be recovered through rates. However, with the advent of rapidly increasing oil and gas prices in the 1970's, this Commission and many others abandoned standard regulatory treatment of fuel costs and began using periodic adjustment clauses. These were established to provide rate relief for rapidly rising costs without the necessity of a formal rate case. In approving a CGA for Gas Service, Inc. in 1975, the Commission stated as follows:

We are of the opinion that the general concept of the proposed cost of gas adjustment provisions, modified to conform to the rate changes and the test year figures used in this report, should be allowed in the public interest. These provisions should result in the need for fewer filings, assess and apportion additional costs or credits conforming to seasonal use patterns, provide for the direct credit or charge for decreases or increases in purchase or supplement gas costs, and provide for refunds to consumers on any excess revenue collected

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with interest. Re Gas Service, Inc., 60 NH PUC 463, 469, 470 (1975).

Initially, most cost of gas adjustment mechanisms were monthly in nature. However, in 1974 and 1975 all gas companies under the Commission's jurisdiction other than Claremont and Petrolane were placed on a forwardlooking semi-annual (winter/summer) CGA. Since its inception in 1973, Claremont's monthly CGA has undergone two significant changes. A brief history of Claremont's CGA follows.

The Commission first approved a CGA for Claremont on October 26, 1973 in Report and Order No. 11,150 (58 NH PUC 82, 83) (D-R6590) which approved an increase in base rates and the implementation of a fuel cost adjustment. The Commission stated therein as follows (58 NH PUC at p. 83):

The Petitioner presented exhibits and testimony, that, together with data on file with this Commission, indicates that under existing rates the Company has been incurring, and will continue to incur, substantial losses. The Company's data showed that with the proposed increased rates, together with the proposed purchase surcharge, the expected earnings level would produce a minimum rate of return.

The Commission next addressed Claremont's CGA in Report and Supplemental Order No. 14,754 issued on February 23, 1981 (66 NH PUC 63, 64, 65) (DR 80-171) wherein it allowed Claremont a \$30,778 rate increase and ordered it to revise its method of calculating the CGA. In essence, it directed Claremont to utilize a forwardlooking monthly CGA which "generally corresponded" to the one which the Commission had then recently adopted for other gas utilities under its jurisdiction. The Commission's description of the calculation is set forth at 66 NH PUC at pp. 64, 65. In accordance therewith, Claremont utilized the following formula from 1981 to October, 1984:

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

ACTUAL USAGE FOR SEPTEMBER 1984

Actual usage	23,020 therms
Cost of gas for month	\$14,388.00
36.2 per therm base	8,333.00
Surcharge to customers	6,055.00
Customers usage	19,849 therms
Fuel adjustment	30.5
Estimated fuel adjustment	30.8
for September billings	52.5
over estimated	21.7
over estimated X usage	\$,4,307.00
Interest	431.00
	\$4,738.00

ESTIMATED USAGE FOR OCTOBER 1984

Estimated usage	50,000 therms
Estimated cost/therm	62.6
Cost of gas for month	\$31,300.00
Base cost/therm	18,100.00
Surcharge to customers	13,200.00
Overestimated in September	4,738.00
Estimated surcharge	8,462.00
Estimated customer usage	20,000 therms
Fuel adjustment to be included	
in customers' bills for	42.3 ¢/therm
Divide by 99 to include	
Gross Receipts Tax	42.7

This formula required Claremont to estimate monthly both its cost of gas and customer usage. However, it also provided for an adjustment in the event the estimate varied from actual cost and usage figures. This reconciliation mechanism provided for the refund of overcollections and the recoupment of undercollections.

Claremont's CGA was further altered as a result of a settlement agreement (Agreement) approved by the Commission in a subsequent rate case. On July 16, 1984, the Commission issued Report and Order No. 17,110 (69 NH PUC 379) (DR 83-215) approving a revenue increase of \$119,669. At page 2 therein, in discussing the highlights of the Agreement, the Commission stated as follows (69 NH PUC at p. 380):

5. Based upon the proformed test year, the settlement proposed that the Company's total annual revenues (net of the Franchise Tax) be increased by \$119,669. This \$119,669 would be achieved by:

- a. A restructuring of the utility's Cost of Gas Adjustment (COGA) to enable the utility to

have its fuel related revenues (including approximately 46.2/therm to be included in base rates) through base rates and the COGA to match its fuel expenses. A deferred account to the COGA should contribute approximately \$58,282 of the \$119,669 increase.

The Agreement changed the nature of the CGA from a monthly forwardlooking calculation to a monthly historical calculation. In addition, the base rate charge regarding fuel cost recovery was increased from 36.2 per therm to 46.2 per therm. This formula, set forth below, is currently utilized by Claremont.

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

FOR BILLING DURING MONTH OF NOVEMBER 1984

(a) Cost of gas for month of OCTOBER	\$23,638.00
(b) Total therms sold for month of 16004	
(c) 46.2 per therm BASE	7,394.00
(d) Fuel charge for month	\$16,244.00
(e) Fuel charge for month of NOVEMBER 1984	
is 1.01. Divide by 99 to include	
Gross Receipts Tax.	
(f) Fuel charge of 1.02 will be applied	
to all bills in NOVEMBER 1984.	

Claremont opposes a forward-looking semi-annual CGA. It argues that the historical monthly CGA, as approved by the Commission a year ago, is a

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better method and should be retained. In support thereof, Claremont cites the November, 1984 decision wherein the Commission stated that a monthly historical CGA would "... enable the utility to have its fuel related revenues ... through base rate and the COGA to match its fuel expense." (69 NH PUC at p. 380.) Claremont argues that with a semi-annual CGA actual gas costs would not be recovered for several months and thus there would not be the expeditious matching of fuel related revenues and expenses as contemplated by the Commission in approving the monthly historical CGA.

Moreover, Claremont argues that it is unable to make adequate estimates of future gas costs which are needed to calculate the semi-annual CGA. Claremont contends that unlike other gas companies, it does not have fixed long-term contracts with predictable prices or a dedicated supplier which guarantees a stable price. According to Claremont, its suppliers do not give forecasts.

In addition to the necessity of expeditiously matching gas revenues and expenses and its inability to make adequate estimates, Claremont contends that it's highly volatile gas costs necessitate retention of the monthly CGA. In this regard Claremont submitted as attachments to the testimony of Herbert Lieberman (exhibit 3) a listing of the price changes Claremont experienced in its purchases from Exxon from July 12, 1984 to July 19, 1985. This reveals that Claremont's cost of gas fluctuated 70 times over an approximate 56 week period. Given that fuel cost is its largest operating expense and the requirement that it pay its fuel suppliers within 30 days, Claremont argues that expeditious fuel cost recovery is imperative.

Lastly, Claremont contends that a semi-annual CGA could be economically detrimental to Claremont. In support thereof, Claremont points to the prefiled testimony of Mr. Lieberman in

which he states that a semi-annual CGA could have a negative effect on cash flow and working capital thereby resulting in potentially serious financial consequences. Claremont argues that higher bills necessitated by recoupment could force customers off the system thereby reducing its overall revenues. Moreover, Claremont further argues that its precarious financial condition would prevent it from obtaining financing in the event a recoupment is necessitated. Claremont further argues that there are potentially adverse financial consequences for its customers. It contends that a new customer would be discriminated against if it comes onto the system and has to pay the recoupment with interest on gas used by other customers a year previously.

The Commission Staff, through the testimony of Mr. Lanning and Mr. Lenihan, takes the position that Claremont should be ordered to utilize the semi-annual CGA. While acknowledging that the semi-annual mechanism is complex, the Staff argues that its advantages outweigh that admitted disadvantage. In particular, the Staff contends that the semi-annual CGA provides for rate continuity and stability thereby eliminating monthly fluctuations inherent in the monthly historical CGA. In addition, unlike the monthly historical CGA, the semi-annual CGA provides for a reconciliation of estimated and actual gas cost and usage data. Lastly, Staff argues that having all gas companies under the Commission's

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jurisdiction utilizing the same CGA would save Commission time and resources.

In its advocacy of a semi-annual CGA for Claremont, Staff also points to what it considers to be the disadvantages of the monthly historical CGA. Staff agrees that the monthly CGA has certain advantages, namely, ease of calculation and expeditious cost recovery in periods of highly volatile gas costs (which Staff argues is not currently the case). However, Staff contends that the following disadvantages argue against its retention by Claremont:

1. lack of a mechanism to refund overcollections and recover undercollections;
2. the extra time and resources needed to analyze the monthly filings; and
3. lack of rate continuity.

III. COMMISSION ANALYSIS

[1] We begin our analysis by noting that there are no statutes or Commission rules regarding how a CGA is to be structured or calculated. Indeed, there is no legal mandate directing the Commission to implement periodic fuel adjustment outside the context of a formal rate case. However, the Commission has, pursuant to its plenary ratemaking authority in RSA 378:7, approved CGA's for gas companies and fuel adjustment clauses for electric companies. The Commission's rationale in adopting these adjustments is best expressed in *Re Public Service Co. of New Hampshire*, 67 NH PUC 211 (1982). We stated therein as follows (67 NH PUC at pp. 213, 214):

The practical basis for a fuel adjustment charge is that the costs of fuel are highly volatile, and constitute a very large share of utility's operating costs. Standard regulatory treatment of fuel costs is generally not sufficiently flexible to accommodate such volatility in a utility's operating costs. The burdens of windfalls of fuel cost increases or decreases between conventional rate cases would be inequitable and unreasonable, and in certain cases might threaten the very

survival of the utility. Historically, fuel adjustment charges were developed to respond to the rapid fluctuation in fuel costs between conventional rate cases. They were often designed to recover in the coming month fuel cost increases or decreases incurred in the previous month. Over time, FAC's have become an important ratemaking concept in most regulatory jurisdictions in this country.

[2] The conditions which led the Commission to institute fuel adjustment mechanisms — volatile fuel costs — no longer exist in the propane market or the market for other fuels. As Mr. Lenihan stated in his prefiled testimony (Exhibit 2, page 2), propane costs have remained relatively stable over the last two years. This is due in part to the historically low levels of inflation during that time. Given the trend away from the economic factors which lead to the adoption of a fuel adjustment clause, persuasive arguments can be made for the elimination of automatic adjustments and thus a return to normal ratemaking treatment for fuel costs. However, at this time the Commission has made no such determination. With the exception of Claremont all other gas and electric companies utilize a semi-annual adjustment which,

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in our view, is a compromise between a monthly adjustment and no adjustment at all.

The record does not support Claremont's contention that its gas costs are highly volatile. The only evidence submitted in this regard is Exhibit 3, described in detail above. Neither this exhibit nor the testimony by Mr. Lieberman explaining it make clear whether the price increases and decrease reflected therein impacted all Exxon customers or Claremont exclusively. Even assuming arguendo that these price changes were experienced by Claremont alone, they hardly evidence constant, substantial price increases; the net effect of these changes is a decrease in price. Thus, in the absence of volatile gas costs we find that there is no necessity for Claremont to retain its monthly CGA.

[3-5] Our decision herein would be no different even if gas costs were highly volatile. Our experience over the last several years and a review of the testimony and evidence in this proceeding leads us to conclude that the semiannual CGA mechanism is vastly superior to the historical monthly CGA utilized by Claremont.¹⁽³⁷³⁾ In our view, the historical monthly CGA is seriously flawed. Unlike the semi-annual CGA, the monthly CGA contains no reconciliation mechanism whereby the actual monthly revenues and costs are matched to determine whether Claremont over or undercollected in a particular month.²⁽³⁷⁴⁾ We have, however, undertaken to perform such a reconciliation. Our analysis, set forth below, shows that from the time it began utilizing the monthly historical CGA in November, 1984 through September, 1985, Claremont has overcollected over \$45,000.00 from its customers.

Claremont's contentions regarding the likelihood of serious financial consequences in the event it is ordered to use semi-annual CGA are unsupported by the record. There is no evidence that this method will adversely impact cash flow and working capital. Certainly this would not be the case if Claremont overcollected in a particular period. In the event of an undercollection, Claremont might experience a need for additional working capital. If so, this need could be met by obtaining short-term debt.³⁽³⁷⁵⁾ Claremont's claim that such financing is unavailable to it because of a precarious financial condition is also

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

MONTH OVER/UNDER	LOW GAS COST	BASE COST	COGA	THERMS SOLD	\$/THERM	TOTAL FUEL REVENUE	+/-
Nov. \$12,709.67	\$31,654.00	\$.462	\$1.02	29,938	\$1.482	\$44,363.67	+
Dec. 12,361.65	40,863.00	.462	.60	51,059	1.062	54,224.65	+
Jan. 4,892.68	52,811.38	.462	.34	59,749	.802	47,918.70	-
Feb. 30,179.85	41,739.43	.462	.43	80,627	.892	71,919.29	+
Mar. 5,624.25	35,104.16	.462	.06	56,473	.522	29,479.91	-
Apr. 4,963.66	24,407.27	.462	.17	46,473	.632	29,370.92	+
May 614.11	17,002.01	.462	.07	33,113	.532	17,616.12	+
June 2,326.63	14,159.85	.462	.06	21,437	.552	11,833.22	-
July 810.53	11,800.42	.462	.21	16,354	.672	10,989.89	-
Aug. 1,081.94	12,001.92	.462	.27	14,918	.732	10,919.98	-
Sept. 1,207.05	13,184.86	.462	.35	14,751	.812	11,977.91	-
Oct. 45,885.86	294,728.30					340,614.16	+

unsupported by the record. There is no evidence, other than Mr. Leiberman's mere assertions, that financing is unavailable. Nor are we convinced that Claremont's financial health is bad. If Claremont is not earning its allowed rate of return, it should file for a rate increase with the Commission.

Nor do we accept Claremont's position that it is unable to adequately estimate its gas costs for a 6 month period. In estimating the costs to be used in the semi-annual CGA, gas companies utilize supplier figures and estimates, historical experience and industry publications such as the Department of Energy Quarterly, the Department of Energy Reports and D.R.I. Reports. While a fixed price, long term contract certainly aids the estimating process, it is only one factor among many to be considered. Thus, Claremont's lack of fixed price contracts and a dedicated supplier does not make estimation impossible. An estimate is essentially an educated guess, one that Claremont, with its substantial experience in purchasing propane, is certainly capable of making. As stated above in footnote 3, should the estimate prove wrong to a substantial degree, the trigger mechanism provides a mid-period adjustment to prevent potential adverse financial consequences.

In view of the above, we therefore will order Claremont to begin using the semi-annual forward looking CGA. We agree that it is more complex than the monthly historical CGA. However, this should not prevent its successful implementation and utilization by Claremont.

The semi-annual CGA has been successfully utilized by the other gas companies for several years. The Commission staff is available to meet with Claremont's management to explain the semi-annual CGA methodology. Thus we will order Claremont to file by December 1, 1985 a cost of gas adjustment using the semi-annual mechanism to be utilized on all bills rendered on or after January 1, 1986 until April 30, 1986. The Commission will thereafter issue an order of notice scheduling a hearing prior to the end of December. That filing shall include a reconciliation of the above discussed \$45,000 overcollection.

Lastly, we note that we are continuing to review whether fuel adjustment clauses should remain part of the ratemaking process given the current stability in gas prices.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Claremont Gas Light Company shall utilize the semiannual cost of gas mechanism described in the foregoing report; and it is

FURTHER ORDERED, that Claremont Gas Light Company shall file a cost of gas adjustment under the semiannual mechanism by December 1, 1985 to be utilized on all bills rendered on or after January 1, 1986 until April 30, 1986.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1985.

FOOTNOTES

¹An example of a semi-annual CGA filing is contained in Exhibit 1.

²Because it is not an issue in this proceeding, we make no findings as to the merits of a forward-looking monthly CGA which, like the semi-annual CGA, provides for a reconciliation of over and undercollections. While it is perhaps likewise an inherently better method than the historical monthly CGA because of the reconciliation mechanism, our findings regarding the current stability of the propane market would in all likelihood lead us to conclude that it is not an appropriate adjustment mechanism to be utilized at this time.

³The semi-annual CGA contains a "trigger mechanism" which identifies excessive over or undercollections during a period. This allows for a mid-period adjustment in the event a company is overcollecting or undercollecting by 10% of its total estimated gas costs for the period. Thus, the trigger removes the possibility of an adverse financial impact resulting from a company carrying an excessive undercollection until it can be recovered in the next corresponding CGA period. For a full description of the CGA trigger mechanism, see Re Keene Gas Corp., 70 NH PUC 873 (1985) (DR 85-350).

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NH.PUC*11/15/85*[61247]*70 NH PUC 946*Nuclear Emergency Planning

[Go to End of 61247]

70 NH PUC 946

Re Nuclear Emergency Planning

DE 85-380, Supplemental
Order No. 17,950

New Hampshire Public Utilities Commission

November 15, 1985

ORDER providing for direct procurement by electric utility of equipment required by state civil defense and health agencies.

By Iacopino, Chairman:

SUPPLEMENTAL ORDER

WHEREAS, Report and Order No. 17,947 was issued on November 14, 1985 (70 NH PUC 934); and

WHEREAS, Order No. 17,947 failed to address the Department of Civil Defense request for the direct procurement by New Hampshire Yankee of equipment for the New Hampshire Civil Defense Agency, Division of Public Health Service, other state agencies, and Rockingham County Dispatch; it is hereby

ORDERED, that the request for the direct procurement by New Hampshire Yankee of equipment for the New Hampshire Civil Defense Agency, Division of Public Health Service, other state agencies, and Rockingham County Dispatch, is hereby granted.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1985.

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NH.PUC*11/18/85*[61248]*70 NH PUC 947*Northeast Power Associates

[Go to End of 61248]

70 NH PUC 947

Re Northeast Power Associates

DR 85,366, Order No. 17,953

New Hampshire Public Utilities Commission

November 18, 1985

ORDER rejecting long term rate filing by operator of a small power production facility.

Cogeneration, § 24 — Rates — Procedure — Tariff filing.

Long term rates filed by the operator of a small power production facility were rejected where the filing was not consistent with commission requirements because (1) the filing did not include attachment of exhibits showing application for qualifying status with the Federal Energy Regulatory Commission and (2) the proposed rate figures contained an improper number of significant digits.

By the COMMISSION:

ORDER

WHEREAS, on October 16, 1985, NorthEast Power Associates (NEPA) filed a long term rate petition for its Greenville, Maine wood burning power plant pursuant to Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985) in Docket No. DR 85-215 and Re TDenergy, Docket No. DR 85-13; and

WHEREAS, the filing requirements in Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in Docket No. 83-62 continue to apply to all filings made under DR 85-215 and are outlined in the New Hampshire Regulatory Handbook for Small Scale Electricity Generators (Handbook), Appendix D at page 35; and

WHEREAS, the Commission finds that NEPA's long term rate petition is not consistent with the filing requirements as outlined in the Handbook; and

WHEREAS, NEPA represents that Exhibit A: Application for qualifying facility status made to the Federal Energy Regulatory Commission, and Exhibit C-1: Request for an interconnection study from Public Service Company of New Hampshire, are attached to its long term rate petition; and

WHEREAS, Exhibit A and Exhibit C-1 are not attached to NEPA's long term rate petition; and

WHEREAS, the long term rates as set forth in Dockets No. DE 83-62 and DR 85-215 have 2 decimal places and the Commission finds that consistency in the proper evaluation of long term rate warrant 2 decimal places for all long term rates; and

WHEREAS, the long term rates as set forth in Exhibit B-1 of NEPA's long term rate petition have 3 decimal places; and

WHEREAS, the Commission has not yet made a decision in Docket No. DR 85-13; it is therefore

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ORDERED, that NEPA's long term rate petition is rejected without prejudice and may be refiled with the corrections to the above noted errors; and it is

FURTHER ORDERED, that Commission action on any subsequent long term rate petition filed by NEPA for this site will be postponed pending the Commissions decision in Docket No.

DR 85-13.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1985.

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NH.PUC*11/18/85*[61249]*70 NH PUC 948*City of Portsmouth

[Go to End of 61249]

70 NH PUC 948

Re City of Portsmouth

DX 84-17, Supplemental
Order No. 17,954

New Hampshire Public Utilities Commission

November 18, 1985

MOTION by a railroad for rehearing of a prior order that (1) required a municipality to incur the expense of repair and reconstruction of a highway bridge at a railroad crossing and (2) directed the railroad to submit long range plans for repair and maintenance of the bridge and statewide rail network; motion denied.

Crossings, § 22 — Jurisdiction and powers — State commissions — Repair and reconstruction — Ancillary jurisdiction — Railroad traffic.

The commission possessed the necessary ancillary authority to require a railroad to submit plans for the abandonment or rerouting of rail traffic and the rehabilitation of a highway bridge at a railroad crossing in a proceeding that was commenced to determine financial obligations for the repair and reconstruction of the bridge. [1] p. 949.

Crossings, § 22 — Jurisdiction and powers — State commissions — Repair and reconstruction — State law — Constitutional review.

The commission lacked the necessary authority to declare as unconstitutional state laws RSA 373:2, 373:3, which require a railroad to repair, modify, or reconstruct a highway bridge at a railroad crossing to accommodate the needs of nearby residents, subject to reimbursement by the local municipality. [2] p. 950.

Crossings, § 22 — Jurisdiction and powers — State commissions — Repair and reconstruction — Ancillary jurisdiction — Railroad traffic.

In a proceeding that was commenced to determine financial obligations for the repair and reconstruction of a highway bridge at a railroad crossing, the commission possessed the necessary ancillary authority to open a new docket for the purpose of monitoring the railroad's long range plans for repair and maintenance of the bridge and of its statewide rail network. [3] p. 950.

Crossings, § 22 — Jurisdiction and powers — State commissions — Repair and reconstruction.

In a proceeding that was commenced to determine financial obligations for the repair and reconstruction of a highway bridge at a railroad crossing, the commission possessed the necessary ancillary authority to require the railroad to be prepared to make such modifications as were requested by the municipality and as might be necessary to support future highway vehicular and pedestrian traffic patterns. [4] p. 951.

APPEARANCES: As previously noted.

By the COMMISSION:

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REPORT

On June 21, 1985, the Commission issued Report and Order No. 17,681 (70 NH PUC 551) wherein it found that the Boston and Maine Corporation should not be required to modify the Greenland Road Bridge in Portsmouth, New Hampshire, at its own expense in order to accommodate pedestrian traffic. In addition, it found that if the City of Portsmouth determined that modifications were necessary to accommodate pedestrian traffic, that all costs for such modifications would be borne by the City of Portsmouth. It required the Boston and Maine Corporation, in conjunction with the New Hampshire Department of Public Works and Highways, to monitor the conditions of the bridge and make such repairs as were necessary to protect the travelling public, and, since the record showed an estimated life of the bridge of about two years, it required the corporation to develop a plan for repairing or replacing it and to submit a progress report as to the status of the plan by December 31, 1985. Finally, the Commission opened a new docket for the purpose of making the Commission aware of the corporation's long range plans for repairing and maintaining its bridge and rail network in the State of New Hampshire, and directed the corporation to be prepared to report on those plans by September 1, 1985.

On July 10, 1985, B&M filed a motion for reconsideration or rehearing on the following grounds:

1. The Commission's consideration of whether the B&M could terminate rail traffic or otherwise abandon facilities at or near the crossing was improper;
2. The Commission lacks jurisdiction to order preparation of plans for future repairing and replacing of the bridge;
3. The provisions of RSA 373:2 and 3, upon which the Commission relies at least in part, are unconstitutionally confiscatory;
4. The Commission has no statutory authority to require long range plans for repairing and maintaining bridge and rail networks;
5. The Commission has no authority to order the company to be prepared to make repairs at the request of the City of Portsmouth, even though it provides that the costs of such repairs are to

be borne by the City; and

6. The evidence in this matter supported an order limited to denying the petition subject to refiling upon further study or in the event of a material change of condition of the bridge.

After due consideration we will deny B&M's motion. We shall address each of their contentions in turn.

[1] The B&M contends that the issue of whether they "... could terminate rail traffic or otherwise abandon facilities at or near the crossing in question was not an issue in this proceeding", and that the Commission's findings and order in this regard were improper. It contended that the Commission gave no notice to consider evidence on abandonment or termination and that there was no opportunity to offer relevant testimony in the matter.

The abandonment issue was raised by the company itself. In a letter of March 2, 1983, to Mr. Calvin A.

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Canney, Portsmouth City Manager, B&M Vice President Terrell advises:

It is our intention to continue to monitor the condition of this and other similar highway bridges and as may be required, we will reduce the allowable loading or close the bridge to traffic to protect the travelling public.

Mr. Terrell's letter was included as an attachment to Mr. Canney's letter of January 6, 1984 to Commissioner Aeschliman, which letter served as the source document for opening this docket. The Commission's Order of Notice in this matter, issued February 15, 1984, said inter alia:

Ordered, that this Commission open docket number DX 84-17 and schedule hearings to determine the appropriate action to be taken in this matter pursuant to RSA 373 in general, and specifically, RSA 373:2, 373:3.

Extensive testimony was given by present customers of the Boston & Maine which clearly showed that they would be harmed by the permanent closing of the railroad. It was proper and, in fact, essential that the Commission speak to the issue of potential abandonment.

The B&M contends that its own engineer estimates an additional ten year life for the bridge and that an order requiring them to develop plans by December 31, 1985 for repairing and replacing it is unjustified and unreasonable. It further contends that the Commission lacks jurisdiction to order preparation of such future plans.

The company's estimate does not stand alone as the only evidence upon which this Commission may rely in this proceeding. Testimony from engineers of the New Hampshire Department of Public Works and Highways reveals that the condition of the bridge is of such concern that it is on a schedule of inspection every six months. On November 16, 1984, the Department estimated the remaining life of the structure at two years. While an analysis of that report gave some satisfaction that there was no danger of imminent failure, the Commission could not ignore the fact that there will come a time when a major rehabilitation effort will be necessary. The Commission recognizes that such rehabilitation efforts require significant planning and it was the Commission's commitment to that planning process which drove it to

require a plan by December 31, 1985. Two years have now passed since the issuance of that inspectors report. We have reviewed the Department's 1984 report and find some comfort in the fact that any further deterioration has not caused a further downgrading of the bridge's expected life span. The need for continued planning remains, however. The Commission has the authority of RSA 374:4 to keep informed with respect to the safety, adequacy and accommodation of its regulated utilities. The Commission acted properly in requiring the B&M to prepare a plan for the replacement of the Greenland Road bridge.

[2] With regard to B&M's contention that RSA 373:2 and 3 are unconstitutional, it provides no Supreme Court cases which so hold. Thus, absent such a case, we must presume the constitutionality of those statutes. Moreover, we have no jurisdiction to adjudicate the constitutionality of any statutory provisions.

[3] The B&M contends that this

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proceeding did not involve issues pertaining to long range plans for repairing and maintaining bridge and rail networks throughout New Hampshire.

... Docket DE 85-229 is hereby opened for the purpose of making the Commission aware of the B&M Corp.'s long range plans for repairing and maintaining its bridge and rail network in the State of New Hampshire.

As was referenced previously, the Commission has the responsibility to keep informed as to the safety and adequacy of its utility's operations. THE Commission used Order No. 17,681 in this proceeding as an Order of Notice of this new proceeding. The B&M has every opportunity to argue any issues it finds necessary in that proceeding. There is no record that they have done so, however, and there is specifically no record in that docket of their request a relaxation of the September 1, 1985, date at which their long range plans were due.

[4] The B&M contends that the Commission has no authority to order it to prepare to make such modifications as are requested by the City of Portsmouth, even though such costs are to be borne by the City.

The provision of the order to which the B&M refers cannot be taken without reference to the attached report, which is made a part of the order. The Commission clearly explained that the present design of the Greenland Road bridge is adequate to support the purpose for which it was originally intended — that is to carry vehicular traffic safely. It is clear, however, that traffic patterns and citizen needs have changed since the bridge was constructed. The B&M must be prepared to discuss changing traffic patterns and changing citizens' needs with the City of Portsmouth. If the City of Portsmouth finds, in the future, that modifications to the bridge are necessary in order to accommodate the needs of its residents, then the B&M must be prepared to make those modifications in accordance with RSA 373:2. Further, in accordance with RSA 373:3, they will be made whole in any modification requirements by the assurance that the City of Portsmouth must be prepared to bear the cost for those modifications. It is the Commission's intent to assure that the City of Portsmouth and the B&M continue to work together to prepare for the future. The Commission acted properly in requiring that the B&M be prepared to make

such modifications as are necessary to support future traffic patterns.

Lastly, the B&M contends that the evidence elicited at the hearing supported an order limited to denying the petition. It is interesting that is exactly what the Commission did. The City of Portsmouth requested that the Greenland Road Bridge be reconstructed. The Commission found that such reconstruction was unnecessary. If our decision can be interpreted as having found against the City, then the B&M should find some satisfaction that the decision found in their own favor. The Commission will not, however, ignore the need for continued close monitoring of the Greenland Road bridge, or of the need for continued communication between the City of Portsmouth and the Boston & Maine Corporation. The Commission

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acted properly in directing that continued monitoring, and that continued communication.

The motion for reconsideration or rehearing is hereby denied. 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 Boston & Maine Corporation's motions for reconsideration or rehearing be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1985.

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NH.PUC*11/19/85*[61250]*70 NH PUC 952*Wolfeboro Municipal Electric Department

[Go to End of 61250]

70 NH PUC 952

Re Wolfeboro Municipal Electric Department

DE 85-325, Order No. 17,957

New Hampshire Public Utilities Commission

November 19, 1985

PETITION by a municipal electric utility for authority to install a submarine electric transmission cable; granted.

Electricity, § 7 — Wires and cables — Submarine transmission line — Construction — Authorization.

State law, RSA 371:17, provides that public utilities, corporations, and individuals are

required to obtain authorization from the commission for the construction of pipelines, cables, conduits or poles and towers, across or under any "public waters," which are defined as tidewater, streams designated by the commission, and all ponds of more than 10 acres. [1] p. 953.

Certificates, § 102 — Electric plant — Transmission line — Submarine cable.

A municipal electric utility was authorized to construct and install a 2.4 kv electric transmission line across and underneath Lake Winnepesaukee to provide electric service to two residences under construction on Parker Island, in the middle of the lake. [2] p. 953.

APPEARANCES: Dennis Bean, Business Administrator, Wolfeboro Municipal Electric Department and Richard Allison, Main Line Company, on behalf of the petitioner; Arthur Johnson, Commission Electrical Engineer, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 6, 1985, the Wolfeboro Municipal Electric Department (Wolfeboro) filed a petition pursuant to RSA 371:17 for authority to construct, operate and maintain a 2.4 KV insulated No. 2 aluminum submarine cable under the waters of Lake Winnepesaukee in Wolfeboro, New Hampshire. An Order of Notice was issued on September 19, 1985 setting a hearing for October 23, 1985, at which time no one appeared in opposition to the petition. Offering testimony and exhibits in support of the petition were

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Dennis Bean, Wolfeboro's Business Administrator, and Richard Allison, an electrician with Main Line Company of Wolfeboro, New Hampshire.

II. APPLICABLE LAW

[1] RSA 371:17 provides as follows:

371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

III. FINDINGS

[2] Wolfeboro seeks a license to install the above described cable under Lake Winnepesaukee

to service two proposed residences on Parker Island, one of which is under construction. The proposed crossing will be from New England Telephone Company pole 25/100 (Route 25, Pole 100) and will proceed across the property of Kent Lauber under Lake Winnepesaukee a total of 4000 feet, 3500 of which will be under water. It is set forth in detail on a map of the area which was submitted as Exhibit 2. The depth of Lake Winnepesaukee in this area is approximately 5 feet. Wolfeboro has secured the necessary easements from Mr. Lauber as well as Water Supply and Pollution Control Commission and Wetlands Board authorizations (Exhibits 3 and 4).

Main Line Company of Wolfeboro, New Hampshire will install the cable and will comply with all applicable electrical codes. The cable will be trenched from the pole 100 feet to the water and an additional 1100 feet under water. While not required, the cable will also be placed in conduit from 100 feet under water to the island as an additional safety measure. There will also be a sign on the shoreline indicating the presence of a submarine cable.

Upon review of the record, we find that the installation of the above-described cable is in the public interest. Accordingly, we will grant Wolfeboro's petition.

Our Order will issue accordingly. Concurring:

ORDER

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

ORDERED, that the petition of Wolfeboro Municipal Electric Department for a license to construct, operate and maintain a 2.4 KV submarine cable under Lake Winnepesaukee be, and hereby is, granted; and it is

FURTHER ORDERED, that this Order shall be considered a license for the purposes of RSA 371:17.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1985.

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NH.PUC*11/19/85*[61251]*70 NH PUC 954*Darrell A. Wagner

[Go to End of 61251]

70 NH PUC 954

Re Darrell A. Wagner

DE 85-327, Order No. 17,958

New Hampshire Public Utilities Commission

November 19, 1985

PETITION by a residential electric customer for authority to install a submarine electric distribution cable; granted.

Electricity, § 7 — Wires and cables — Submarine transmission line — Construction —

Authorization.

State law, RSA 371:17, provides that public utilities, corporation, and individuals are required to obtain authorization from the commission for the construction of pipelines, cables, conduits or poles and towers, across or under any "public waters," which are defined as tidewater, stream designated by the commission, and all ponds of more than 10 acres. [1] p. 954. Certificates, § 102 — Electric plant — Distribution line — Submarine cable — Ex post facto authority.

A residential electric customer was granted authority after the fact to construct and install an electric distribution cable across and underneath Highland Lake in Stoddard, New Hampshire, to connect an electric utility service drop to his vacation home situated on a 3 acre island in the middle of the lake; the customer was a general contractor by trade and had constructed the line in accordance with all applicable safety codes, but had been unaware of certification requirements at the time of construction. [2] p. 955.

APPEARANCES: Darrell A. Wagner, Pro Se; Arthur Johnson, Commission Electrical Engineer, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 9, 1985, Darrell A. Wagner of Hudson, New Hampshire filed a petition pursuant to RSA 371:17 for authority to install an electric line under the waters of Highland Lake in Stoddard, New Hampshire. An Order of Notice was issued on September 19, 1985 setting a hearing for October 23, 1985 at which time no one appeared in opposition to the petition. Darrell Wagner offered testimony and exhibits in support of the petition.

II. APPLICABLE LAW

[1] 371:17 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over,

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under or across any of the public waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, "public waters" are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility.

II. FINDINGS

[2] Mr. Wagner seeks a license with regard to a submarine cable which he installed approximately 4 months ago across Highland Lake in Stoddard, New Hampshire. The cable was installed to provide electric service from a PSNH service drop on a lot owned by Mr. Wagner on the mainland to Mr. Wagner's vacation home on a 3 acre island in Highland Lake in Stoddard, New Hampshire.¹⁽³⁷⁶⁾ At the time he installed the cable, Mr. Wagner was unaware of RSA 371:17 and the necessity of obtaining a license from the Commission. Upon being informed of this by the Stoddard Board of Selectmen, Mr. Wagner filed the instant petition.

The exact location of the crossing is set forth in a map which is part of Exhibit 1. Also contained therein is a cross-section diagram which shows the lake's depths all along the 700 feet of the crossing. With the exception of 78 feet between two buoys, there is no boat traffic in the area. In that section of the lake where there is traffic, the depth is 30 feet and the cable is securely affixed on the bottom. Thus, the cable poses no threat to the boat traffic in that area. In the non-traveled areas where the depth is significantly more shallow, the cable has settled in approximately 7 to 12 inches of silt. While not required, Mr. Wagner has installed the cable in conduit and has trenched the cable on land.

A general contractor by trade, Mr. Wagner installed the cable himself. He is familiar with the National Electric Safety Code and other applicable safety codes. According to Mr. Wagner, the cable has been installed in accordance with the requirements of these codes. Since its installation, Mr. Wagner has experienced no problems with the cable.

It should be noted that Mr. Wagner originally contacted PSNH with regard to its installing a line extension to the island. PSNH expressed reservations about the boat traffic and was reluctant to construct such an extension. Moreover, a probable cost of \$70,000 lead Mr. Wagner to conclude that a line extension from his side of the meter was the only economically feasible alternative.

Upon review of the record, we find that the installation of the above-described cable is in the public interest. Accordingly, we will grant Mr. Wagner's petition subject to the condition that he obtain the requisite authorizations from the New Hampshire Wetlands Board (RSA 483-A) and the New Hampshire Water Supply and Pollution Control Commission (RSA 149:8-a). Once we receive these

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authorizations, the license conferred herein will become effective.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of Darrell Wagner for a license to install a submarine cable under Highland Lake in Stoddard, New Hampshire be, and hereby is, granted; and it is

FURTHER ORDERED, that this order shall be considered as a license for the purposes of RSA 371:17; and it is

FURTHER ORDERED, that as provided in the foregoing Report, this License shall not

become effective until Mr. Wagner files authorizations from the N.H. Wetland Board and the N.H. Water Supply and Pollution Control Commission with this Commission.

By order of the Public Utilities Commission of New Hampshire, this nineteenth day of November, 1985.

FOOTNOTE

¹The line drop is attached to a pole located on a lot owned by Mr. Wagner on the mainland. The circuit breaker is housed in a small, weather-tight house. Mr. Wagner plans to construct a camp on this site.

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NH.PUC*11/22/85*[61252]*70 NH PUC 956*New Hampshire Electric Cooperative, Inc.

[Go to End of 61252]

70 NH PUC 956

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Office of Consumer Advocate et al.

DF 83-360, 22nd
Supplemental Order No. 17,960

New Hampshire Public Utilities Commission

November 22, 1985

ORDER issued on remand from state supreme court concerning financing authority for investment in Seabrook unit I nuclear electric generating plant and probable range of electric rates necessary to produce lawful rate of return.

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Return, § 15 — Reasonableness — Elements — Expenses — Rate base — Depreciation.

The level of rates must be adequate to produce, after payment of projected operating expenses, a net return on capital investment in rate base equal to the cost of capital; the return rate is the product of a prescribed rate applied to the cost (less depreciation) of utility property that is "used and useful in the public service," as defined by state law, RSA 378:27, 378:28, the rate base includes the depreciated cost of plant in service plus working capital. [1] p. 960.

Valuation, § 224 — Construction work in progress — Allowance for funds used during construction — Anti-CWIP statute.

The cost of money invested in a plant during its construction is not recoverable in utility rates by an allowance for construction work in progress (CWIP), under the so-called anti-CWIP

statute, RSA 378:30-a; therefore, the capitalized cost of money incurred during construction is added to the investment and to the rate base when the plant begins operation as a used and useful addition to the utility's total rate base; the capitalized value of the cost of money is referred to as allowance for funds used during construction (AFUDC). [2] p. 960.

Valuation, § 224 — Construction work in progress — Allowance for funds used during construction — Financing sources.

During the construction of a utility plant, capitalized allowance for funds used during construction (AFUDC) is recorded as an accounting entry indicating future income, but does not produce any cash flow from operation; interest and dividends on money attributable to investment in plant under construction must be paid from other earnings or from borrowed or invested funds. [3] p. 960.

Expenses, § 122 — Electric utilities — Purchased power costs — Seabrook plant — Probable rate effects.

The commission was unable to calculate precisely the low end of the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant because the lower limit of the range would depend upon ultimate findings in a prudence investigation of the Seabrook investment and purchased power costs to be held by the commission, as well as a prudence review to be conducted by the Federal Energy Regulatory Commission. [4] p. 970.

Electricity, § 3 — Generating plants — Investment share — Public interest — Seabrook unit 1.

It was held that the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant was reasonable (even in the event of a rate base disallowance for Public Service Company of New Hampshire on the grounds of imprudence associated with the Seabrook plant) and would assure the cooperative a lawful rate of return on its investment; accordingly, it was determined to be in the public interest to grant authority to the cooperative for financing and investment in the Seabrook plant. [5] p. 977.

Electricity, § 3 — Generating plants — Investment share — Public interest — Seabrook unit I.

In determining the reasonableness of the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant, and whether the rates would assure the cooperative a lawful rate of return on its investment, it was necessary not only to examine the amount of the percentage increase in rates, but also to answer the following issues: (1) whether there was a need for power (i.e., whether the new plant investment would be used and useful); (2) whether the proposed investment represented the least cost means of meeting that need for power under the appropriate incremental cost standard; (3) whether all or a part of the costs of the plant were prudently incurred; and (4) whether the return on the cost of the investment would be reasonable. [6] p. 978.

Electricity, § 3 — Generating plants — Need for power — Investment share — Electric cooperative — Seabrook unit I.

Based upon a determination of the need for power by an electric cooperative, authorization

was granted for the financing of the acquisition of an investment share in

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Seabrook unit I nuclear electric generating plant. [7] p. 978.

Electricity, § 3 — Generating plants — Need for power — Investment share — Electric cooperative — Seabrook unit I.

Based upon a determination of the need for power by an electric cooperative, including evaluation of alternative energy supply sources and least cost power availability, authorization was granted for the financing of the acquisition of an investment share in Seabrook unit I nuclear electric generating plant. [8] p. 979.

Electricity, § 3 — Generating plants — Seabrook unit I — Investment share.

Discussion of dollar value of share of investment in Seabrook unit I nuclear electric generating plant held by New Hampshire Electric Cooperative, Inc., together with sale and leaseback arrangements with Public Service Company of New Hampshire. p. 961.

Expenses, § 122 — Electric utilities — Purchased power costs.

Discussion of factual assumptions governing estimation of purchased power costs to be incurred by New Hampshire Electric Cooperative in acquiring wholesale electricity from Public Service Company of New Hampshire, and probable effects caused by various in-service scenarios for the Seabrook unit I nuclear electric generating plant. p. 962.

Expenses, § 122 — Electric utilities — Purchased power costs — Seabrook plant — Probable rate effects.

Discussion of method used for hypothetical calculation of the low end of the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant, based upon an assumption of a rate base exclusion of about \$1 billion for Public Service Company of New Hampshire on the grounds of imprudence. p. 970.

Expenses, § 122 — Electric utilities — Purchased power costs — Seabrook plant — Probable rate effects.

Discussion of upper and lower ends of the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant. p. 972.

Expenses, § 122 — Electric utilities — Purchased power costs — Seabrook plant — Probable rate effects.

Statement, in dissenting opinion, that the method used for hypothetical calculation of the upper and lower ends of the probable range of electric rates resulting from financial investment by an electric cooperative in the Seabrook unit I nuclear electric generating plant, which was based upon projections of average rates charged by Public Service Company of New Hampshire (PSNH), was possibly flawed, because, the average rates for PSNH reflected wholesale rates set by the Federal Energy Regulatory Commission (which might employ unexpected assumptions),

and because the cooperative did not sell power at wholesale, but sold power only at resale, making it impractical to compare average rates between PSNH and the cooperative. p. 982.

(AESCHLIMAN, commission, dissents, p. 982.)

APPEARANCES: As previously noted.

By the COMMISSION:

I. INTRODUCTION

On May 31, 1985, the Commission issued Report and Seventeenth Supplemental Order No. 17,638 (70 NH PUC 423) in this docket granting requested financing authority to the New Hampshire Electric Cooperative, Inc. (NHEC) pursuant to RSA Chapter 369. Timely Motions for Rehearing were filed by Intervenors Gary McCool, Roger Easton and the Consumer Advocate. Those Motions were denied in Report and Twentieth Supplemental Order No. 17,699 (70 NH PUC 573). Intervenors McCool and Easton then filed Appeal Petitions with the New Hampshire

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Supreme Court. Briefs were filed in the appeal pursuant to a schedule established by the Court and the matter was orally argued on November 12, 1985.

On November 15, 1985, the Supreme Court remanded the matter to the Commission. The Court held that the Commission did not address with sufficient specificity the effect on NHEC's future rates of the investment in Seabrook Unit I upon completion with findings of fact sufficient for genuine appellate review. *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 718, 484 A.2d 1196, 1203 (1984). The Supreme Court stated that the Commission's analysis of projections of future rates necessary to support the NHEC's investment upon completion of Seabrook Unit I did not establish the reasonably probable range within which actual customer rates must be set in order to assure the NHEC a lawful return on investment. The Court further stated that without a determination of the range within which rates will probably be set, the Commission's findings are incomplete and fail to satisfy the requirements of RSA 369:1 and 4. The Court concluded.

Therefore we remand this case to the commission for the issuance of a supplemental report or reports based on the present record and containing (1) specific findings, expressed in dollars and as percentages of the existing rates, of the reasonably probable range within which the actual customer rates will be set if the borrowing occurs as authorized by the commission; and (2) determinations of the effect of such findings on the validity of the conclusions stated in the commission's Report and Order dated May 31, 1985.

Herein, we issue our Supplemental Report addressing the Court's mandate.

II. REASONABLY PROBABLE RANGE

In its November 15, 1985 Order, the Court recognized that the Commission had defined an array of rates that could be applicable under varying assumptions. (See e.g., 70 NH PUC 423). The Court went on to state:

The commission did not, however, make any findings of fact about the reasonably probable

range within which actual customer rates must be set in order to assure the company a lawful return on investment.

The Court stated that in the absence of such specific findings of fact, the Commission's Order was incomplete and failed to satisfy RSA 369:1 and :4. See also, *Re SAPL*, 125 N.H. at p. 718.

The Court correctly observed that although Order 17,638 found that rates to support the NHEC's investment in Seabrook I will be reasonable, it did not contain findings on the reasonably probable range of rates. We had understood our responsibility to be an assessment of ratepayer and investor exposure when evaluating financing petitions and, in the context of exposure, we identified the range of rates that may be adopted in a subsequent rate proceeding without establishing the reasonably probable range within which actual customer rates must be set in order to assure the company a lawful return on its investment. We found that the financing is consistent with the public good at the projected level of rates under an

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array of scenarios with varying assumptions resulting in substantial increases in rate levels more than double current rates. (70 NH PUC 422.)

In this Report, we have, on the basis of the present record, made findings of a range of reasonably probable rates. It must be 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 and 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 10 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.

A. Specific Findings in Dollars and as Percentages of the Existing Rates of the Reasonably Probable Range Within Which the Actual Customer RATEs Will be Set if the Borrowing Occurs as Authorized by the Commission.

[1-3] From the array of projections of future rates necessary to support the NHEC's future capital investment, we have selected representative projections from scenarios establishing the approximate limits of the reasonably probable range of rates subject to a prudence investigation.

The level of rates must be adequate to produce, after payment of projected operating expenses, a net return on

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capital investment in rate base equal to the cost of capital. The return is the product of a prescribed rate applied to the cost less depreciation of the Company's property that is "used and useful in the public service", RSA 378:27, 28. The rate base includes the depreciated cost of plant in service plus working capital. The recovery of the cost of money invested in plant during the construction period is not recoverable by an allowance for Construction Work in Progress (CWIP) under the Anti-CWIP statute, RSA 378:30-a, and therefore the capitalized cost of money incurred during construction is added to the investment and to the rate base when the plant begins operation as a used and useful addition to the Company's total rate base. The capitalized value of the cost of money is referred to as Allowance for Funds Used During Construction (AFUDC). During the construction of the plant, capitalization of AFUDC is an accounting entry indicating future income, but does not produce: "... any cash flow from operations, and interest and dividends on money attributable to investment in that plant must be paid from other earnings or from borrowed or invested funds." Re Public Service Co. of New Hampshire 125 N.H. 46, 50, 60 PUR4th 16, 480, A.2d 20 (1984).

1. Assumptions

The capital investment of the NHEC in Seabrook I determined from the total cost of the project including past and prospective construction plus the financing costs for sunk and prospective investment (AFUDC). The total cost of the project was estimated in Re PSNH, supra, 70 NH PUC at p. 219, 66 PUR4th at p. 399, to be 4.6 to 4.7 billion dollars. See also, Re Public Service Co. of New Hampshire, 70 NH PUC 886 (1985) (Order 17,939) and Report and Tenth Supplemental Order No. 17,601 (70 NH PUC 367). This finding was adopted in the instant docket for purposes of determining the level of reasonable rates based on a \$1 billion cost to go. (70 NH PUC 319). The NHEC's share of this total cost is approximately \$103,500,915, based on 2.17319% of 4.6 billion dollars. (Exh. R-4). Estimated revenues were determined from the NHEC's Dalton load forecast, and expenses were based upon the costs associated with the construction and operation of the NHEC's total plant less depreciation over the 20 year time frame of the scenarios plus projected purchase power costs. The estimated revenues include an allowance to produce a return on investment equal to the NHEC's weighted cost of capital.

A fundamental assumption in consideration of the reasonably probable range of rates for the

NHEC is that in pursuing the least cost alternative the NHEC will take advantage of the sell-back arrangement with PSNH during the first ten years of Seabrook operation (See, 70 NH PUC 422). Under this arrangement, whenever the cost of purchasing power from PSNH is less than the capacity and energy costs of its 25 MW Seabrook share, the NHEC may sell at cost its Seabrook share and purchase power from PSNH. The "no UNITIL" scenarios, upon which we rely for our rate projections, indicate that during the first ten years of Seabrook operation it is to the advantage of the NHEC to sell back its Seabrook share in all years except 1988 and 1989. Therefore, in the remaining 8 years the capital and associated costs of the

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NHEC's Seabrook investment are excluded from the NHEC rate base and are replaced by additional costs of purchased power from PSNH. Exh. R-21A; 5 Tr. 813.

The NHEC's purchased power costs from PSNH have the major impact upon the probable level of rates since over 90% of the NHEC's purchased power is supplied by PSNH. Therefore, many assumptions underlying the calculation of the probable range of rates are similar to the Commission findings in Re PSNH, supra. These findings were subsequently outlined in Re PSNH 70 NH PUC at p. 892:

1. Seabrook Unit I in-service date of December 31, 1986.
2. Seabrook Unit I total project cost of \$4.6 billion.
3. Projected rate levels based on a cost to go of \$882,000,000 as of January 1, 1985.
4. Average cost of capital for PSNH of approximately 15.4%¹⁽³⁷⁷⁾
5. 1984 load forecast of PSNH excluding UNITIL as reasonable projection.²⁽³⁷⁸⁾
6. 60% capacity factor for Seabrook I.

The NHEC-specific assumptions are:

1. An average cost of capital for NHEC of 11%. Exhibit R-21A and R-21E.
2. Load requirements based on a "Power Requirements Study 1985-1994" (Exh. 16) and "Demand vs Resources" 1985-2004" (Exh. 19). (70 NH PUC 422.)
3. Demand forecast based on the LaCapra analysis of the Dalton Report incorporating the NHEC market characteristics.

We specifically found that the Dalton forecast was a reasonable analysis to determine the need for power in terms of projected demand. Id.

Assumptions 1-6 above, plus the assumption of no recovery for write-offs of Seabrook Unit II and Pilgrim II underlie the PSNH rate projections of the scenario at Exhibit 124-D in Re PSNH, DF 84-200 (Scenario 124-D). (See, 70 NH PUC at p. 895, Table 3.) Assumptions 1-6 also underlie NHEC's Exhibit R-21A. The primary difference between Scenario 124-D and Exhibit R-21A is that Scenario 124-D assumed no recovery for Seabrook II and Pilgrim II and R-21A assumed that PSNH will be allowed to recover these costs (and therefore charge for recovery through the purchased power rates established for PSNH/NHEC transactions).³⁽³⁷⁹⁾ To the extent that recovery is not allowed, calculations based on R-21A will overstate the rate

projection.

In Order 17,638 the basis of our analysis was Exhibit R-21B rather than Exhibit R-21A. In that Order, our analysis was intended to assess the maximum exposure of the NHEC and its ratepayers, rather than the range of probable rates. The difference between R-21A and R-21B is that R-21B projects the per kilowatt hour power costs

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of a scenario that assumes that the commercial operation date of Seabrook I will be October 1987 and the cost to complete Seabrook I will be \$1.3 billion from July 1984 (essentially \$1.0 billion from January 1985). In contrast, the R-21A scenario assumes a commercial operation date of December 1986 and a cost to complete of \$882 million from January 1985. (70 NH PUC 422.) The reconciliation of these differences is summarized in Order 17,638 (70 NH PUC 422) and Order 17,699 (70 NH PUC 573). Exhibit R-47 then adds distribution and general and administrative costs to the power costs of R-21B to derive a estimate of retail rates. This analysis, and the R-21B/R-47 exhibits, were appropriate for an examination of ratepayer exposure; however, for an investigation of the reasonably probable range of rates, it is necessary to utilize R-21A with its more likely commercial operation date of December 1986 and its completion cost of \$882 million.⁴⁽³⁸⁰⁾

The Exhibit R-21 projections also include cases which analyze the effect of including UNITIL in the PSNH load forecast and two sets of results reflecting the cost of cancellation of the NHEC's Seabrook participation. The additional assumptions necessary to perform these analyses (e.g., terms of repayment to the Federal Financing Bank in case of default) are included in Exhibit 21e and outlined in Order 17,638 (70 NH PUC 422). However, neither the cases nor the assumptions are relevant to the present analysis of the reasonably probable range of rates upon completion of construction of Seabrook I, including the NHEC's cost of borrowing as authorized by the Commission.

2. Probable High End of the Range

A probable high end of the range is based on the assumption of full recovery of the capital investment made in Seabrook by both PSNH and the NHEC at an assumed total cost to complete of \$882 million from January 1985. These assumptions underlie the power cost projections of R-21A. While there is no calculation in the record to translate the R-21A power costs into retail rates, there are figures in the record to make the calculation.

The arithmetical difference between R-47 and R-21B-Table 2 is the NHEC non-power costs on a per kilowatt hour basis. R-47 incorporates two assumptions regarding the escalation rate of non-power costs, 7.5% and 5%. Of these two escalation rates, the Commission finds 5% the more likely. The non-power costs are within the control of management and the general inflation rate has remained between 3 and 4% for the last 3 years. Further, the Commission would expect the NHEC management to be particularly mindful of its own administrative and distribution costs at a time when its power costs are contributing to significant increases in rates.

Subtraction of each annual figure in R-21B (per kilowatt hour power costs) from its counterpart R-47-5% (per

kilowatt hour retail rates) produces a calculation of the non-power "fixed cost adder" at an assumed 5% escalation rate. This fixed cost adder can then be combined with the power costs in R-21A to obtain a retail rate that both embodies the assumption of an \$882 million cost to complete, and includes the distribution and administrative costs of the NHEC as well as its power costs. See, Table 3, *infra*, at 967.

Table 1 displays the retail rate derived in Table 3 and calculates cents per kilowatt hour annual changes, the annual percentage changes and the percent increase over 1985. As the projections do not include a phase in of rates, the retail rates double by 1988, remain essentially level through 1996 and begin to rise again in 1997.⁵⁽³⁸¹⁾ Thus by 2004, retail rates in nominal terms are 29.68/kwh, which is a 227.59% increase over the 1985 rates. Graph 1 expresses from Table 1 the upper limit of the reasonably probable range within which retail rates will be set upon completion of Seabrook Unit 1. Table 1 and Graph 1 incorporate our specific findings expressed in dollars and as percentages of the existing rates of this upper limit of the reasonably probable range of rates.

Table 2 and Graph 2 show the retail rates in terms of both nominal and real dollars and calculates the real dollar increase over 1985. The analysis in real rather than nominal terms is important because it is clear that the compounding effect of the assumed rate of inflation has a major influence on the level of rates by the end of the period. Deflating the price increase by the inflation rate produces a calculation of the percentage increase in the retail rate in excess of the inflation rate. Thus, as shown on Table 2, by 2004 the upper limit of rates will result in an increase of rates 29.64% above whatever increases result from the general inflation rate.

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

TABLE I

PROJECTIONS OF RATE LEVELS IN NOMINAL PRICES

\$882 MILLION TO COMPLETE — 5.0% ESCALATION HIGH

Year	Retail Rate Cents Per KWH	Yearly Increase Cents Per KWH	Percent Increase Over Preceding Year	Cents Per KWH Increase Over 1985	Percent Increase Over 1985
1985	9.06				
1986	10.73	1.67	18.43%	1.67	18.43%
1987	18.05	7.32	68.22	8.99	99.23
1988	19.53	1.48	8.20	10.47	115.56
1989	19.58	0.05	0.26	10.52	116.11
1990	19.52	-0.06	-0.31	10.46	115.45
1991	19.20	-0.32	-1.64	10.14	111.92
1992	19.65	0.45	2.34	10.59	116.89
1993	19.58	-0.07	-0.36	10.52	116.11
1994	19.34	-0.24	-1.23	10.28	113.47
1995	19.27	-0.07	-0.36	10.21	112.69

1996	19.81	0.54	2.80	10.75	118.65
1997	20.98	1.17	5.91	11.92	131.57
1998	21.52	0.54	2.57	12.46	137.53
1999	22.63	1.11	5.16	13.57	149.78
2000	23.65	1.02	4.51	14.59	161.04
2001	24.28	0.63	2.66	15.22	167.99
2002	25.73	1.45	5.97	16.67	184.00
2003	27.80	2.07	8.05	18.74	206.84
2004	29.68	1.88	6.76	20.62	227.59

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

TABLE 2

COST PER KWH IN NOMINAL AND REAL DOLLARS

\$882 MILLION TO COMPLETE - 5.0% ESCALATION HIGH

Year	Nominal Dollar Retail Rates Cents/KWH	Real Dollar Retail Rates Cents/KWH	Real Dollar Percent Increase over 1985
1985	9.06	9.06	
1986	10.73	10.22	2.79%
1987	18.05	16.37	80.71
1988	19.53	16.87	86.21
1989	19.58	16.11	77.80
1990	19.52	15.29	68.81
1991	19.20	14.33	58.14
1992	19.65	13.96	54.14
1993	19.58	13.25	46.27
1994	19.34	12.47	37.60
1995	19.27	11.83	30.58
1996	19.81	11.58	27.84
1997	20.98	11.68	28.95
1998	21.52	11.41	25.97
1999	22.63	11.43	26.16
2000	23.65	11.38	25.56
2001	24.28	11.12	22.77
2002	25.73	11.23	23.91
2003	27.80	11.55	27.50
2004	29.68	11.75	29.64

(1) Calculated by deflating Nominal Rates by an annual compound inflation rate of 5% (1985 = Year "0")

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's and NHEC's costs have different sensitivities to inflation.

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

TABLE 3

CALCULATION OF HIGH END OF RANGE FOR RETAIL RATES

PURbase

	(1) Exhibit R-47 5.0% Esc. Projected	(2) Exhibit R-21B Projected	(3) Fixed Cost	(4) Exhibit R-21A Projected	(5) Retail
Rates	Retail Rates	Power Costs	Adders	Power Costs	Cents/KWH
Year	Cents/KWH	Cents/KWH	(1) - (2)	Cents/KWh	(3) - (4)
1985	9.05	5.58	3.47	5.59	9.06
1986	9.57	5.92	3.65	7.08	10.73
1987	12.10	8.28	3.82	14.23	18.05
1988	19.02	15.01	4.01	15.52	19.53
1989	21.71	17.50	4.21	15.37	19.58
1990	22.39	17.96	4.43	15.09	19.52
1991	21.68	17.03	4.65	14.55	19.20
1992	21.44	16.56	4.88	14.77	19.65
1993	20.70	15.57	5.13	14.45	19.58
1994	20.59	15.20	5.39	13.95	19.34
1995	20.62	14.97	5.65	13.62	19.27
1996	20.99	15.06	5.93	13.88	19.81
1997	21.97	15.74	6.23	14.75	20.98
1998	22.84	16.30	6.54	14.98	21.52
1999	23.90	17.03	6.87	15.76	22.63
2000	24.86	17.65	7.21	16.44	23.65
2001	25.43	17.85	7.58	16.70	24.28
2002	26.75	18.80	7.95	17.78	25.73
2003	28.38	20.03	8.35	19.45	27.80
2004	30.25	21.48	8.77	20.91	29.68

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[Graphic Not Displayed Here]

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[Graphic Not Displayed Here]

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3. Low End of the Range

[4] Based on the present record, we cannot prescribe the low end of the reasonably probable range of rates since the lower limit of the range will depend upon ultimate findings in a prudence investigation by this Commission of the investment in Seabrook and the prudence of the NHEC's purchased power costs, as well as a prudence review by the FERC to determine the rate level of wholesale sales to the NHEC. However, as in Order 17,939 we can determine in this proceeding the lower limit consistent with a survival scenario for PSNH relevant to purchased power costs by the NHEC. We cannot prejudge the prudent investment by the NHEC in Seabrook which must await a subsequent investigation in rate proceedings before this Commission and the FERC after Seabrook has been completed. See, 70 NH PUC 886 (Tables 4 and 5, Graph 2).

Calculation of the low end of the range involves more complicated arithmetic computations than does the high end. If one assumes that the rates set both by the FERC and this Commission

must be at least high enough not to put either PSNH or the NHEC into default, the maximum rate base exclusions from PSNH costs are presented in Re PSNH, DF 84-200, Exhibit 119-J (Trawicki rate base exclusions). THE methodology for calculating the low end of the range is straight-forward, although it does involve a number of steps. In essence, the calculation traces the effect of the rate base exclusion for PSNH on the cost of power purchased from PSNH by the NHEC.⁶⁽³⁸²⁾

The first step in the calculation is to determine the price effect of the rate base exclusion in terms of a percentage discount on PSNH rates. This can be done by comparing DF 84-200, Exhibit 119-J (rate base exclusion) to DF 84-200 Exhibit 99B, (PSNH base case without phase-in), the scenario most like Exhibit 119-J in its assumptions. The importance of comparing Exhibit 119-J to a scenario most similar in the assumptions is that it is desirable that the first ratio capture only the effect of the rate base exclusion, not other factors as well. The other factors are included at later stages in the analysis and therefore including them in the first ratio would double-count their effect. The major difference between Exhibit 99B and

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119-J, aside from the rate base exclusion, is that Exhibit 119-J is based on an assumption of a higher level of financing. However, the conclusions of the rate base exclusion scenario would not be substantially modified by a revision of the financing proposal. (70 NH PUC 886.)

The assumptions of Exhibits 99B and 119-J are similar to those listed above for Exhibit 124-D, except that Exhibits 99B and 119-J assume no loss of the UNITIL load and higher capacity factors for Seabrook I operation.

The ratio between Exhibit 119-J and Exhibit 99B produces the percentage change in PSNH rates due to the rate base exclusion. In 1987, for example, rates based on a rate base exclusion assumption are 85% of rates based on a full recovery scenario. (See, Table 6, Columns 1, 2 & 3, 1987, *infra* at 28.) As Exhibit 119-J includes only years 1985-2000, an estimated ratio of 87% has been used for the years 2001-2004.

This ratio (Table 6, Column 3) is then multiplied by the NHEC Purchase Power Cost from PSNH (Table 6, Column 4) taken from Exhibit R-21A, Workpapers 1, a workpaper that isolates the cost of power for the NHEC from each of its sources. Exhibit R-21A incorporates the assumptions that the Commission has found most likely and therefore the disparity between the assumptions underlying Exhibits 99B and 119-J and the more probable assumptions is corrected at this step in the calculations. The result of the calculation is a cost of power purchased from PSNH discounted for the rate base exclusion. (Table 6, Column 5).

The adjusted purchase cost from PSNH is then added to NHEC's costs of power from non-PSNH sources (Maine Yankee, minor suppliers and Seabrook), again taken from Exhibit R-21A, Workpaper 1, to obtain a new total cost of power for the NHEC (Table 6, Column 5, 6 and 7). The total cost of power is divided by NHEC's Load estimates (Column 8 from Exhibit R-21A, Workpaper 5) to obtain a per kilowatt hour cost of power (Column 9). Finally the cost of power is added to the fixed cost adders (administrative and distribution costs) previously derived on Table 3. The result is a retail rate that is the sum of the NHEC's fixed costs plus a discounted power cost which represents the low end of the reasonably probable range of rates consistent

with the assumption that neither PSNH nor the NHEC will default on their debt obligations.

Table 4 displays the retail rates derived on Table 6 and calculates the yearly cents per kilowatt hour changes and percentage changes and the increases in cents and percentages over the base year 1985. Again without phase-in, rates increase 30% by 1987, but remain relatively stable through 1997. Thereafter, they increase markedly in 1998 and gradually escalate for the remainder of the period. By 2004, rates have increased 192%. Graph 3 displays the rates in cents per kwh derived in Table 4.

We find that the projected rates in Table 4 and Graph 3 are the lowest level of rates which could possibly be set if a substantive prudence investigation warranted the exclusion of \$1.0-1.1 billion of PSNH's investment in Seabrook I on the ground of imprudence. Until a prudent investment rate base has been determined and until the purchased power costs by the NHEC from PSNH as its primary supplier have been approved consistent with protection of ratepayer interests, the lower limit of rates to yield a reasonable return on an indeterminate rate base after payment of the reasonable costs of purchased power cannot be ascertained. Order 17,939 at 28. We recognize that the level of rates dependent on the evidence in a prudence investigation may be substantially higher than the "floor"

on rates derived from Table 4 and Graph 3 based on hypothetical exclusions from rate base consistent with the financial survival of PSNH. See, Re PSNH, 70 NH PUC 367 ("The Efficacy of the Future Prudence Determination"), cited in Order 17,939; see also, Re McCool, No. 85-139, Brief for the State of New Hampshire, Amicus Curiae at 11-13.

Table 5 and Graph 4 compare the retail rates in nominal terms to rates expressed in real terms and calculates the real dollar increases over 1985. As explained above, the comparison of real to nominal rates indicates a percentage increase of rates by 2004 of 15.7% above any increases caused by the general inflation rate.

The upper and lower limits of the reasonably probable range within which rates will be set are set forth on Graph 5. The difference between the high and low cases is most pronounced in the early years during the period of the sellback. For these years, the NHEC is purchasing as much as 94% of its power from PSNH, and therefore the effect of discounting that purchase price is most substantial. In 1997, for example, the difference in the two cases reaches nearly 5¢ per kilowatt hour. In the later years, the differential drops to approximately 2¢ per kilowatt hour as purchases from PSNH drop to 78-82% of total power supply and the costs of the 25 MW of Seabrook capacity assume a larger role in the NHEC's overall power costs.

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

TABLE 4

PROJECTIONS OF RATE LEVELS IN NOMINAL PRICES
EXCLUSION FROM PSNH RATE BASE
LOW

Year	Retail Rate		Percent Increase		Cents Per Over Preceding Over 1985	Cents Per Over KWH Over 1985	Percent Increase Over 1985	Percent Increase
	Cents Per KWH	Cents Per KWH	Year	Year				
1985								
1986								
1987								
1988								
1989								
1990								
1991								
1992								
1993								
1994								
1995								
1996								
1997								
1998								
1999								
2000								
2001								
2002								
2003								
2004								

1985	9.43				
1986	10.83	1.40	14.85%	1.40	14.85%
1987	16.03	5.20	48.01	6.60	69.99
1988	17.22	1.19	7.42	7.79	82.61
1989	17.25	0.03	0.17	7.82	82.93
1990	16.77	-0.48	- 2.78	7.34	77.84
1991	17.18	0.41	2.44	7.75	82.18
1992	17.87	0.69	4.02	8.44	89.50
1993	18.09	0.22	1.23	8.66	91.83
1994	17.76	-0.33	-1.82	8.33	88.34
1995	17.44	-0.32	-1.80	8.01	84.94
1996	17.09	-0.35	-2.01	7.66	81.23
1997	16.01	-1.08	-6.32	6.58	69.78
1998	20.29	4.28	26.73	10.86	115.16
1999	21.20	0.91	4.48	11.77	124.81
2000	22.08	0.88	4.15	12.65	134.15
2001	22.70	0.62	2.81	13.27	140.72
2002	24.03	1.33	5.86	14.60	154.83
2003	25.88	1.85	7.70	16.45	174.44
2004	27.57	1.69	6.53	18.14	192.36

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

TABLE 5

COST PER KWH IN NOMINAL AND REAL DOLLARS

EXCLUSION FROM PSNH RATE BASE

LOW

Year	Real Dollar		
	Nominal Dollar Retail Rates Cents/KWH	Real Dollar Retail Rates Cents/KWH	Percent Increase over 1985
1985	9.43	9.43	
1986	10.83	10.31	9.38%
1987	16.03	14.54	54.19
1988	17.22	14.88	57.74
1989	17.25	14.19	50.49
1990	16.77	13.14	39.34
1991	17.18	12.82	35.95
1992	17.87	12.70	34.68
1993	18.09	12.24	29.84
1994	17.76	11.45	21.40
1995	17.44	10.71	13.54
1996	17.09	9.99	5.96
1997	16.01	8.91	-5.46
1998	20.29	10.76	14.11
1999	21.20	10.71	13.55
2000	22.08	10.62	12.63
2001	22.70	10.40	10.28
2002	24.03	10.48	11.18
2003	25.88	10.75	14.04
2004	27.57	10.91	15.70

(1) Calculated by deflating Nominal Rates by an annual compound inflation rate of 5%

(1985 = Year "0").

Note: This can only provide a rough approximation of projected real price changes because various components of PSNH's and NHEC's costs have different sensitivities to inflation.

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

TABLE 6

CALCULATION OF LOW END OF RANGE FOR RETAIL RATES

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Fixed Rate	Exhibit Retail	Price Effect	Adjusted		Total Costs	Poer from	Other	Costs	NHEC	Poer
			NHEC Purchase	Poer of Rate						
Rate	119-J	99-B	Base	Cost	PSNH	PSNH	Load	Costs	Costs	Cost
Cents/ (MWHS)	Prime Sales	Prime Sales	Exclusion Cents/ (from	PSNH (1)/(2) (9)+(10)	from (\$ 000's)	(\$ 000's)	Power KWH (3)x(4)	(\$ 000's)	(\$ 000's)	Estimates (5)+(6)
Year (KWH)	Cnts/ (7)/(8) KWH	Cnts/ (from			(000's)					
1985	8.54	8.49	1.01	\$22,710	\$22,844	\$ 3,608	\$26,452	444		
5.96	3.47	3.43								
1986	9.74	9.59	1.02	\$28,325	28,768	\$ 3,753	\$32,521	453		
7.18	3.65	10.83								
1987	12.25	14.44	0.85	\$56,572	47,932	\$ 3,906	\$51,838	425		
12.21	3.82	16.03								
1988	12.67	16.49	0.77	\$43,745	33,611	\$24,233	\$57,844	438	13.21	
4.01	17.22									
1989	12.93	16.86	0.77	\$45,511	34,903	\$24,572	\$59,475	456	13.04	
4.21	17.25									
1990	13.54	16.80	0.81	\$67,226	54,181	\$ 4,455	\$58,636	475		
12.34	4.43	16.77								
1991	14.15	16.62	0.85	\$67,370	57,358	\$ 4,668	\$62,026	495		
12.53	4.65	17.18								
1992	14.72	16.83	0.87	\$71,160	62,017	\$ 4,902	\$66,919	515		
12.99	4.88	17.87								
1993	14.88	16.72	0.89	\$72,146	64,206	\$ 5,138	\$69,344	535		
12.96	5.13	18.09								
1994	15.14	17.23	0.88	\$71,995	63,262	\$ 5,403	\$68,665	555		
12.37	5.39	17.76								
1995	15.03	17.57	0.86	\$72,158	61,727	\$ 5,695	\$67,422	572		
11.73	5.65	17.44								
1996	15.18	18.32	0.83	\$72,076	59,772	\$ 6,005	\$65,727	583		
11.16	5.33	17.09								
1997	15.57	19.25	0.81	\$60,971	49,315	\$ 9,967	\$59,282	606		
9.78	6.23	15.01								
1998	16.46	18.53	0.89	\$64,323	57,137	\$28,826	\$85,963	625	13.75	
6.54	20.23									
1999	17.16	19.71	0.87	\$71,336	62,107	\$30,042	\$92,143	643	14.33	
6.87	21.20									
2000	17.77	20.49	0.87	\$78,036	67,677	\$30,916	\$98,593	663	14.87	
7.21	22.08									
2001	20.81	0.87	\$82,086	71,415	\$31,888	\$103,303	683	15.12		
7.58	22.70									
2002	22.54	0.87	\$92,132	80,155	\$32,859	\$113,014	703	16.08		
7.95	24.03									
2003	24.83	0.87	\$106,954	93,050	\$33,830	\$126,940	724	17.53		

8.35	25.88							
2004		0.87	\$120,971	105,245	\$34,987	\$140,232	746	18.80
8.77	27.57							

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[Graphic Not Displayed Here]

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B. Analysis of Reasonably Probable Range Within Which the Actual Customer Rates Will be Set If the Borrowing Occurs as Authorized by the Commission.

[5] As detailed below, the validity of our conclusions in Order 17,638 (70 NH PUC 422) is unaffected by our findings of the reasonably probable range within which rates will be set. Our conclusions in Order 17,638 were based on the same analysis and findings that the ultimate level of reasonable rates could be set at the forecasted levels of Exhibit R-21A.

We found in Order 17,638 that the array of rates postulated under various assumptions were within a zone of reasonableness to serve the public good, considering member/ratepayer exposure and return on investment, subject to a later determination in a rate proceeding to find prudent investment required to be supported by rates to assure the Company a lawful return on investment.

Rates will probably be set within the upper limit of the range if: 1) the Commission finds that the NHEC's investment in Seabrook Unit I was prudent; 2) the Commission finds that PSNH's investment in Seabrook Unit I was prudent; and 3) the FERC adopts similar prudency findings for PSNH to produce a level of wholesale rates compatible with a reasonable return on that investment.

Based on the record in this case, we find that the reasonably probable range of rates projected in Table 1 and Graph 1 (upper limit) and Table 4 and Graph 3 (lower limit) is reasonable in order to assure the NHEC a lawful return on its investment and that the public good is served by granting the authorized financing and completing Seabrook. A lower level of rates within the range of reasonable probabilities will be set if we find in a subsequent rate proceeding that the prudent investment is less than the Company's total investment and rate base assumed in Exhibit R-21A. A lawful return may be prescribed only upon prudent investment in rate base. For the NHEC, a subsequent prudency investigation may result in a reduced rate base and less than full recovery in rates of the NHEC investment in Seabrook. In such event, the lower end of the range may be below the level shown in Table 4 and Graph 3. To the extent that the disallowance of full recovery through rates is insufficient to allow the NHEC the cash necessary to meet its obligations when due, the unrecovered cost of Seabrook will be shared by the Rural Electrification Administration (REA) investor.⁷⁽³⁸³⁾ These conclusory findings are inherent in our analysis and findings of public good in Order 17,638 and Order 17,699 (70 NH PUC 573).

It is of paramount importance that the precise level of rates cannot be determined until after a prudency investigation by this Commission. Forecasts are not immutable. When Seabrook goes on line actual operating experience with Seabrook, other PSNH generating plants and other sources of NHEC power will either verify or compel revision of our forecast of projected rates based on the present record.

III. THE EFFECT OF RATE FINDINGS ON ORDER 17,638

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The reasonably probable range of rates found above are higher both in real and nominal terms than present NHEC rates. The range is consistent with the findings and conclusions of Order 17,638 and, accordingly, we conclude that our findings above do not affect the validity of the Commission's conclusions stated in that Order. The basis of our analysis is the definition of reasonable rates in a regulatory context.

[6] Reasonable rates have been defined as those rates " ... 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, 28. Thus, a probabilistic determination of whether the rates will be reasonable based on the present record must go further than a quantification of the percentage increases over current rate schedules. Rather, the inquiry must be directed to resolving the issues of:

- 1) whether there is a need for the power (i.e., whether a new plant will be used and useful);
- 2) whether the proposed plant is the least cost means of meeting that need under the appropriate incremental cost standard;
- 3) whether all or a part of the costs of the plant were prudently incurred; and
- 4) whether the return on the cost of the property will be reasonable.

The findings and conclusions in Order 17,638 based on the substantial evidence of record in this proceeding, are sufficient to satisfy on a probabilistic basis issues 1, 2, and 4 above. The third issue — whether all or a part of the cost of investment was prudently incurred — was not an issue in this finance proceeding, *Re Public Service Co. of New Hampshire*, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982), and thus the record will not support a probabilistic assessment of what costs, if any, will be excluded from rate base because they were imprudently incurred. The Court recognized that such a determination must be made in a subsequent proceeding when it stated " ... rates may not be determined specifically and finally until the commission has made a comprehensive prudency determination ... " Order of November 15, 1985; see also, *Re Conservation Law Foundation of New England, Inc., et al.* Nos. 85-252 and 85-253, Order of October 30, 1985 at 1. We shall now address the assessment of the remaining issues addressed in Order 17,638 based on substantial evidence of record that allow us to make a determination that the reasonably probable range of rates to support Seabrook will be reasonable, subject to a prudency review in a subsequent rate proceeding.

A. Need For Power

[7] In Order 17,638, we found that Seabrook I is required to serve the public interest of the

NHEC consumers. (70 NH PUC 422.)

Order 17,638 contained an extensive analysis of the need for power. (70 NH PUC 422.) We examined the NHEC's power capacity requirements through the study period by first defining the demand for electricity and then evaluating the supply alternatives for

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meeting that demand.⁸⁽³⁸⁴⁾ After an evaluation of all record evidence, we accepted the Dalton Power Requirement Study — 1985-1984 (Exh. R-16) (Dalton Report) as a suitable basis for determining demand in this proceeding, (70 NH PUC 422), because reasonable assumptions (including price elasticity assumptions) were analyzed under an up-to-date methodology. Id. Further, we subjected the Dalton Report to various sensitivity analyses to determine how that forecast is affected by changes in certain key assumptions. See e.g., 70 NH PUC 422 (actual load growth exceeded projections) and 78 (Dalton estimates found to be "conservative").

After determining the NHEC's probable load requirements, we turned to an evaluation of the NHEC's existing and planned capacity to determine whether it is sufficient to meet the projected demand. We found based on substantial evidence that Seabrook I is the least cost alternative for meeting the NHEC's baseload requirements. 70 NH PUC at 460. (Analysis of HydroQuebec), 70 NH PUC at pp. 460-463 (Analysis of cogeneration and small power production, including wind energy), 70 NH PUC at pp. 463, 464 (Analysis of conservation) and 70 NH PUC at pp. 464, 465 (Analysis of other system alternatives, including alternative sources of purchased power). See also, 70 NH PUC at pp. 586-587 (Alternatives considered both individually and in combination). Thus, substantial evidence in this proceeding compelled a finding that the NHEC needs Seabrook I.⁹⁽³⁸⁵⁾ In the context of projecting future rates, the need for power findings form the basis for our confidence that Seabrook I is a necessary addition and will be used and useful in the service of the public.

B. Supply Alternatives

[8] Once we determined that additional supply is needed, we went on to evaluate the alternatives available for meeting the probable demand.¹⁰⁽³⁸⁶⁾ In this proceeding, we evaluated both the Seabrook completion alternative and the Seabrook cancellation alternatives from two interrelated perspectives: 1) whether they have the requisite physical or engineering capability of meeting the demand requirements; and 2) whether they are the most reasonable alternatives from the standpoint of cost under an incremental cost standard. Under both tests, substantial evidence lead us to find that Seabrook completion is the best alternative for meeting the NHEC's power supply requirements. With respect to the first test (engineering), we found that Seabrook will provide the NHEC with 25 MW of safe reliable baseload capacity. Substantial

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evidence supported our determination that the alternatives of small power producers or cogenerators, Canadian energy and conservation do not compare favorably with Seabrook in terms of their ability to provide the requisite amount of baseload capacity. (See e.g., 70 NH PUC 422.) With respect to the second test (economics), we initially defined the probable cost of the

completion alternative. See e.g., *Re Public Service Co. of New Hampshire*, 70 NH PUC at pp. 219-223, 66 PUR4th at pp. 399-402 (cost and schedule); 70 NH PUC at pp. 224-226, 66 PUR4th at pp. 402-403 (capital additions); 70 NH PUC at pp. 228-229, 66 PUR4th at pp. 403-405 (capacity or availability factor); 70 NH PUC at pp. 226-228, 66 PUR4th at pp. 405, 406 (operating costs); and 70 NH PUC at pp. 228, 229, 66 PUR4th at pp. 406, 407 (plant life) adopted in this proceeding in Order 17,568. (70 NH PUC 319). See also, 70 NH PUC 422.) We then compared those Seabrook costs to the cost of the alternatives — including the Smith cancellation alternatives (Exh. R-21A, R21B and R-21C) cogeneration and conservation (70 NH PUC 422) — and found that Seabrook is the least cost alternative in all cases. Our findings were based upon a simple comparison of the incremental cost of Seabrook and the alternatives, as well as a Net Present Value (NPV) analysis. The results under both the engineering and economic tests were subjected to sensitivity analysis to determine the effect of pessimistic assumptions on the result of the evaluation. See e.g., utilization of a \$870/KW cost based on \$1 billion to go cost rather than \$882 million to go cost, Order 17638 (70 NH PUC 422.) which translates to \$767/KW. See also, utilization of pessimistic factors utilized in the Smith Scenarios discussed in Order 17,638. While the magnitude of Seabrook's overall benefits did change under the sensitivity assumptions, the end result was the same. *Id.* Accordingly, we concluded that Seabrook I is the least cost reliable means of meeting the NHEC's power requirements. (70 NH PUC 422.)

¹¹⁽³⁸⁷⁾ It should be noted, however, that our finding was based on evidence pertinent to the NHEC's need for power for its 25 MW baseload requirements. Thus, we found that the alternatives identified by Intervenors are complements to, but not substitutes for, Seabrook power. To the extent that such alternatives are cost effective and should be developed, as we believe they should, costs will be reduced and the range of actual rates will fall below the reasonably probable range of rates identified above.

C. Prudent Investment

As noted above, we did not in this proceeding engage in an assessment of how much, if any, of the NHEC's investment in Seabrook I was or will be prudently incurred. We do not believe that such an assessment may be made until the plant is completed. Thus, the rates at the high end of the range all assume that 100% of the NHEC's (and

PSNH's) Seabrook costs were prudently incurred. This is an appropriate assumption because it defines ratepayer exposure under reasonably probable assumptions based on this evidentiary record. As noted, the low end of the range is based on the assumption that any rate base exclusions would not be inconsistent with the financial survival of the NHEC's wholesale supplier. Subject to the evidence, rates to assure PSNH a lawful return on prudent investment will probably be above the "floor" required for financial survival. However, inasmuch as a future prudence investigations will examine both the NHEC's Seabrook investment and its purchase power commitments, *Re Sinclair Machine Products*, *supra*, the precise level of rates cannot be projected with certainty. Thus, if events bear out all of the assumptions found reasonable by the Commission, it is the resolution of the issue of prudence that will determine precisely where

rates will be set within the reasonably probable range found herein.

D. Capital Costs

As the Court noted in its Order of November 15, 1985 at 1, the reasonably probable range of rates must be sufficient " ... to assure the company a lawful return on investment." A critical element of this analysis is the capital structure and the rate of return assumed in the rate scenarios. We recognize that this is an area of uncertainty because returns established in a rate case are forward looking judgments based on findings about contemporary circumstances in capital markets. *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission*, 262 U.S. 679 PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). Nevertheless, in this proceeding, we examined the assumptions used to determine both the capital structure and the rate of return and we found them to be within reasonable ranges, given the limitations on available data. The capitalization ratios in the scenarios selected herein were identified and reproduced in Order 17,638. Those capitalization ratios were found to be within a zone of reasonableness for prescribing rates. 70 NH PUC 422.) The cost of capital was also identified and found to be within a reasonable range on the basis of substantial evidence. *Id.* In particular, we found on the basis of substantial evidence that the rates based on a 1.0 Times Interest Earned Ratio (TIER) will be reasonable, rejecting an Intervenor argument that we must utilize a 1.5 TIER assumption. (See, 70 NH PUC 573.) Thus, we have found on the basis of the present record that the return assumptions utilized in determining prospective rate levels are within a range of reasonableness and will allow the Company a lawful return on its investment.

IV. CONCLUSION

Pursuant to the Court's Order of November 15, 1985 we have herein set forth, based on the present record, our specific findings, expressed in dollars and percentages of existing rates, of the reasonably probable range within which actual customer rates will be set if Seabrook I is completed. Thus, we have found that the high end of the reasonably probable range of rates is as set forth in Table 1 and Graph 1 and the low end of the reasonably probable range consistent with the financial survival of PSNH is as set forth

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in Table 3 and Graph 4. We have also determined, for the reasons set forth above, that the specific rate findings have no effect on the validity of the conclusions stated in Order 17,638.

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 findings and conclusions set forth in the foregoing Report, be, and hereby are, adopted; and it is

FURTHER ORDERED, that this Order be filed with the New Hampshire Supreme Court forthwith.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of November, 1985.

Opinion of
Commissioner Aeschliman

My opinion of May 31, 1985 in Seventeenth Supplemental Report and Order No. 17,638 (70 NH PUC at p. 488) relied upon and adopted the same analysis of full cost rate support as my opinion in DF 84-200. Re Public Service Co. of New Hampshire, 70 NH PUC 164, 66 PUR4th 349, 454-61 [1985].) Since the PSNH wholesale rates form the basis for the projection of the Cooperative's rates, the Cooperative's analysis depends upon the validity of the PSNH analysis. The additional analysis of full cost rates included in my opinion of November 8, 1985, DF 84-200, Fifteenth Supplemental Order No. 17,939 (70 NH PUC at p. 912), also would apply to the New Hampshire Electric Cooperative for the period of the sellback to PSNH; there would be differences after the period of the sellback as explained in my prior opinion. I have prepared this report to explain these conclusions in light of the Court's remand Order.

The New Hampshire Electric Cooperative has a right to sell back all of its Seabrook power to PSNH for 10 years and to purchase power from PSNH at PSNH's wholesale rate in lieu of its Seabrook ownership. Since the Cooperative's analysis indicates that the sellback would be favorable to the Cooperative, one can conclude that the Cooperative's rates will closely track PSNH's during the period of the sellback given the same regulatory treatment for each Company. (Opinion of Commissioner Aeschliman, *supra*.)

An analyst has to be careful in reviewing the rate scenarios in each docket to be sure that you are comparing the same thing. There are two particular problems in this regard. First, the rate forecasts used by Ms. Smith for the Cooperative's analysis combine assumptions in a slightly different manner than the PSNH assumptions. Second, the PSNH forecasted rates are average rates, including both wholesale and retail rates for all customer classes. Because wholesale rates do not include distribution costs, average rates will be lower than retail rates. Since the Cooperative has no wholesale customers, the rates projected are retail rates. However, if PSNH's average prime sales rates are adjusted, the estimated retail rates for PSNH will be essentially the same as the Cooperative's retail rates when the Cooperative is purchasing from PSNH under the sellback. This adjustment is explained in footnote 9 on page 8 and the results of the analysis are explained on pages 5-8.

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(Opinion of Commissioner Aeschliman, *supra*).

In projecting the reasonably probable range of rates for the Cooperative, I prefer to rely on the financial scenarios I have chosen for the PSNH analysis rather than Ms. Smith's scenarios, because the combination of assumptions more closely captures the results — conclude to be most likely. Ms. Smith has chosen assumptions to capture the range of lowest and highest possible results, which is appropriate for the purpose of her analysis, but is not as useful for projecting probable results. In particular, with Ms. Smith's scenarios one must choose either the combination of full retention of the UNITIL load by PSNH and no Seabrook 2 recovery by PSNH, or loss of the UNITIL load by PSNH and full recovery of Seabrook 2 by PSNH. While these two scenarios project the lowest possible rate results and the highest possible rate results for these two assumptions in developing the PSNH wholesale rate to the Cooperative, neither

portrays the combination I would choose of no Seabrook 2 recovery and no UNITIL to project probable rates.¹⁽³⁸⁸⁾ Ms. Smith's forecasts also are based upon PSNH scenarios incorporating the 1984 load forecast, whereas I believe the 1985 forecast provides an updated and preferable starting point for analysis. Since my analysis has shown that estimated PSNH retail rates closely track the Coop retail rates during the sellback, the projected full cost retail rates for the Cooperative would approximate the full cost average rates I have projected for PSNH (Separate Opinion, DF 84-200, Fifteenth Supplemental Report and Order No. 17,939, supra.) multiplied by the adjustment factor explained in footnote 9. (Opinion of Commissioner Aeschliman, DF 83360, supra at 8).

After the sellback period, I have estimated that the Cooperative's retail rates will be 3 to 4 cents/KWH higher than PSNH's assuming that the Cooperative purchases all of its additional power requirements from PSNH. (Opinion of Commissioner Aeschliman, DF 83-360, supra.) The reason for this is that when the Cooperative takes its Seabrook share directly, Seabrook power is more heavily weighted in the Cooperative's power mix than it is in PSNH's mix of power. The heavier Seabrook weighting is disadvantageous through the forecast period (2003), although it is potentially advantageous beyond that time.

As explained in detail in my November 8th opinion in DF 84-200, I judged the projected rates to be reasonable only if the variance from the average projected NEPOOL rates was less than 4 to 5/KWH at any one time and if the change in rates for the forecast period as a whole approximated the change in the NEPOOL rates. (Separate Opinion, DF 84-200, supra.) Since

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the NEPOOL rates are average rates rather than retail rates, the more appropriate comparison is with the PSNH average rates set forth in my opinion (Separate Opinion, supra) rather than the Cooperative's retail rates.²⁽³⁸⁹⁾

Because of the interrelationship between the PSNH rates and the Cooperative's rates and because the PSNH wholesale rates will be set at FERC, the Cooperative's rates could only be brought into a range of reasonableness using this standard if the following conditions occurred:

(1) The rate-making standards for PSNH as set forth in my separate opinion (Re PSNH, supra 70 NH PUC at p. 270, 66 PUR4th at p. 443) were adopted.

(2) PSNH accepted as a condition of its wholesale contract with the Cooperative that the ratemaking treatment utilized by this Commission in setting PSNH's retail rates would apply to its wholesale rates as well.

(3) The letter agreement of March 8, 1985 between PSNH and the Cooperative relative to small power producers is rejected, allowing the Cooperative to vigorously pursue this alternative to power purchases from PSNH. This is critical to offsetting the higher rates following the sellback period.

It is possible that these conditions could be met, if they were supported by the Commission and required as a condition precedent to any financing approval for the Cooperative. However, since the majority of the Commission is not in agreement with this approach and is willing to approve the financing unconditionally, I cannot agree.

In addition, it should be pointed out that in the absence of these conditions, the Commission could in a future prudency review disallow recovery of costs that it determined resulted from imprudent decisions of the Cooperative's management. However, whereas equity investors have no recourse against a lawful Commission disallowance, debt investors do have recourse. Any sizeable future rate base exclusion for the Cooperative would result in a default to REA. Furthermore, the REA is not only a debt investor, but all of its debt including the proposed issuance in this financing is secured by the assets of the Cooperative. Consequently, it is inconsistent to find that a default to REA and potential bankruptcy is not in the public interest and at the same time rely on a future prudency review where any significant disallowance will result in default. Of course it is possible that the REA will be willing to absorb some loss if it thinks that it is more likely to recover the balance of its investment without a bankruptcy proceeding. The REA also might be willing to absorb some loss in a sale of the Cooperative's Seabrook ownership in order to reduce its own exposure. This is a course that the Cooperative could pursue in addition to or as a partial alternative to the three points listed previously.

The Commission also cannot assume that a prudence disallowance or other rate making treatment prescribed by

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this Commission for PSNH will be adopted by FERC in establishing wholesale rates for the Cooperative. The Cooperative's own witnesses testified to the contrary view. (Opinion of Commissioner Aeschliman, DF 83-360, *supra*.) Consequently, the majority's reliance on future proceedings to ensure reasonable rate results for the Cooperative is not supportable.

FOOTNOTES

¹The PSNH cost of capital is relevant to the determination of the PSNH wholesale rates, which will be the probable cost of purchased power to the NHEC.

²The PSNH load forecast is relevant to the determination of the PSNH wholesale rate, which will be the probable cost of purchased power to the NHEC.

³While the FERC is not legally constrained in considering whether to allow recovery of abandoned plant costs in whole rates, *Re Sinclair Machine Products*, 126 N.H. — (1985), we believe for the reasons cited *infra* at n. 6 that the FERC will be guided by the state policy articulated at RSA 378:30-a, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

⁴An additional scenario at Exhibit R-21C was also a part of record in this proceeding. That exhibit was based on Intervenor assumptions labeled as "Request 10" in *Re PSNH*, DF 84-200, Exh. 174. We did not adopt Exhibit R-21C in our calculus because it combined every pessimistic assumption identified by the Intervenor and the evidence did not support a finding that the Request 10 (Exhibit R-21C) combination of assumptions is likely to occur. The level of projected rates under Exhibit R-21C is substantially different from the projected level of rates in Exhibit R-21A; the exhibit that best captures the assumptions found by the Commission to be reasonably probable.

⁵If this Commission and the FERC adopt a phase-in of rates in identical terms, the cost of the NHEC's purchased power reflected in the wholesale rates and the NHEC's retail rates will be lower over the first 5 to 6 years and higher over the next 10 years. (70 NH PUC 886.) (Table 1 based on Exh. 99A and 27 (Graph 3).

⁶As we noted in Order 17,638, we find it probable that the FERC will exclude the same level of investment from rate base for wholesale rate purposes as this Commission will exclude for retail rate purposes. This finding is reinforced by the recent decision in *Mid-Tex Electric Co-op., Inc. v. Federal Energy Regulatory Commission*, — U.S. App.D.C. —, 70 PUR4th 62, 773 F.2d 327 (1985). *Mid-Tex* involved an appeal of the FERC regulation allowing utilities to include in rate base a limited amount of CWIP. 18 C.F.R. §35.26. The Court remanded the matter to the FERC and inter alia directed the FERC to consider whether to investigate the effect of the rule on retail ratepayers in states which do not allow CWIP to be included in rate base for retail ratemaking purposes. The court's directive is an expression of importance of comity in the federal/state relationship and, accordingly, the importance of New Hampshire state regulatory policy in the federal ratemaking process. Cf., *Re New England Power Co.*, 27 FERC 63,080 (1984).

⁷The record indicates that the sell back agreement between the NHEC and PSNH (Exh. R-8) 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.

⁸The conservation alternative was evaluated in both the demand and the supply analysis because conservation affects demand through price elasticity and because a conservation program was offered as a supply alternative by Witnesses Lovins and Flavin. This is an example of the complex interrelationship between the demand and the supply analysis which we recognized in the course of our evaluation in Order 17,638.

⁹"In the absence of substantial evidence that the synergism of discrete alternatives and other conservation measures will substitute for Seabrook capacity and energy, we cannot responsibly abandon Seabrook for conjectural and inadequate sources of power to meet demand. In the aggregate, based on record evidence and cold hard analysis, there is no reasonable substitute for Seabrook I." (70 NH PUC at p. 586).

¹⁰There is a relationship between the need for power and the supply alternatives. Thus, to some extent, the supply alternatives have been previously addressed in the Need For Power discussion, *supra*.

¹¹See also, Order 17,638 (70 NH PUC at p. 477): "We further point out that the debt resulting from our authorization to borrow consistent with NHEC's petition will not exceed the fair cost of the 25 megawatts of Seabrook capacity which, together with other capacity and purchased power from PSNH, will be reasonably requisite for present and future use to supply reliable electric service at reasonable cost to the NHEC's ratepayers and the New Hampshire economy. *Re Easton*, *supra*; *Re New Hampshire Gas & E. Co.*, 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl 602 (1936). See also, *Re PSNH*, DF 84-200, *supra*, 70 NH PUC at p. 245, 66 PUR4th at pp. 421, 423."

Opinion of

Commissioner Aeschliman

¹The problem created by Ms. Smith's combination of assumptions is illustrated by the fact that scenarios combining to UNITIL with Seabrook 2 recovery show that it is advantageous for the Cooperative to take its Seabrook entitlement directly in the years 1988 and 1989. With some analysis it is clear that it is the effect of Seabrook2 recovery on the PSNH wholesale rates in those years that causes this result rather than the UNITIL load loss. (See Technical Appendix, Separate Opinion, DF 84-200, supra at 20 for an explanation of the impact of Seabrook 2 recovery.) Thus, one can conclude that without the Seabrook 2 recovery as modeled in these scenarios that it would be advantageous for the Cooperative to sell back its Seabrook entitlement in all years even with the loss of UNITIL. However, it would be easy to erroneously conclude that the UNITIL assumption was causing this effect in 1988 and 1989 because of the combination of assumptions used by Ms. Smith.

²This is the reason that I did not include the NEPOOL projected rates on the chart and tables in my prior opinion. (Opinion of Commissioner Aeschliman, DF 83-360, supra.)

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NH.PUC*11/22/85*[61253]*70 NH PUC 985*Public Service Company of New Hampshire

[Go to End of 61253]

70 NH PUC 985

Re Public Service Company of New Hampshire

DE 85-368, Order No. 17,961

New Hampshire Public Utilities Commission

November 22, 1985

PETITION by an electric utility for authority to lease a coal storage yard at an electric generating station; granted.

Electricity, § 3 — Generating plants — Fuel — Coal inventories — On-site storage — Lease.

An electric utility was authorized to lease property located at its Schiller generating station for use as a coal storage yard by a coal commodity supplier and to ensure availability of sufficient coal inventories.

APPEARANCES: Debbie Ann Sklar, Esquire, for the Petitioner.

By the COMMISSION:

REPORT

On October 17, 1985, Public Service of New Hampshire filed with this Commission a

petition for authority to lease certain property at the Company's Schiller Station located in Portsmouth, New Hampshire, to ANR Coal Sales, Incorporated.

On October 21, 1985, the Commission issued an Order of Notice setting a hearing at its Concord offices at 10 o'clock a.m. on November 12, 1985. The Company was directed to provide public notice once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, and advised any parties seeking intervention to submit a motion to intervene at least three (3) days prior to the hearing. By letter of October 31, 1985, the Company certified that a notice was published in the Union Leader on October 24, 1985.

Mr. Ray A. Hines, Jr., Director of Fuel Procurement and Supply, Public Service of New Hampshire, testified regarding the desirability of the agreement. ANR and the Company are parties to an existing coal sales agreement under which ANR supplies and delivers coal for the Company's Schiller Station. Under the agreement, ANR retains title to and possession of the coal

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until it is bunkered. ANR leases the property on which coal is stored at Schiller Station, and which allows it to maintain a forty day supply on site.

PSNH was authorized to enter into a lease agreement with ANR for the existing on-site storage by Second Supplemental Order No. 17,612 on May 14, 1985 (70 NH PUC 396). In that order, the Commission directed the Company to maintain at least a forty day supply of coal at Schiller Station for each unit as each unit is converted to coal, and that it have access to a seventy day level of supply during winter periods and to a ninety day reserve supply during periods of strike threats.

The instant petition is offered to meet that directive. An area of approximately three acres in size adjacent to the Schiller site and currently owned by PSNH is being converted to add approximately 90,000 tons to Schiller's coal storage capacity making a total capacity of approximately 145,000 tons. Construction is expected to be completed by mid-November, 1985, and it is planned to bring in enough coal during late November and December, 1985, to obtain a minimum supply of 97,000 tons during the winter months.

PSNH desires to enter into a coal sales agreement with ANR for this new storage area. The terms of the lease are similar to those of the original Schiller lease authorized in the Commission's earlier docket. The lease will have a term which is co-terminus with other agreement, and will have an annual lease payment of \$1,300. The lease differs from the existing lease in that no rights are provided to ANR for storage of coal for third parties. However, the lease does provide for the company a right to permit third party use of unused storage capacity on an "as available" basis.

The Commission finds that the proposed agreement is in the public good. The same benefits accrue to both the Company and its ratepayers as were identified and approved in docket DR 84-308 with Order No. 17,335 dated November 13, 1984 (69 NH PUC 673), which approved the lease of the first storage yard.

We are satisfied that the Company, by this action, meets the storage requirements set forth in its Second Supplemental Order No. 17,612, which will assure that at least a seventy day level of

supply will be maintained during winter periods and a ninety day supply will be maintained during strike threats.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report, which is hereby incorporated by reference, it is

ORDERED, that Public Service of New Hampshire be, and hereby is, permitted to enter into a "coal storage lease agreement" with ANR Coal Sales, Inc. in accordance with RSA 374:30 for the purpose of leasing the additional coal storage area identified herein.

By order of the Public Utilities Commission of New Hampshire this twentysecond day of November, 1985.

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NH.PUC*11/25/85*[61254]*70 NH PUC 987*Continental Telephone Company of Maine

[Go to End of 61254]

70 NH PUC 987

Re Continental Telephone Company of Maine

DR 85-170,
First Supplemental
Order No. 17,962

New Hampshire Public Utilities Commission

November 25, 1985

ORDER accepting filing of revised tariffs for telephone service.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on May 24, 1985, the Continental Telephone Company of Maine filed with this Commission certain revised pages to its Tariff No. 4 providing for an annual increase in its revenues of \$2,820 (10.3%); and

WHEREAS, that filing was suspended by Order No. 17,651 on June 6, 1985 (70 NH PUC 513), pending investigation and decision by this Commission; and

WHEREAS, this Commission has completed said investigation during which it was discovered that certain proposals included in the filing conflicted with Chapter PUC 400 of the New Hampshire Code of Administrative Rules; and

WHEREAS, Continental Telephone Company of Maine has refiled those pages removing all conflicting data; and

WHEREAS, the Commission now finds that the Continental Telephone Company of Maine

proposed tariff changes are in the public interest; it is

ORDERED, that the following revisions to the Continental Telephone Company of Maine Tariff No. 4 be, and hereby are, rejected:

Section 2, 1st Revised Sheet 12
Section 4, 8th Revised Sheet 4
Section 5, 7th Revised Sheet 11
1st Revised Sheets 21.2 and 21.3
Original Sheets 24 and 25
Section 6, 7th Revised Sheet 2
5th Revised Sheet 4
2nd Revised Sheets 7 and 8
and it is

FURTHER ORDERED, that the following revisions to cited Tariff No. 4 be, and hereby are, approved for effect with all bills issued on and after December 1, 1985:

Section 1, 4th Revised Sheet 1
Section 4, 9th Revised Sheet 4
Section 5, 8th Revised Contents
6th Revised Sheet 9
8th Revised Sheet 11
6th Revised Sheet 14
3rd Revised Sheet 17
4th Revised Sheet 21
2nd Revised Sheets 21.2 and 21.3
1st Revised Sheets 24 and 25
Section 6, 5th Revised Contents
5th Revised Sheet 1
8th Revised Sheet 2
6th Revised Sheets 3, 4 and 5
5th Revised Sheet 6
3rd Revised Sheet 7 and 8
Section 100, 2nd Revised Sheet 2
3rd Revised Sheet 3
1st Revised Sheet 7

and it is

FURTHER ORDERED, that Continental Telephone Company of Maine

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file its Section 2, 2nd Revised Sheet 11, said revision to reflect the deletion of Paragraph 22B and issued in lieu of Section 2, 1st Revised Sheet 11, rejected herein and bearing an effective date of December 1, 1985; and it is

FURTHER ORDERED, that all subscribers in the Chatham and East Conway exchanges be advised of the impact of this order by bill insert summarizing the changes authorized therein.

By order of the Public Utilities Commission of New Hampshire this 25th day of November, 1985.

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NH.PUC*11/27/85*[61255]*70 NH PUC 988*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 61255]

70 NH PUC 988

Re Continental Telephone Company of New Hampshire, Inc.

Intervenor: Office of Consumer Advocate

DR 85-219, Order No. 17,963

New Hampshire Public Utilities Commission

November 27, 1985

APPLICATION for authority to implement temporary increase in local exchange telephone rates pending decision on permanent rate application; granted as modified.

Rates, § 630 — Temporary rates — Telephone company.

A temporary increase in local exchange telephone rates was granted, pending decision on a permanent rate application. [1] p.989.

Apportionment, § 61 — Plant — Telephone company — Jurisdictional allocation.

All telephone company assets should be treated as intrastate rate base, because the toll separations procedure provides a local telephone company with payments for the use of its assets in providing the intrastate segment for toll services, so that none of the company assets should be treated as dedicated to the provision of interstate toll service. [2] p.989.

Rates, § 249 — Effective date — Temporary rates.

A temporary rate increase cannot become effective prior to the date of the commission's

order approving the increase. [3] p.990.

APPEARANCES: David Marshall, Esquire for Continental Telephone Company of New Hampshire, Inc.; Michael Holmes, Esquire for the Consumer Advocate; Eugene Sullivan, Sarah Voll, and Edgar Stubbs on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On June 5, 1985, 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 a notice of intent to file rate schedules. On July 19, 1985, Continental filed revised tariff pages providing for an increase in rates of \$325,460, effective August 19, 1985. The proposed rates were suspended by Order No. 17,786, dated August 12, 1985.

Continental filed on October 3, 1985 a petition for temporary intrastate rates

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pursuant to RSA 378:27 to be effective on August 19, 1985. The temporary rate filing was designed to be applied to basic rates to produce additional gross intrastate revenue of \$239,000 annually. The petition claims that the rates which it has proposed are just and reasonable and could properly be applied as temporary intrastate rates. It contends that temporary rates should be higher than its present intrastate rates in order to minimize the amount to be recouped from its customers when final rates are prescribed by the Commission. The amount requested is derived by taking into account the adjusted intrastate revenue for the test year available to produce a return of 11.84 percent overall rate of return on updated rate base. The 11.84 percent rate of return is calculated using the March 31, 1985 weighted cost of long term debt and a return on equity based upon the cost of equity found in the last rate case (DR 75-220).

Continental further claims that it will suffer irreparable harm unless it is allowed to recoup from its customers for the period from August 19, 1985 to the time that just and reasonable revised intrastate rates are prescribed by the Commission. They contend that the Commission should fix, determine and prescribe temporary intrastate rates sufficient to yield, at a minimum, a reasonable return on the cost of property used and useful in intrastate public service, less accrued depreciation, as shown by the reports, evidence and testimony of the petitioner on file with the Commission.

Continental witness Felix L. Boccucci, Jr. testified that the temporary rates sought were a minimum of \$239,000. He stated that an increase of \$119,979 effective August 1, 1985 was sought, with an additional \$119,021 increase to be effective January 1, 1986. The witness stated that although he believed that the permanent rates requested might reasonably be allowed as temporary rates, there may be certain items which may be more appropriately addressed where permanent rates are decided; such as, the cost of common equity. Continental's permanent and temporary requests are based upon separating the rate base on an interstate and intrastate basis to determine the revenue requirement. Pro forma adjustments to rate base, revenues and expenses

have been used to calculate temporary rates. The increase in temporary rates on January 1, 1986 is based on the same factors. However, the step is related to the transition from a frozen interstate subscriber plant factor (SPF) to a 25% basic allocator over an eight year period beginning January 1, 1986.

[1,2] Staff witness Eugene Sullivan, Finance Director testified that a temporary increase of \$110,415 should be allowed. His recommendation is based upon treating all company assets as intrastate rate base. He asserts that the toll separations procedure provides a local company with payments for the use of its assets in providing the intrastate segment for toll services, and that none of the companies assets are dedicated to providing interstate toll service. In making his calculation of the revenues required for temporary rate purposes Mr. Sullivan used figures which reflect total company operations during the test year without any pro forma adjustments. Additionally, the staff witness testified to a cost of capital which reflected premiums on long term debt as provided in the annual report to the Commission. He also used the most recent business profits tax rate of 8.25

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percent, as compared to the 9.56 percent rate used by the Company. Mr. Sullivan recommended that temporary rates be made effective with the date of a Commission order and at a constant level until final rates are set.

The Commission agrees with the staff witness in several respects. The Federal Communications Commission (FCC) and the long distance interstate carriers have agreed that long distance rates have been subsidizing the local telephone companies. In this case, Continental has claimed that the interstate operations are earning a greater rate of return than intrastate operations. Company witness Boccucci's schedule 1 indicates that adjusted intrastate operations is earning below the total company rate of return. We agree with Mr. Sullivan that the nature of the assets of this independent telephone company are primarily to serve the needs of its customers and the payments received from interstate toll separations are compensation for the initiation or termination long distance calls. Any subsidization which is realized should benefit the local ratepayer until any transition is made. This concept can be shown by the Company's own testimony which states that on January 1, 1986, when the transition from the frozen SPF begins, more revenues will be required from the local telephone user through basic rates.

We will adopt the rate base and the net operating income proposed by the staff witness to determine the level of temporary rates. A business profits tax rate of 8.25 percent will be used to arrive at the proper ongoing combined tax rate. The Company has provided post-hearing data which correct the annual report and change indicated premiums to discounts. Therefore, for temporary rate purposes, we will adopt the cost of capital used by Mr. Boccucci. The revenue requirement for temporary rate purposes is computed as follows:

TEMPORARY REVENUE REQUIREMENT

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

Rate Base	\$8,116,116
Cost of Capital	11.84%
Revenue Requirement	960,948
Less: Net Operating Income	898,127

Revenue Deficiency 62,821
 Tax Factor 49.545%
 Required Rate Increase
 (temporary) \$126,796

The Commission will allow Continental to collect temporary rate of \$126,796. The request for a two step temporary rate level is denied. By granting temporary rates the rights of the Company to recoupment are assured.

[3] Upon consideration of the effective date we have decided to set the effective date of the temporary as the same date as the order. Although the Commission realizes that an earlier effective date has been requested and noticed to the Company's customers, that date is prior to the request for temporary rates. Since temporary rates cannot be charged until they have been reviewed and approved by the Commission, the Company's customers could not make knowledgeable decisions about telephone service before the date of this Order. This is the basis for the Commission's longstanding policy. The Company has not presented sufficient evidence of financial hardship to override the rationale for adhering to its policy.

The parties also submitted a proposed schedule for conducting the remainder of the proceedings. The schedule will be adopted as follows:

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

November 18, 1985 Due date for Data
 Requests to the Company
 December 06, 1985 Due date for Responses
 to Data Requests
 December 17, 1985 Conference of Parties
 to Narrow Issues
 January 6, 1985 Due date for Prefiled Staff
 and Intervenor Testimony
 and Exhibits.
 January 13, 1986 Due date for Data Requests
 to Staff and Intervenors
 January 24, 1985 Due date for responses to
 Data Requests
 February 4, 5, 6 Hearing Dates

Our Order will issue accordingly.

ORDER

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

ORDERED, that Continental Telephone Company of New Hampshire, Inc. shall file a tariff supplement effective as of the date of this Order to recover additional annual revenues of \$126,796 in temporary rates; and it is

FURTHER ORDERED, that the temporary rate increase be applied proportionately among the various basic exchange rates; and it is

FURTHER ORDERED, that the procedural schedule shall be as set forth in the foregoing report.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of

November, 1985.

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NH.PUC*11/27/85*[61256]*70 NH PUC 991*Nuclear Emergency Planning

[Go to End of 61256]

70 NH PUC 991

Re Nuclear Emergency Planning

DE 85-380,
Second Supplemental
Order No. 17,964

New Hampshire Public Utilities Commission

November 27, 1985

ORDER amending prior decisions to correct the official name of an operating division of an electric distribution utility.

By Iacopino, Chairman:

SUPPLEMENTAL ORDER

WHEREAS, Order Nos. 17,947 (70 NH PUC 934) and 17,950 (70 NH PUC 946) referred to the Petitioner as New Hampshire Yankee Nuclear Power Corporation, Division of Public Service Company of New Hampshire when in fact the proper name of said legal entity is the New Hampshire Yankee Division of Public Service Company of New Hampshire; it is hereby

ORDERED, that Order Nos. 17,947 and 17,950 are hereby amended, supplemented and reissued to substitute the name of New Hampshire Yankee Division of Public Service Company of New Hampshire in place of New Hampshire Yankee Nuclear Power Corporation, Division of Public Service Company of New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

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NH.PUC*11/27/85*[61257]*70 NH PUC 992*New England Telephone and Telegraph Company

[Go to End of 61257]

70 NH PUC 992

Re New England Telephone and Telegraph Company

DR 84-95,
Second Supplemental

Order No. 17,965
New Hampshire Public Utilities Commission
November 27, 1985

ORDER amending prior decision to allow business telephone customers to apply for refunds from improper and involuntary assignment of measured rates in place of unlimited rates.

Reparation, § 15 — Telephone business customers — Rate classification — Improper assignment.

Local business telephone customers who were improperly assigned measured service on an involuntary basis were allowed to switch back to unlimited service and were allowed to apply for a refund equal to the overcharge, if any, produced by the improper rate classification.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission issued Supplemental Order No. 17,945, dated November 12, 1985 (70 NH PUC 926), which rescinded certain portions of Order No. 17,639 (70 NH PUC 426) regarding mandatory measured business service; and

WHEREAS, said Supplemental Order No. 17,945 provided in pertinent part that those customers who qualified and were involuntarily assigned mandatory measured business service as a result of Commission Order No. 17,639 and who now wish to avail themselves of unlimited business service may, by contacting the New England Telephone Company, be transferred to unlimited business service at no charge; and

WHEREAS, on November 22, 1985, New England Telephone petitioned the Commission that those customers who were so involuntarily assigned may, until January 31, 1986, apply to the company for a recalculation of their bills and may be entitled to a refund if it can be determined that the unlimited business rate would have been lower than the rates charged under the approved tariff; and

WHEREAS, granting the request would be in the public good; it is

ORDERED, that Supplemental Order No. 17,945 be hereby amended so that those customers who were involuntarily assigned to measured business service may, until January 31, 1986, apply to the Company for a recalculation of their bills; and it is

FURTHER ORDERED, that in all other respects Supplemental Order No. 17,945 remains in full force and effect.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

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NH.PUC*11/27/85*[61258]*70 NH PUC 993*William F. Sparks

[Go to End of 61258]

70 NH PUC 993

Re William F. Sparks

DX 85-328, Order No. 17,966

New Hampshire Public Utilities Commission

November 27, 1985

APPLICATION by a landowner to compel construction of a private at grade highway crossing over railroad tracks; denied.

Crossings, § 75 — Private use — Authorization — Landowner access — Necessity.

State law, RSA 373:1, which requires railroads to provide "suitable" gates, crossings, and cattle passes for the accommodation of persons whose lands are divided by or are separated from a highway by railroad tracks, has been interpreted as assigning a duty to the railroad to construct a crossing wherever reasonably necessary, and may apply to property that is already accessible; the statute is not limited only to landlocked or inaccessible property. [1] p.994.

Crossings, § 75 — Private use — Authorization — Landowner access — Necessity.

A request by a landowner to compel construction of a private at-grade highway crossing over railroad tracks to gain access to landlocked property that was otherwise inaccessible was denied where, because the land was not currently put to use, and because proposals for residential development had not been specified to the extent of a formal offer or contract, there was no reasonable necessity for the crossing. [2] p.995.

APPEARANCES: William F. Sparks, Pro Se; Dwight A. Smith, President and General Manager of Conway Scenic Railroad, Inc. on behalf of the Conway Scenic Railroad, Inc.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 9, 1985, William F. Sparks of Conway, New Hampshire filed a petition pursuant to RSA 373:1 to have the Conway Scenic Railroad, Inc. (Conway) install a crossing at grade over the tracks of Conway near Milepost 5 in Conway, New Hampshire. An Order of Notice was issued on September 23, 1985 setting a hearing for October 22, 1985. William F. Sparks submitted testimony and evidence on behalf of his petition. Testifying in

opposition to the petition was Dwight A. Smith, President and General Manager of Conway.

II. COMMISSION ANALYSIS

William F. Sparks and his wife, Margaret H. Sparks, are the owners of a 107.4 acre parcel of land located in Conway, New Hampshire. They acquired this land in 1966 from Gladys E. Hale, Mrs. Spark's mother, by warranty deed recorded in the Carroll County Registry of Deeds at Book 400, Page 326 (Exhibit A). The land is bounded on the north by land of one W. Bradford Ingalls and on the south by the Kennet Company. To the east is land owned by the United States Forest Service and to the west are tracks of the Conway Scenic Railroad, Inc. (Conway) located in a right-of-way which a predecessor railroad company obtained from prior owners of the Spark's parcel (Exhibit B). On the other side of the railroad tracks is a 6.2 parcel of the land formerly owned by the Sparks' grantor, Mrs. Hale, who, in the deed conveying the 107.4 acre parcel also granted a 50 foot wide right-of-way from the nearest public road, West Side Road, to the tracks.

The Sparks' 107.4 acre parcel is currently landlocked, there being no means of obtaining access thereto. The Sparks have sought and been refused rightsof-way and/or easements from Mr. Ingalls and the Kennet Company. Thus, by this petition they seek a private crossing over the Conway's tracks at that point where their right-of-way from West Side Road meets the tracks. The exact location of the proposed crossing is set forth in a map submitted as Exhibit J.

The Sparks' parcel is currently not being used for any purpose. They seek this crossing for the sole purpose of making the land marketable. The Sparks desire to sell the land for a residential development but as yet have no concrete plans in that regard. While a buyer has expressed an interest in purchasing the land for that purpose (Exhibit L), no purchase and sale agreement has been entered into between the Sparks and the buyer.

[1] RSA 373:1, which addresses a railroad's duty to provide crossings, states as follows:

373:1 Facilities. It shall be the duty of every railroad to provide suitable crossings, stations and other facilities for the accommodation of the public, and suitable gates, crossings, cattle passes and other facilities for the accommodation of persons whose lands are divided, or are separated from a highway, by a railroad.

This statute has been construed by the New Hampshire Supreme Court in *Re Meserve*, 120 N.H. 461 (1980). *Meserve* involved an appeal of a Commission decision granting a petition for a private crossing over tracks of the Boston and Maine Corporation (B&M) and ordering B&M to construct the crossing at its own expense. The petitioner therein sought the crossing to gain access to its property from a specific location. That property was already accessible from two other locations. In response to the B&M's argument that the Commission could only order a crossing for the purpose of gaining access to landlocked property, the Court

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stated as follows¹⁽³⁹⁰⁾ :

We do not construe RSA 373:1 so narrowly. Under the statute, a railroad may have a duty to provide a suitable crossing for the accommodation of the public or any landowner whose lands are divided by or separated from a highway by a railroad. *Patterson v. Boston & Maine Railroad*,

102 N.H. 387, 157 A.2d 653 (1960). The standard to be applied in determining the duty of a railroad under RSA 373:1 is that of the reasonable necessity for a crossing, not its absolute necessity, as suggested by Plaintiffs. *Id.* 102 N.H. at 389, 157 A.2d at 655. The fact that other access to the property in question is available, although not as convenient is a factor which may be considered in making the determination of reasonable necessity. See *Hagemann v. Chicago G. W. R. Co.* 2 Ill.App.2d 401, 119 N.E.2d 523 (1954). Where an additional crossing is sought for mere convenience and will result in an increased hazard to the public and landowner, reasonable necessity has been held not to have been shown. *St. Louis-S. F. R. Co. v. Logue*, 216 Ark. 64, 68, 224 S.W.2d 42, 44 (1949). Such a holding implies that when the proposed crossing does not create a safety hazard, reasonable necessity may still be shown although other access is available. (Emphasis added.)

Thus, in considering the Sparks' petition, we must determine whether there is a reasonable necessity for the proposed crossing.

[2] Our review of the record leads us to conclude that there is no reasonable necessity for the crossing at this time. As stated above, the land is currently not being used. While it might be the site of a future residential development, there is no need for a crossing to serve such a purpose at this time. We are sympathetic to Mr. Spark's desire to make his land marketable by providing the necessary access thereto. However, we cannot provide that access by means of a crossing on the basis of the facts established in this case. The proper time to seek a crossing is when the proposed use of the land becomes more definitely established. Evidence to be considered in that regard would include a purchase and sale agreement and the necessary regulatory approvals (town planning board, board of adjustment, historical district commission, etc.). We therefore will deny the Sparks' petition without prejudice. In so doing, we make no findings as to the numerous issues raised by Conway at the hearing (i.e. potential hazards, safety, etc.) which are required to be considered in determining the reasonable necessity of a crossing. We will preserve the record generated thus far and will, upon request of either party, make it part of any further proceeding.

Two further matters merit our attention. First, as stated above, the Sparks' petition sought a private crossing. If the land is sold for a 50 home residential development, a private crossing would be inappropriate. The substantial traffic that would result from such a development would require a public crossing and therefore greater protection. In addition, in any further

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proceeding, the parties should also address the issue of who is to bear the costs of any crossing the Commission might order. That issue is discussed in great detail in *Meserve*. See 120 N.H. at pp. 463, 464.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition of William F. Sparks for a private crossing at grade over the tracks of the Conway Scenic Railroad, Inc. near Milepost 5 in Conway, New Hampshire be, and

hereby is, denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

FOOTNOTE

¹The B&M argued that the purpose of RSA 373:1 is to prevent landowners from being deprived of access to their land, and thus, being deprived from the enjoyment of it. They contended that unless access is otherwise unavailable, the Commission has no statutory authority to order a crossing. 120 N.H. at 462.

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NH.PUC*11/27/85*[61259]*70 NH PUC 996*Squire Ridge Water Company, Inc.

[Go to End of 61259]

70 NH PUC 996

Re Squire Ridge Water Company, Inc.

DE 85-274, Order No. 17,967

New Hampshire Public Utilities Commission

November 27, 1985

APPLICATION for authority to provide regulated water utility service in a defined service area; granted.

Water, § 11 — Water utilities — Franchise — Service area.

An unregulated water service company operating as a corporation with a single individual stockholder and providing water service to customers in a residential development was granted a franchise authorizing it to provide regulated water service within a defined service area. [1] p.997.

Return, § 115 — Water utilities.

A newly franchised water utility was authorized to earn a 10% rate of return on long term debt, common equity, and overall capital. [2] p.998.

Expenses, § 144 — Water utilities — Purification — Plant out of service.

Expenses incurred by a water utility for purification but related to the operation of plant not in service were disallowed, under state law, RSA 378:30-a. [3] p.998.

Rates, § 151 — Reasonableness — Increases — Severity — Rate shock.

Discussion of magnitude of increase in water service rates in the case of a newly franchised water utility authorized to provide regulated unmetered water service at an annual charge of

\$376, billed quarterly at \$94, where previously, the company had provided unregulated, unmetered water service at an annual rate of \$120, billed in arrears at \$10 per month. p.998.

APPEARANCES: Peter A. Lewis and Stephen J. Noury for the Petitioner; Robert B. Lessels and Daniel D. Lanning for the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 27, 1985, Squire Ridge Water Company, Inc. (Squire Ridge or the Company), a New Hampshire corporation supplying water to 39 customers

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in a limited area in the Town of Hampstead, New Hampshire, filed a petition requesting authority pursuant to RSA 374:22 to establish a water public utility in that area. In addition, the petition requested that the Commission fix rates pursuant to RSA 378. An Order of Notice was issued on September 18, 1985 setting a hearing for October 22, 1985 at which time no one appeared in opposition to the petition. Testimony and exhibits in support of the petition were offered by Peter A. Lewis, President of Squire Ridge, and Stephen J. Noury.

II. FINDINGS

[1] Squire Ridge is wholly-owned by Peter Lewis, the President of Lewis Builders, a New Hampshire construction and development company located in Atkinson, New Hampshire. It was purchased by Lewis and provides water service to a residential development in Hampstead, New Hampshire which is fully described in Exhibits 5 and 6. Two wells, which comprise the supply source, have an adequate yield to service this area which service has been provided by Squire Ridge since June, 1985, at a flat, unmetered rate of \$10 per month, billed in arrears.

In view of the above, we find that the granting of a franchise to provide water service in the limited area as described and shown in Exhibits 5 & 6 is consistent with the public good. We therefore will grant Squire Ridge's petition in that regard. We now turn to the issue of just and reasonable rates for such service.

A. Revenue Requirement

On the basis of the testimony and exhibits, we find Squire Ridge's revenue requirement to be as follows:

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

Rate Base

Gross Plant \$28,436
 Less: Depreciation 947
 Plant in Service \$27,489
 Plus: Working Capital
 (2 mos. operation &
 maintenance expense) 1,700
 Rate Base \$29,189

The Company witnesses acknowledged that the purchase price for Squire Ridge included four acres of land. This land is necessary to maintain a buffer zone around the water system's well. Therefore, the Company witnesses aver the land has "no real estate value" (Tr.26) and did not record a value for such on Squire Ridge's books.

The land is part of the system and was covered by the purchase and sale agreement for Squire Ridge. Accordingly, the Commission will attach a minimal value of \$100 per acre to this land. We will reduce the NHPUC account No. 2308.1 (Exh. 2) by \$400 (\$100 x 4 acres) and require the Company to record the \$400 in account No. 2307.1 "Source of Supply Land and Water Rights".

This will not change the value of plant in service. It will, however, slightly reduce depreciation expense by \$8.00 (Exh.;2).

1(391) We will adjust the depreciation expense accordingly.

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Rate of Return

[2] The financing to purchase and improve this water system was obtained from Lewis Builders, with the resulting capital structure and composite rate of return as follows:

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

Cost Rate	
Long Term Debt	\$18,436 10%
Common Stock	10,000 10%
	\$28.436 10%

The Commission will require that Squire Ridge file a copy of the note issued to Lewis Builders, at which time it will be reviewed in accordance with RSA 369:1.

Given the above-stated rate base, the return requirement thus becomes:

Average Rate Base \$29,189 x 10% = \$2,919

Expenses

[3] A. Operating Expenses

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

A. Superintendence	\$7,020
Maintenance of pumps	250
Purchased power	1,260
Customer billing	200
Office supplies	350
Supervision fees	1,000
Franchise requirement	120
	10,200
B. Depreciation	\$947
C. Taxes - Property	\$586

Exhibit 4 of this docket displays an estimated \$150 per year expenditure for purification. Through cross-examination staff established that this estimated expenditure is for operation of equipment which is not in service.

This expense is not a proper rate making charge for two reasons:

a) the cost is related to equipment which is not in service and therefore not permitted in a utility's rates pursuant to RSA 378:30-a; and

b) the cost is now known and measurable, a standard consistently utilized by this Commission when establishing utility rates.

Accordingly the cost for purification is eliminated from the Company's cost of service.

Revenue Requirement

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

Operation and Maintenance	10,200
Depreciation Expense	947
Return Requirement	2,919
Taxes - Property	585
	\$14,651

B. Rates

As stated above, Squire Ridge is presently serving 39 unmetered customers with no plans for expansion or customer growth. The existing rate of \$10 per month, billed quarterly in arrears, was established by the former owner and has been continued since purchase of the system by Peter Lewis in June, 1985. As stated previously, Squire Ridge has made capital improvements to the system and generally informed its customers that these improvements, combined with better operating procedures, would mean an increase in the rates charged.

The revenue requirement developed in this Report is \$14,651 which when distributed equally among the 39 customers, results in an annual charge of \$376, billed quarterly at \$94.

We recognize the magnitude of this increase and must also acknowledge that the previous annual rate of \$120 was unrealistic for a water utility supplying good quality water with restrictions only against unreasonable use or waste. The Commission will expect

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Squire Ridge to continue this level of service.

Our order will issue accordingly.

ORDER

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

ORDERED, that Squire Ridge Water Company, Inc., be, and hereby is, authorized to operate as a public water utility in a limited area in the Town of Hampstead, New Hampshire as described in the foregoing Report; and it is

FURTHER ORDERED, that Squire Ridge Water Company, Inc., shall file a tariff describing the terms, conditions and rates, as designated in the foregoing Report, so as to recover annual

revenues of \$14,651 for all service rendered on or after November 1, 1985.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

FOOTNOTE

¹\$4,213 Originally recorded in Account

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

No. 2308.1
 -400 The imposed value of land
 \$3,813 Adjusted Account No. 2308.1
 x .02 Depreciation Rate for the well
 \$ 76.26 Annual Depreciation expense
 -84.26 Annual Depreciation rate based on
 original value
 \$ 8.00 Reduction in depreciation expense

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NH.PUC*11/27/85*[61260]*70 NH PUC 999*Manchester Gas Company

[Go to End of 61260]

70 NH PUC 999

Re Manchester Gas Company

DR 85-214, Supplemental Order No. 17,972

New Hampshire Public Utilities Commission

November 27, 1985

APPLICATION for authority to implement temporary increase in rates for natural gas distribution service pending decision on application for permanent rate increase; granted pursuant to settlement agreement.

Rates, § 630 — Temporary increase — Natural gas service.

A temporary increase in rates for natural gas distribution service was granted pursuant to settlement agreement.

APPEARANCES: Orr and Reno by Charles H. Toll, Jr., Esquire, David W. Marshall, Esquire and Thomas C. Platt, III, Esquire; Daniel J. Kalinski, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 16, 1985, Manchester Gas Company (Company), a public utility providing gas service in the State of New Hampshire, filed revised tariff pages reflecting an increase in gross annual revenues of \$1,748,072 (10.47%) to be effective on all bills rendered on or after September 16, 1985. Thereafter, pursuant to the provisions of RSA 378:6, the Commission suspended the effective date of those tariff revisions in Order No. 17,856 issued on September 9, 1985 (70 NH PUC 782).

On October 10, 1985, the Company filed a Petition for Temporary Rates pursuant to RSA 378:27 requesting an increase in revenues of \$1,748,072, the same amount sought by its September 16, 1985 permanent rate filing, or, alternatively, an increase of \$1,280,348 (7.7%). The Company requested that temporary rates become effective on all bills rendered on or after September 16, 1985. An Order of Notice was issued October 21, 1985 setting a hearing for November 26, 1985 on the issues of temporary rates and an appropriate procedural schedule. No parties sought to intervene in this docket.

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Prior to the hearing, the Company submitted the prefiled testimony of Carolyn J. Huber, the Company's Manager of Regulatory Affairs, and Michael J. Mancini, its Treasurer, in support of the petition. The Company's \$1,280,348 increase as set forth in Mrs. Huber's testimony (Exhibit 1) was computed as follows:

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

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RATE BASE 14,718,582
COST OF CAPITAL 13.10%
REQUIRED NET GAS 1,928,134
OPERATING INCOME
NET OPERATING INCOME 1,236,746
REVENUE DEFICIENCY 691,388
TAX EFFECT 54%
REQUIRED TEMPORARY
RATE REVENUE INCREASE 1,280,348

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In calculating this revenue deficiency for temporary rate purposes, Mrs. Huber utilized the rate base and income statement requested in the Company's permanent rate request filing (Exhibit 3). Both contain pro forma adjustments to the actual test year (period ending March 31, 1985) figures. The requested 13.10% overall rate of return was likewise computed using the capital structure and cost rates included in the Company's permanent rate filing with two exceptions:

1. The 15.5% cost rate for common equity allowed by the Commission in the Company's last rate case was used instead of the 17.00% common equity cost rate requested in the permanent rate filing.
2. Omission of the 1.080% attrition allowance requested in the permanent rate filing.

Staff prefiled testimony on the issue of temporary rates was submitted by Daniel D. Lanning, the Commission's Assistant Finance Director. Mr. Lanning recommended that the Commission set temporary rates on the basis of the following revenue deficiency computation:

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

RATE BASE 13,817,097
 COST OF CAPITAL 12.94%
 1,787,932
 NET OPERATING INCOME 1,434,210
 REVENUE DEFICIENCY 353,723
 TAX EFFECT 54%
 REQUIRED TEMPORARY RATE 655,042
 REVENUE INCREASE

Like the Company, Mr. Lanning utilized the permanent rate filing rate base, income statement and cost of capital calculations. However, unlike the Company, he omitted all pro forma adjustments with three exceptions:

1. As shown in Schedule 2 of Exhibit 1, the Company's rate base plant in service figure was pro formed for the allocation of a propane tank to non-utility operations;
2. With regard to the cost of capital, Mr. Lanning included, as did the Company, the Company's May, 1985 debt financing in the long term debt calculation and adjusted the income statement to reflect the tax effect of the additional interest expense of that debt issuance.
3. Mr. Lanning omitted a pro formed future equity infusion by the Company's parent corporation, Energy North, Inc.

In addition, for temporary rate purposes, Mr. Lanning adjusted the average deferred tax to reflect a monthly instead of a quarterly accrual and utilized the Federal Energy Regulatory Commission's 45-day method for calculating working capital in lieu of the Company's "lead-lag" study. With regard to timing, Mr. Lanning

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recommended that the date of the Commission's order be the effective date of any temporary rates approved by the Commission.

Prior to the hearing, the Staff and Company met, and as a result of their discussion, entered into a stipulation agreement (Agreement) with regard to the appropriate level of temporary rates and their effective date. The Agreement is embodied in Staff Exhibit 1 which is a revised version of Mr. Lanning's prefiled testimony. According to Mr. Lanning, his revised testimony differs from his prefiled in only two respects. First, the revised testimony omits certain language which has no relevance to the issue of temporary rates. Additionally, it changes his original recommendation as to the effective date of temporary rates. In all other respects it is identical; the rate base, income statement and cost of capital computations as set forth above are the same.¹⁽³⁹²⁾

With regard to the implementation of temporary rates, Mr. Lanning's revised testimony recommends that they take effect with all bills rendered on or after December 1, 1985. That date will be after the date of the Order accompanying this Report which Mr. Lanning recommended as the effective date in his prefiled testimony. Mr. Lanning, Mrs. Huber and Mr. Mancini all testified in support of the proposed agreement.

Regarding the rate design to be adopted in connection with temporary rates, the Company proposed and Staff agreed that the Company increase its existing base rates, including the customer charge, on a pro rata basis. Following the hearing, the Company submitted the

following rate design which the Staff has reviewed and found to accurately reflect the Agreement:

After a complete review, we find that the terms of the settlement agreement are amply supported by the record and that the increase in revenues for temporary rate purposes contained therein 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 ..." RSA 378:27.

The parties proposed the following procedural schedule:

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

January 24, 1986 Deadline for Staff
Data Requests

February 14, 1986 Deadline for Company
Responses to Staff Data
Requests

March 7, 1986 Deadline for Staff to
Submit Testimony

March 21, 1986 Deadline for Company
Data Requests

April 11, 1986 Deadline for Staff Responses
to Company Data Requests

April 22, 23 Hearing Dates
& 24, 1986

After review, we find this schedule to be reasonable and will adopt it as the schedule for the remainder of these proceedings.

Lastly, with regard to a matter of procedure, we note that at the hearing the parties inadvertently failed to move to have the identifications stricken from the exhibits submitted at the hearing and to have those documents admitted as full exhibits. We hereby entertain and grant their motions to do so.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

MANCHESTER GAS COMPANY

Rate Design

	PRESENT	PROPOSED							
Rate D:	RATE	REVENUE	RATE	REVENUE	INCREASE	%			
Customer Charge	180,335	Bills	\$3.08	\$	555,432	\$3.21	\$	578,875	\$ 23,444
First Block To 80 Therms	7,606,057	Therms	0.6954		5,289,252	0.7253		5,512,673	227,421
Tail Block over 80 Therms	5,526,460	Therms	0.6407		3,540,803	0.6682		3,692,781	151,978

\$ 9,385,487 \$ 9,788,329 \$402,842 4.29%

Rate G:

Customer Charge 12,710 Bills \$3.08 \$ 39,147 \$3.21 \$ 40,799 \$ 1.652

First Block 3,014,250 Therms 0.7798 2,350,512 0.8133 2,451,490 100,977
to 500 therms

Tail Block 5,353,275 Therms 0.6507 3,483,376 0.6786 3,632,732 149,356
over 500 Therms

\$ 5,873,035 \$ 6,125,021 \$251,986 4.29%

\$15,258,522 \$15,913,350 \$654,828 4.29%

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Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that the settlement agreement set forth in the foregoing Report and the temporary rates contained therein be, and hereby are accepted; and it is

FURTHER ORDERED, that Manchester Gas Company file revised tariff pages reflecting said temporary rates.

By Order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

FOOTNOTE

¹Mr. Lanning's prefiled testimony was not introduced into testimony.

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NH.PUC*11/27/85*[61261]*70 NH PUC 1003*Mountain Springs Water Company, Inc.

[Go to End of 61261]

70 NH PUC 1003

Re Mountain Springs Water Company, Inc.

Intervenor: Mountain Lakes District

DR 85-358, Second
Supplemental Order No. 17,973

New Hampshire Public Utilities Commission

November 27, 1985

INVESTIGATION of rights, duties, and responsibilities of a water utility and customers concerning quality of service and advance billing pending adjudication of condemnation proceeding involving possible transfer of utility assets.

Service, § 117 — Duty to serve — Pending legal proceedings — Condemnation.

Where condemnation proceedings were pending and where the possibility existed that ownership of the assets and distribution system of a water utility would be transferred, the utility, pending an actual transfer, was directed (1) to continue to provide adequate service to its customers, and (2) to make personnel available to respond promptly to customer service complaints. [1] p.1005.

Receivers, § 3 — Jurisdiction and powers — State commissions — Pending legal proceedings — Condemnation — Water utility.

Where condemnation proceedings were pending and where the possibility existed that ownership of the assets and distribution system of a water utility would be transferred, the commission determined that it lacked legal authority to appoint a receiver or to require the utility to allow access to its plant and equipment by the potential transferee. [2] p.1006.

APPEARANCES: Myers and Laufer by David W. Jordan, Esquire for Mountain Springs Water Company, Inc.; Laurence F. Gardner, Esquire for Mountain Lakes District; Larry M. Smukler, Esquire, General Counsel, New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On October 11, 1985 the Commission on its own Motion issued Order 17,899 (70 NH PUC 845) opening this docket. As noted in Order No. 17,899, the Commission had been notified that the Grafton County Superior Court had adjudicated the condemnation proceeding between Mountain Springs Water Company, Inc. (MSWC) and Mountain Lakes District (District). Since a transfer of assets from MSWC to the District appeared to be imminent and since the MSWC tariff provides for

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yearly billing in advance of service, the Commission opened this docket "... for the purpose of establishing the rights, duties and responsibilities of MSWC and its customers pending resolution of the issues involved in the purchase and acquisition of the plant and property of MSWC by Mountain Lakes District." (70 NH PUC at p. 846.) Order 17,899 went on to schedule a hearing for November 26, 1985 and to establish an interim billing schedule pending more definitive record information to be developed in the November 26, 1985 hearing. Thus, Order 17,899 provided that (70 NH PUC at p. 846):

... pending the hearing of November 26, 1985 and any Commission action resulting therefrom no customer shall be disconnected for nonpayment of their bill so long as that customer renders payment on or before November 1, 1985 of \$32.93 and the sum of \$115.89 which shall represent payment for service to be rendered for the months of October, November and December, 1985.

Subsequent to the issuance of Order 17,899, the Commission received several customer complaints that raised the issue of how to define the interface between Order 17,899 and the Commission's termination regulations. Accordingly, the Commission issued Supplemental Order No. 17,927 (70 NH PUC 868) which, in essence, provided that Order 17,899 and the Commission's regulations must be read together. Thus, customers were entitled to the 12 day written notice of disconnection if payment was not rendered by the November 1, 1985 due date. N.H. Admin. Rules, Puc 603.08. The record indicates that MSWC has complied with Order 17,899 and Supplemental Order No. 17,927.

On November 26, 1985 the hearing was held as scheduled. At the hearing, the Commission was provided with an update on the condemnation proceedings. Additionally, the Commission heard testimony on service problems encountered by customers on November 25, 1985 and on the effectiveness of outside monitoring of the MSWC facilities.

With respect to the condemnation proceedings, the Commission was informed that the Grafton County Superior Court had valued the MSWC assets at \$250,000 and that the District is prepared to pay that amount to acquire the system. The transaction must be concluded no later than January 12, 1985. MSWC's position was that unless and until the transaction is closed it remains obligated to provide water service and it remains entitled to full payment on the annual bill. MSWC also stated that if the Commission wished to provide for payment only until the January 12, 1986 transfer deadline, the appropriate bill for the additional service for the period January 1, 1985 to January 12, 1986 would be \$15.24 per customer. MSWC suggested that, if the Commission provided for the payment of \$15.24, due dates be established so as to allow for termination by January 5, 1986. According to MSWC, such a measure is necessary to allow the Company the means of enforcing payment prior to the transfer date.

The District did not directly address the method of payment prior to the transfer date. Rather, it complained about the quality of service and the billing practices of MSWC. The District

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presented evidence which established that a water outage occurred at some point in the evening of November 25, 1985. Customers had been unable to reach any MSWC personnel at the phone numbers provided for that purpose. Customers had contacted Fenn Construction (Fenn) which is responsible for servicing the MSWC system and were told that Fenn would attempt to resolve the problem. There is no record information about whether the problem has, in fact, been resolved. The District's billing practices complaints were a reiteration of the issues resolved in Order No. 17,927. As a result of those complaints, the District requested, inter alia, that the Commission:

- 1) provide for payments to an escrow agent;
- 2) appoint a receiver to manage MSWC; and
- 3) provide for access to MSWC property by District personnel (at no charge to MSWC) for the purpose of monitoring the system.

[1] After review and consideration, we shall define the rights, duties and responsibilities of MSWC and its customers as follows:

- 1) MSWC must continue to provide adequate service to its customers until its assets are transferred to the District;
- 2) MSWC must have personnel available to respond promptly to customer service complaints;
- 3) MSWC is entitled to bill its customers an additional \$15.24 for service rendered between January 1, 1986 and January 12, 1986 unless the transfer of assets is accomplished prior to the due date of the \$15.24 bills;
- 4) The bills for the additional \$15.24 must be postmarked no later than December 4, 1985 if MSWC wishes to be entitled to payment by the due date established below;
- 5) The due date for the \$15.24 payment is December 20, 1985;
- 6) If the \$15.24 payment is not rendered by the due date, MSWC may issue 12 day written disconnect notices with a disconnection date no earlier than January 5, 1986;
- 7) To the extent that a customer has rendered a payment to MSWC which exceeds \$164.06 (payment for service to January 12, 1986), MSWC must refund the difference between the payment and the \$164.06 amount due no later than December 20, 1985; and
- 8) Pursuant to N.H. Admin. Rules, Puc 201.05, the Commission hereby waives N.H. Admin Rules, Puc 603.08 and the 30 day billing requirement to the extent that they are inconsistent with the foregoing provisions.

As is evident from the above provisions, the Commission's concern is that adequate service continue to be provided during the time period that MSWC continues to operate the system as a utility and that customers be required to pay for that service. We are cognizant of the unfortunate ill-will between the parties to this proceeding.¹⁽³⁹³⁾ While the Commission cannot compel

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the parties to act with good will, we can compel good faith. We will not tolerate attempts to evade the responsibilities established in this Order. If MSWC does not continue to provide adequate service and to have personnel available to resolve service complaints, the matter will be immediately referred to the Attorney General for expeditious and effective enforcement measures. If the customers do not render payment when due, we shall allow service to be discontinued in accordance with the foregoing provisions.

[2] We have not adopted the District's recommendations that we appoint a receiver and require MSWC to allow access to its plant and equipment by District personnel because we lack the requisite legal authority to take such measures. We also trust that MSWC will fulfill its public utility obligations, including the daily monitoring of its system provided for in Re Mountain Springs Water Co., 70 NH PUC 720 (1985), thus rendering unnecessary District access. We have also declined to provide for payment of bills in escrow because we have only required payment for service rendered prior to the transfer date. Since there will be no funds for service subsequent to the transfer date to be returned to customers, an escrow agent is unnecessary.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the rights, duties and responsibilities of Mountain Springs Water Company shall be as established in the foregoing Report; and it is

FURTHER ORDERED, that a copy of this Order be served on the Office of the Attorney General.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of November, 1985.

FOOTNOTE

¹Counsel for MSWC represented that, given the history of these proceedings, positions have "hardened" and that MSWC would not trust District personnel "as far as we can throw them". Counsel for the District argued that the billing violations were sufficiently egregious to justify a revocation of the franchise.

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NH.PUC*11/27/85*[61262]*70 NH PUC 1007*Petrolane-Southern New Hampshire Gas Company

[Go to End of 61262]

70 NH PUC 1007

Re Petrolane-Southern New Hampshire Gas Company

DR 85-370, Order No. 17,974

New Hampshire Public Utilities Commission

November 27, 1985

REVIEW of semi-annual cost of gas adjustment (CGA) for a gas distribution utility for 1985-1986 winter period.

Automatic Adjustment Clauses, § 53 — Billing, collections, and adjustments — Over- and undercollections — Reconciliation — Semi-annual cost of gas adjustment.

A gas distribution utility was directed to file a monthly reconciliation comparing revenues collected under its semi-annual cost of gas adjustment (CGA) with actual gas costs. [1] p.1007.

Automatic Adjustment Clauses, § 53 — Billing, collections, and adjustments — Over- and undercollections — Reconciliation — Trigger mechanism — Semi-annual cost of gas adjustment.

Gas distribution utilities operating with a semi-annual cost of gas adjustment (CGA) ordinarily use a "trigger mechanism" set at 10%; i.e., over- or undercollections of gas costs in

excess of 10% are signalled automatically. [2] p.1007.

APPEARANCES: Ransmeier & Spellman by Dom S. D'Ambruoso, Esquire on behalf of Petrolane Southern New Hampshire Gas Company.

By the COMMISSION:

REPORT

[1,2] On October 29, 1985 the Commission held a hearing to review Petrolane Southern New Hampshire Gas Company's (Southern) semi-annual Cost of Gas Adjustment (CGA) for the 1985-1986 winter period. This hearing was scheduled pursuant to Commission Order No. 17,849 (70 NH PUC 770). The Commission subsequently granted a motion by Southern to continue the proceedings to November 8, 1985.

Southern filed their 1985-1986 winter CGA rate of \$0.479 per therm, net of franchise tax, at the November 8, 1985 hearing.

At the November 8, 1985 hearing, the following issues were discussed: a) sales estimate used in calculating the CGA; b) the propane supplier for Southern; c) lost and unaccounted for and Company use; and d) the relationship between Southern's propane supplier, Petrolane Gas Service, Inc. and Southern.

This is Southern's initial filing

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utilizing the semi-annual CGA. Accordingly, there are a number of procedural items which the Commission wishes to address. The first concerns filing requirements. Southern is to file the CGA one month prior to the date the tariff pages are to become effective. In addition, as with all gas utilities utilizing the semiannual CGA, Southern is required to file a monthly reconciliation of the CGA revenue compared to gas cost. We will rely on staff to provide Southern with the proper format for these reports.

The second issue concerns a "trigger mechanism" on the CGA. This is a mechanism which signals excessive over/ undercollections. All gas utilities which have a semi-annual CGA are currently utilizing a trigger set at over or under collections of gas costs in excess of 10%.

This issue was not addressed during the proceedings. Therefore, for the instant CGA period, the Commission will review the above mentioned reconciliations provided by Southern during the period. If the Commission determines that the CGA is excessively overcollecting or undercollecting gas costs, we may, upon our own motion, require an adjustment of the CGA rate.

Southern is to address at the next CGA proceeding the issue of whether the same trigger mechanism which applies to other gas companies in New Hampshire should apply to Southern.

Based on the evidence provided during the hearing the Commission finds that the filed CGA rate of \$0.479 per therm 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 Revised Page 15 of Petrolane Southern New Hampshire Gas Company, Tariff, NHPUC No. 1 Gas, providing for a Cost of Gas Adjustment of \$0.479/therm for the period November 1, 1985 through April 30, 1986 be, and hereby is, approved; and it is

FURTHER ORDERED, that the Revised Tariff Pages approved by this Order become effective with all billings issued on or after November 1, 1985; 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.

By Order of the Public Utilities Commission of New Hampshire this 27th day of November, 1985.

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NH.PUC*12/02/85*[61263]*70 NH PUC 1009*Southern New Hampshire Water Company, Inc.

[Go to End of 61263]

70 NH PUC 1009

Re Southern New Hampshire Water Company, Inc.

DF 85-295, Order No. 17,975

New Hampshire Public Utilities Commission

December 2, 1985

PETITION for authority to issue and sell \$1.2 million in first mortgage bonds, to increase authorized common stock sales, and issue additional shares of common stock.

Security Issues, § 105 — Sale price and interest rates — Bonds — Common stock.

A water utility operating as a subsidiary of a holding company was authorized (1) to issue \$1.2 million in first mortgage bonds, Series F, at a range of interest rates of 10-14%, maturing in approximately 10 years; (2) to sell an additional 5,000 shares of \$100 par value common stock; (3) to issue 3,125 shares of additional common stock at \$320 per share; and (4) to issue short-term notes in an amount not to exceed \$2 million.

Expenses, § 117 — Income taxes — Consolidated return — Affiliated group.

Discussion of problems attendant to the filing of a consolidated income tax return by an affiliated group and a demand by a corporate holding company for a utility subsidiary to pay corporate income taxes to the holding company, when the holding company has not exercised best efforts to ensure that its consolidated filing is accurate or makes use of all available credits and deductions. p.1010.

APPEARANCES: for the Petitioner, James C. Hood, Esquire; for the Staff: Eugene F. Sullivan, Finance Director, and Sarah P. Voll, Chief Economist.

By the COMMISSION:

REPORT

By this petition filed August 8, 1985, Southern New Hampshire Water Company, Inc. (the Company), a corporation duly organized and existing under the laws of the State of New Hampshire and operating as a water public utility in the towns of Hudson, Litchfield, Windham, Amherst, and Londonderry under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369 to issue and sell \$1,200,000 of First Mortgage Bonds, Series F, with a proposed interest rate range of 10-14%, due 2005, to authorize an increase in authorized capital stock from 5,000 shares of \$100 par value common stock to 10,000 shares of \$100 par value common stock and to issue 3,125 shares of \$100 par value common stock for \$320 per share, or \$1,000,000 in cash. The

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Company further requested that authorization be granted to issue short-term notes not in excess of \$2,000,000, as previously authorized in Order No. 17,446 (70 NH PUC 57).

At the hearing on the petition, held in Concord on October 9, 1985, Robert W. Phelps, Vice President and Treasurer of Consumers Water Company, the parent, testified that the proceeds of the issues would be used to retire short term indebtedness which was at a \$2,300,000 level at the time of the hearing. He further testified that the requested short term debt level would allow the Company to fund additional construction which was estimated to be approximately \$1,000,000 by year end 1986. Over several years the short term debt would exceed the previous authorization of \$1,400,000. The Company feels that it is necessary to allow the short term debt level to build up over time in order to issue further debt at amounts in excess of \$1,000,000. Under the 10 percent standard Commission limitation only \$750,000 of short term debt could be accumulated.

In addition to requesting preliminary approval for an interest range of 10-14 percent on the Series F bonds, the Company has stated that a 20 year financing will not be available and feels that the most efficient financing would be in the 10 year range. Mr. Phelps testified that he believes that the Company would be in the position to achieve a coupon rate of 11-11.5 percent from an insurance company, and that banks would be asking interest rates in the range of 13 percent. Therefore, the Company is seeking approval to negotiate within a range of interest rates and terms with final approval by the Commission when final terms have been negotiated with a financial institution.

Approval for the issuance of additional common stock is requested in order to address the thin debt to equity position which was a concern in the last general rate case. The equity infusion by the parent, Consumers Water Company would also provide stability in the eyes of the financial community.

The following is the balance sheet of the Company as of June 30, 1984 and June 30, 1985, pro formed to reflect these issues.

At the hearing, concern was expressed regarding the amount of \$295,178 which appears on the balance sheet as a current asset listed as income taxes refundable. The Commission has been very sensitive to the dealings between holding companies and subsidiaries and questioned whether it was in the best interest of the ratepayers to provide cash to the parent company. In a post hearing response data was furnished which stated that Consumers Water Company estimates its federal income taxes and makes billings to its subsidiaries on a pro rata basis as part of a tax group. When a consolidated federal tax return is filed and the real liability is determined for each subsidiary (September of the following year), a refund or bill is rendered. The Company states that extraordinary growth has occurred resulting in additional investment tax credit and accelerated depreciation and that fact was not picked up by Consumers Water Company. The Commission is aware that a corporation may file for a six-month extension for filing its return. We are also aware that the

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

SOUTHERN NEW HAMPSHIRE WATER COMPANY, INC.

BALANCE SHEETS

June 30, 1984 and 1985; Pro Forma Effect
of Proposed Bond Issue

ASSETS	Actual				Pro Forma
Property, Plant and Equipment	6/30/84	6/30/85	Adjustments		
Less: Accumulated Depreciation	6,282,807	\$7,405,897	\$		\$7,405,897
	(674,136)	(760,640)	(760,640)		
	5,598,671	6,645,257	6,645,257		
Construction Work In Progress	318,397	1,209,772	1,209,772		
CURRENT ASSETS					
Cash	86,960	48,681	430,000	(1)	439,634
Accounts Receivables	118,576	221,168	8,050	(2)	221,168
Income Taxes Refundable	-	295,178	(43,500)	(3)	295,178
Unbilled Revenue	166,500	185,300	(3,597)	(5)	185,300
Materials and Supplies	77,744	111,916	111,916		
Prepayments	44,228	3,391	3,391		
	494,008	865,634	1,256,587		
DEFERRED DEBITS					
Unamortized Debt Deferred	55,938	47,213	43,500	(3)	89,988
Unamortized Rate Case Expense	17,800	15,725	(725)	(4)	15,725
Other	57,391	108,125	108,125		
	131,129	171,063	213,838		
TOTAL ASSETS	\$6,541,205	\$8,891,726	\$9,325,454		
LIABILITIES & CAPITAL					
Common Stock	\$ 849,642	\$ 849,642	\$1,000,000	(1)	\$1,849,642
Reinvested Earnings	717,932	723,012	3,728	(5)	726,740
	1,567,574	1,572,654	2,567,382		
FIRST MORTGAGE BONDS					
Series B - 7%	218,600	211,200	211,200		
Series C - 8-1/4%	266,000	259,000	259,000		
Series D - 9-3/8%	704,000	688,000	688,000		
Series E - 14-3/4%	1,200,000	1,200,000	1,200,000		

Series F - 12% (Average -	-	1,200,000	(1)	1,200,000
Short-Term Debt	475,000	1,770,000	(1,770,000)	(1) -
	4,430,174	5,700,854	6,134,582	

CURRENT LIABILITIES

Accounts Payable	247,012	147,822	147,822	
Accrued Taxes	34,099	90,204	90,204	
Accrued Interest	65,766	58,809	58,809	
Other	59,719	60,736	60,736	
	406,596	357,571	357,571	
Customer Advances	43,796	41,092	41,092	
Contrib. in Aid of Construc.	1,239,601	2,109,465	2,109,465	
Deferred Federal Income Taxes	207,988	307,680	307,680	
Deferred Investment Tax Credit	213,050	375,064	375,064	
	1,704,435	2,833,301	2,833,301	
TOTAL LIABILITIES	\$6,541,205	\$8,891,726	\$9,325,454	

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corporation must pay, on or before the due date for payment of its tax, the entire amount of its tentative computed tax. Therefore, at the time of its original due date, Consumers Water Company should have been aware of the situation with Southern N.H. Water Company and made appropriate adjustments. In this case, the short term borrowings could have been reduced. We will expect this situation to be remedied in the future.

The Company filed calculations of the actual and proforma cost of capital. Based on an interest rate of 12 percent for the Series F bonds and a rate of 14.5 percent on equity the cost of capital would be increased from 12.28 percent to 13.25 percent. While we do not find those calculations to be appropriate for ratemaking purposes due to the speculative nature of the proposed bond issue and the cost impact of the thickened equity, we will accept them for the purpose of this petition. A proposed capital budget was also submitted for the period of 1986 through 1990.

In its last report and order (DF 82-287) this Commission required the Company to use a different procedure in its financing. The procedure called for the financing to be within an interest rate range. Upon approval of the request, the Company may offer or negotiate the financing and notify the Commission of the negotiated terms in a timely manner for final approval. We find that the Company's filing adheres to that procedure. We will expect the Company to negotiate the best possible terms available at this time.

Upon consideration of the evidence submitted, the Commission is satisfied that the proceeds herein will be used for the purposes stated herein. The Commission finds that the issuance of \$1,200,000 First Mortgage Bonds, Series F, 10-14%, maturing in approximately ten years, the authorization of an additional 5,000 shares of \$100 par value common stock, the issuance of 3,125 shares of common stock at \$320 per share, and to issue short-term notes in an amount not to exceed \$2,000,000 is consistent with the public good and will be approved, subject to final authorization of the terms of the Series F First Mortgage Bonds. Our order will issue accordingly.

ORDER

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

ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to sell and issue for cash One Million Two Hundred Thousand Dollars (\$1,200,000) of its First Mortgage Bonds, Series F, 10-14% at par, such bonds to be issued and sold in accordance with terms and conditions set forth in the petition and subject to final approval when negotiated; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized an increase in its authorized capital stock from 5,000 shares of \$100 par value common stock to 10,000 shares of \$100 par value common stock; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to sell for cash Three Thousand One Hundred and Twenty Five (3,125) shares of its \$100 par value common stock for Three Hundred Twenty Dollars (\$320) to Consumers Water Company, its only

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stockholder, such shares to be sold in accordance with the terms and conditions set forth in the petition; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, without first obtaining the approval of this Commission be, and hereby is, authorized to, from time to time, issue and sell for cash, and renew its shortterm note or notes, payable less than twelve (12) months from the date thereof, in the aggregate principal amount not in excess of two Million Dollars (\$2,000,000); and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to mortgage its present and future property as security for the First Mortgage Bonds to be issued; and it is

FURTHER ORDERED, that the proceeds from the sale of said securities be used solely for the following purpose: to retire its outstanding shortterm indebtedness, to finance future purchases and construction of property and facilities, and to replenish working capital; and it is

FURTHER ORDERED, that on January first and July first in each year, Southern New Hampshire Water Company shall file with this Commission a detailed statement, duly sworn to be 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 second day of December, 1985.

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NH.PUC*12/04/85*[61265]*70 NH PUC 1023*UNITIL Service Corporation

[Go to End of 61265]

Re UNITIL Service Corporation

Intervenors: Office of Consumer Advocate and Granite State Electric Company

DR 85-362, Order No. 17,980

New Hampshire Public Utilities Commission

December 4, 1985

ORDER adopting schedule for hearings and filing of exhibits concerning tax sharing agreement between corporate affiliates.

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APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambrosio, Esquire and LeBeouf, Lamb and McRae by Paul Lammy, Esquire on behalf of UNITIL Service Corporation; Michael Holmes, Esquire, Consumer Advocate; Janis A. Callison, Esquire on behalf of Granite State Electric Company; Larry Smukler, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On October 1, 1985, UNITIL Service Corporation filed a Tax Sharing Agreement between Concord Electric Company, Exeter and Hampton Electric Company, UNITIL Service Corporation, UNITIL Power Corporation and UNITIL Corporation (hereinafter referred to as the AFFILIATES) with the Commission pursuant to RSA 366. An Order of Notice was issued on October 15, 1985 opening this docket pursuant to RSA 366:5, 6, and 7 for the purpose of determining whether the Tax Sharing Agreement is just and reasonable, specifically, inter alia,

1) Whether paragraph 1 which allows the AFFILIATES to elect on a year-by-year basis to file a consolidated Income Tax Return is just and reasonable; and

2) Whether the Tax Sharing Agreement as filed is consistent with the rule of Federal Power Commission v. United Gas Pipeline Co., 386 U.S. 237, 68 PUR3d 321, 18 L.Ed.2d 18, 87 S.Ct. 103 (1967) and, if it is not consistent with that rule, whether the Tax Sharing Agreement should be rejected;

In addition, the Order of Notice scheduled a hearing for November 13, 1985 and set deadlines for the filing of Motions to Intervene and testimony.

Thereafter, on October 15, 1985, UNITIL Service Corporation filed a Motion to Amend the Commission's Order of Notice requesting that the November 13, 1985 hearing be designated a procedural hearing instead of a hearing on the merits to allow for adequate discovery and sufficient preparation. The Commission granted UNITIL Service Corporation's request in a revised Order of Notice issued on November 4, 1985.

At the November 13, 1985 hearing, the Commission granted the Motion to Intervene of Granite State Electric Company. In addition thereto, the Consumer Advocate and Commission Staff entered appearances. The parties presented the following proposed procedural schedule:

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

12/13/85 Parties to file prefiled
testimony and exhibits

12/20/85 Staff to notify parties of its
intent, if any, to file
testimony.

1/8/86 Due date for data requests.

1/27/86 Due date for responses to data
requests.

2/11/86 Hearing.

2/12/86 Hearing.

After review, we find the proposed procedural schedule to be reasonable and will adopt it.
Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing

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Report, which is made a part hereof; it is

ORDERED, that the procedural schedule set forth in the foregoing Report be, and hereby is,
adopted for the remainder of the proceedings in this docket.

By order of the Public Utilities Commission of New Hampshire this fourth day of December,
1985.

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NH.PUC*12/04/85*[61266]*70 NH PUC 1025*Claremont Gas Light Company

[Go to End of 61266]

70 NH PUC 1025

Re Claremont Gas Light Company

DR 85-27, Order No. 17,981

New Hampshire Public Utilities Commission

December 4, 1985

INVESTIGATION, on motion by commission, of cost of gas adjustment clause.

Automatic Adjustment Clauses, § 57 — Billing, collections, and adjustments — Over- and
undercollections — Refunds — Cost of gas adjustment.

It was held administratively cumbersome and unnecessary to make refunds to gas customers where, because of untimely and irregular meter readings over a two-month period, the monthly cost of gas adjustment clause was billed incorrectly to certain customers, producing perhaps a 10 per day over- or undercollection; the overall amount of revenue collected was correct, however.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire; Daniel Lanning, Assistant Finance Director, and James Lenihan, Rate Analyst, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

After receiving a number of customer inquiries concerning the November, 1984 Cost of Gas Adjustment (COGA), the Commission, on February 20, 1985, upon its own motion, issued Order No. 17,457 (70 NH PUC 70) which opened this docket to investigate Claremont Gas Light Company's November, 1984 COGA of \$1.01 per therm. Herbert Lieberman, Claremont's Vice President, and Georgia Weatherby, its Clerk, offered testimony and exhibits regarding the manner in which the November COGA was calculated.

Mrs. Wetherby explained that under normal circumstances all customers' meters are read between the first and the twelfth of each month. Each customer, therefore, receives one bill per month. The bill would normally reflect a period of consumption of approximately four weeks; thus, 17 meter books representing the total number of customers for

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the Claremont Gas Light Company are read during the first two week period of each month.

After the meters are read, the consumption data is forwarded to a computer facility in Rutland, Vermont, for processing around the seventeenth of each month. The information is compiled and returned to the Claremont office on or about the fourth week of every month and, subsequently, the customers are billed on or about the first week of the following month. Events which began in September provide the basis for the eventual billing cycle resulting in the November COGA.

The Company employs only one meter reader. The meter reader normally records consumption for all 17 books between the first and approximately the fifteenth, of each month. September readings began under normal circumstances. However, from the period of September 5 through September 16, no recordings were registered as during that time the meter reader was ill. As a result, for the first half of September only books 1 through 4 had entries for a normal four-week consumption. For books 5 through 17, the entries were read between the 17th and 19th of September. Therefore, the information sent for processing in September reflected a normal four-week consumption only for those customers in books 1 through 4. Customers in books 5 through 17 reflected a consumption period of six weeks.

Thus, again, the bills sent out in early October did not reflect a normal four- week

consumption for all customers in all 17 books. The meter reading process for the month of October returned to normal and all 17 books were read during the first eleven days. Since books 5 through 17 were read late in September reflecting a six-week consumption period, the same customers in books 5 through 17 for October's reading reflected approximately a two week period.

According to schedule, October's meter information was submitted to Vermont for processing and returned to the Claremont office during the last week of October for November's billing.

To determine the cost of gas for a given month, the Company divides the total cost of the gas assigned to the utility customers at the end of the calendar month (less the base cost of gas) by the number of therms sold during the monthly billing cycle. As a result, if the number of therms sold decreases, the COGA will increase. The abnormally low customer consumption figures for October led to the high November COGA. In addition, November's bills also reflected an increase of \$.10 per therm in the base cost of gas in accordance with Order No. 17, 110 in Docket 83-215 (69 NH PUC 379).

The Company, as a result of reading meters in books 5 through 17 as much as two weeks late in September, applied an overall higher than actual therm consumption for the four-week September meter reading cycle and subsequent lower than actual four-week therm consumption figure for October's meter reading cycle. This confusion in consumption for the two consecutive months resulted in a low October COGA and a high November COGA.

This docket was opened to investigate the manner in which Claremont calculated its November, 1984 COGA. It is clear that the great disparity between the (October \$.42 per therm) and November (\$1.01 per therm) COGA resulted from Claremont's varying from its normal meter reading procedures.

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What is less clear is whether the utilization of a higher than normal consumption figure in October's COGA and a lower than normal consumption figure in November's COGA resulted in some customers paying more than they would have under normal meter reading circumstances. Presumably, when averaged, the lower than normal October COGA and the higher than normal COGA result in a wash; that is, they cancel each other out. However, the only way to establish whether customers were actually overbilled is to go back and recalculate the October and November COGA's based on meter readings at the dates on which they should have been made rather than on the delayed date. This cannot be done. There is no way to go back to the proper day and find out what a customer's consumption was as of that date. Thus, it is impossible to determine the extent to which Claremont customers were harmed by its failure to read its customers' meters in a timely fashion.

We are able to conclude that the bills of those customers whose meters are read in books 1 through 4 were not affected by the delayed readings. Similarly, the bills of those customers whose meters are read at the end of the reading cycle are only minimally affected since the reading dates are within a few days of the normally scheduled readings.

The customers most adversely affected are those whose meters are in books 5 through 10.

Although a precise calculation is impossible, it can be determined that customers in that book who used fifty therms during the normal billing period were overcharged approximately \$.10 per day, based on the fact that the October COGA was ten cents per therm less than the September COGA, and based on an estimated usage of one therm per day.

While this overcharge is not insignificant, its value must be carefully considered when evaluating the desirability of directing a refund. Refunds are a desirable action when a company overcollects revenues and stands to gain a windfall by overcollection. In this instance, such was not the case. The cost of gas mechanism functioned properly in allocating known expenses among all the customers. Although the allocation was slightly incorrect because of the reading dates, the company collected only an amount which it had shown represented actual costs. Therefore, while there were customers who were overcharged, there were other customers who were undercharged by an equal amount. Therefore, any action directed at the company to make proper refunds would also require a recalculation and rebilling of those customers who were undercharged.

The Commission will not embark on such an exercise. As we indicated herein, it is impossible to determine with accuracy the magnitude of the overbilling or underbilling of individual customers. There would be little merit in committing the company's administrative resources to an exercise which, at best, would simply redistribute the inequities and cause further customer misunderstandings.

While we cannot say with certainty that Claremont customers were not harmed by its failure to timely read meters, it is important to note this situation will not arise in the future. Beginning with January 1, 1986, Claremont will no longer be utilizing the monthly historical COGA which is dependent upon timely meter reading. In

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Report and Order No. 17,949 issued on November 15, 1985 (DR 84-380), the Commission ordered Claremont to begin utilizing a semi-annual forward looking COGA as of that date. Thus, the situation described herein should not happen again. This docket is hereby closed.

Our order will issue accordingly.

ORDER

Based upon the foregoing Report, which is made a part hereof; it is

ORDERED, that this docket by, and hereby is closed.

By order of the Public Utilities Commission 12/4/85.

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NH.PUC*12/04/85*[61267]*70 NH PUC 1028*Chester Telephone Company, Inc. d/b/a Granite State Telephone Company

[Go to End of 61267]

70 NH PUC 1028

Re Chester Telephone Company, Inc. d/b/a Granite State Telephone Company

DF 85-389, Order No. 17,982

New Hampshire Public Utilities Commission

December 4, 1985

PETITION for approval of an amendment to a telephone loan contract with the United States Rural Electrification Administration and Rural Telephone Bank.

United States, § 14 — Loans — Nonfederal projects — Rural Electrification Administration — Rural Telephone Bank.

A loan contract between a telephone company and the United States Rural Electrification Administration and Rural Telephone Bank was amended to include a three-year extension of the six-year drawdown period of certain 35-year, 5%, mortgage notes.

By the COMMISSION:

ORDER

WHEREAS, on June 27, 1979 the Commission issued its Report and Order No. 13,688 (64 NH PUC 187) approving a petition by Chester Telephone Company, Inc. to issue its Mortgage Notes in a principal amount not to exceed two million two hundred and twenty thousand dollars (\$2,220,000) to the Rural Electrification Administration and Rural Telephone Bank (REA/RTB), said notes to bear interest of five percent (5%) per annum, and to be payable over a term of thirty five (35) years; and

WHEREAS, this mortgage had a drawdown period of six years, and

WHEREAS, on November 8, 1985, Chester Telephone Company, Inc. filed a letter with this Commission requesting advice as to further authorization required under RSA 369 concerning a proposed extension of the drawdown period of said REA/RTB mortgage, needed to utilize the remaining three hundred seventy two thousand dollar (\$372,000) balance of the authorized principal; and

WHEREAS, the requested extension of the drawdown period is for three years, as agreed upon with REA/RTB; and

WHEREAS, said amendment to the

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extension period appears to be consistent with the public good; it therefore is hereby

ORDERED, that Chester Telephone Company, Inc. be, and hereby is, granted an extension to the drawdown period on its Mortgage Note, the principal amount not to exceed two million

two hundred and twenty thousand dollars (\$2,220,000) issued to REA/RTB at five percent per annum payable over a thirty-five (35) year term; and it is

FURTHER ORDERED, that the extension of the drawdown period be for three (3) years in accordance with the proposed Agreement between United States of America and Chester Telephone Company dated as of September 30, 1985 — New Hampshire 502-M8 Chester.

By Order of the Public Utilities Commission of New Hampshire this fourth day of December, 1985.

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NH.PUC*12/04/85*[61268]*70 NH PUC 1029*Dockham Shore Estates

[Go to End of 61268]

70 NH PUC 1029

Re Dockham Shore Estates

DE 85-394, Order No. 17,983

New Hampshire Public Utilities Commission

December 4, 1985

ORDER granting regulatory exemption to water distribution system.

Public Utilities, § 121 — Regulatory status — Exemption — Water distribution system.

A small water distribution system furnishing water to eight customers, and intended to be conveyed to a real estate owners' association was granted an exemption from formal regulation.

By the COMMISSION:

ORDER

WHEREAS, Dockham Shore Estates which operates and owns a central water system furnishing water service in a limited area in the town of Gilford, New Hampshire, by a request filed November 14, 1985, seeks exemption from the provisions of RSA 362:4, as amended; and

WHEREAS, the petitioner states that he is now furnishing water to eight customers, and intends to convey ownership of the water system to the Dockham Shore Estates Association prior to providing service to the tenth customer; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; it is

ORDERED, that exemption from public utility statutes be, and hereby is, granted to Dockham Shore Estates; and, it is

FURTHER ORDERED, that the exemption here granted shall expire on August 1, 1986, at which time further demonstration must be made to support its continuance.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1985.

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NH.PUC*12/06/85*[61264]*70 NH PUC 1013*Bridgewater Steam Power Company

[Go to End of 61264]

70 NH PUC 1013

Re Bridgewater Steam Power Company

Intervenors: Town of Bridgewater, Town of Ashland, Squam Lakes Association, and Town of Center Sandwich et al.

DE 85-262, Order No. 17,976

New Hampshire Public Utilities Commission

December 6, 1985

PETITION for exemption from a municipal zoning ordinance to allow construction, operation, and maintenance of a 15 megawatt, wood fired, electric generating plant.

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Public Utilities, § 73 — Regulatory status — Electric plants — QFs.

A qualifying cogeneration and small power production facility (QF) is classified as a "utility" under state law, RSA 362:2, which defines a public utility as, among other things, "every corporation, company, association ... owning, operating or managing ... any plant or equipment ... for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public." [1] p. 1015.

Public Utilities, § 73 — Regulatory status — Electric plants — QFs.

Under state law, RSA 362-A:2, as enacted in 1978, and as amended in 1983, all electric generation facilities that are characterized under the Public Utility Regulatory Policies Act as qualifying cogeneration and small power production facilities are considered as "public utilities." [2] p. 1015.

Zoning — Exemptions — Jurisdiction and powers — State commission — Regulated utilities — Construction projects.

The commission possessed authority to grant a zoning exemption to allow a qualifying cogeneration and small power production facility (QF) to construct, operate, and maintain a

wood fired electric generating plant because the commission has such authority in the case of "public utilities," and a QF qualifies as a "public utility" under state law. [3] p. 1015.

Electricity, § 3 — Generating plants — Siting considerations.

The siting of 15 megawatt, wood fired, electric generating plant in central New Hampshire was found reasonably necessary for the public welfare because (1) long term energy goals required a reasonable dispersion of wood-burning facilities throughout the state (and no such facilities were presently located in the center of the state) and (2) the plan qualified as a small power production facility under the Public Utility Regulatory Policies Act and thereby promoted state and federal policies of encouraging the development of natural, renewable, nonfossil resources to produce electricity. [4] p. 1020.

Zoning — Exemptions — Criteria — Public utilities — Construction projects — Generating plants.

In deciding whether to grant a zoning exemption to allow construction, operation, and maintenance of an electric generating plant, the commission must evaluate the following factors: (1) the suitability of the location chosen for the utility structure, (2) the physical character of the uses in the neighborhood, (3) the proximity of the site to residential development, (4) the effect on abutting owners, (5) the site's relative advantages and disadvantages from the standpoint of public convenience and welfare, (6) whether other and equally serviceable sites are reasonably available by purchase or condemnation that would have less impact on the local zoning scheme, and (7) whether any reasonable injury to abutting or neighboring owners can be minimized by reasonable requirements relating to physical appearance, lot size, setback, or landscaping. [5] p. 1020.

Zoning — Exemptions — Criteria — Public utilities — Construction projects — Generating plants.

A proposed seven-acre site for construction of a 15 megawatt, wood fired electric generating plant satisfied legal requirements for the granting of a zoning exemption where the site was in close proximity to necessary power lines, there was an abundant local wood supply, the site was large enough to allow all accessory needs, the site was formerly a gravel pit (minimizing environmental concerns), the site was a topographical depression (which minimized view from off-site areas), there were other industrial uses in the area, and the site was a quarter-mile away from the closest purely residential structure. [6] p. 1021.

Zoning — Exemptions — Public utilities — Construction projects — Generating plants.

An exemption from a local municipal zoning ordinance was granted to allow construction, operation, and maintenance of a 15 megawatt, wood fired, electric generating plant operating as a qualifying cogeneration and small power production facility. [7] p. 1022.

APPEARANCES: Willard G. Martin, Jr., Esquire, and Walter L. Mitchell, Esquire, for the Petitioner; William H.

Hopkins, Esquire, for the Town of Bridgewater; John J. McCormick, Esquire, for the Town of Ashland; Robert A. Backus, Esquire, for Squam Lakes Association.

By the COMMISSION:

REPORT

On July 15, 1985, Bridgewater Steam Power Company (BWS) filed a petition with this Commission for an exemption from the Town of Bridgewater zoning ordinance pursuant to RSA 674:30, to construct, maintain and operate a 15 MW wood power electricity production plant.

On July 26, 1985, an Order of Notice issued providing for a hearing on August 19, 1985, at 10:00 a.m. Notices were sent to Willard G. Martin, Esquire, Bridgewater Steam Power Company, for publication, the Town of Bridgewater, New Hampshire Air Resources, New Hampshire Water Supply and Pollution Control Commission, the Federal Aviation Administration, Public Service Company of New Hampshire (PSNH), Department of Resources and Economic Development, Governor's Energy Office, New Hampshire Department of Public Works and Highways, Lakes Region Disposal, the Boards of Selectmen of Ashland and Plymouth, and the Office of Attorney General.

On August 12, 1985, a motion to reschedule the matter was filed. On August 14, 1985, the motion was granted by a letter opinion of the Commission fixing September 17, 1985, at 10:00 a.m. for hearing.

In addition to those parties requesting intervenor status, the Town of Center Sandwich was granted a limited appearance. Letters from the Town of Plymouth and from Counselor Ray Burton were also entered into the public file. A motion requesting a view was filed by Attorney Mitchell. A "motion for preliminary hearing and decision on petitioner as a utility" and a motion to dismiss, were filed by Squam Lakes Association. The Motion was taken under advisement.

Comments were offered by State Senator, Mark Hounsell; Senator Roger Heath; Mr. Jack Townsend; Sandwich Selectman, Frederick C. Rozelle, Jr.; Plymouth Selectman, Francis DiLorenzo; Ashland Selectman, James Rollins; Holderness Selectman, Stephen T. Gregg; Ashland Selectwoman, Gilda Harris; Mr. Wayne Blais; and New Hampton Conservation Commission Chairman, Pat Schlesinger.

MOTION TO DISMISS

Squam Lakes Association submitted a Motion to Dismiss the petition on the grounds that BWS is not a regulated utility included under the definition of "utility" in RSA 362:2, but is actually a Limited Electrical Energy Producer under RSA 362-A, and, therefore, not entitled to the exemption authorized by RSA 674:30. The Motion was taken under advisement. For the following reasons, the Motion is denied.

[1-3] Squam Lakes Association and the Town of Ashland have argued that the Commission lacks authority to grant a zoning exemption to Bridgewater Steam Power under the provisions of RSA 674:30 because RSA 362-A (the Limited Electrical Energy Producers Act or LEEPA) does not define small power producers and cogenerators as public utilities. Squam Lakes Association Motion for Preliminary Hearing

and Decision on Petitioner as "Utility", and for Prehearing Conference, Sept. 9, 1985; Motion to Dismiss, Sept. 17, 1985; 1 TR 10-16. This interpretation is contrary to both the definitions contained in RSA 362:2 and the legislative history of RSA 362-A. RSA 362:2 defines a public utility, inter alia, as "every corporation, company, association ... owning, operating or managing ... any plant or equipment ... for the manufacture or furnishing of light, heat, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public ... " Bridgewater Steam Power which intends to generate electricity for ultimate sale to the public clearly falls within this definition.

The fact that all producers of electrical energy are public utilities unless otherwise exempted was acknowledged in RSA Chapter 362-A (LEEPA). LEEPA as passed in 1978, specifically exempted the producers covered by its provisions from being public utilities: "The producers of electrical energy not involving the use of nuclear or fossil fuels with developed output capacity of not more than 5 megawatts shall not be considered public utilities and shall be exempt from all rules, regulations and statutes applying to public utilities." RSA 362-A:2. However, in 1983 the legislature replaced Section 2 by expanding the definition of facilities covered by LEEPA's provisions to include all facilities covered by the federal legislation (the Public Utilities Regulatory Policies Act or PURPA) and specifically eliminated the exemption from public utility status. The exemption was replaced by language that mirrored the language of PURPA and exempted qualifying facilities only from "rules and statutes related to electric utility rates or relative to the financial or organizational regulation of electric utilities." RSA 362-A:2, 1 TR 198-213.¹⁽³⁹⁴⁾

It is not necessary to analyze "what was in the minds of the [legislative] Committee" (1TR 204) in order to reach the conclusion that the legislature intended to include the facilities qualifying under RSA 362-A in the definition of public utilities. In amending Section 2, the Senate Committee had three options before it. First, it could respond to the specific concern of the Public Utilities Commission and subject qualifying facilities to the Commission's authority only for the purpose of overseeing safety. Second, it could adopt Representative Leonard Smith's proposed amendment and give the qualifying facility the choice of opting for exempt status. Third, it could eliminate the exemption in LEEPA which would automatically place the qualifying facilities within the definitions of RSA 362:2. These options were outlined in the Commission's testimony presented by its Staff Coordinator of Alternate Energy development (Exh. 7) who also noted in that testimony that one of the effects of making qualifying facilities public utilities was that they could be exempted by the Commission from local zoning decisions. The legislature chose option three and made qualified facilities public utilities.

Therefore, the Commission finds that

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Bridgewater Steam Power is a public utility and that the Public Utilities Commission has authority to grant a zoning exemption to Bridgewater Steam Power under the provisions of RSA 674:30.

POSITION OF THE PARTIES

Bridgewater Steam Power Company

Counsel for Bridgewater explained that the petition is before the Commission under RSA 674:30 because the position that the Town of Bridgewater has taken is that this proposal is not allowed under the Town's zoning ordinance, despite a favorable decision by the town planning board. Counsel for Squam Lakes contends that it was the zoning board of adjustment's authority, and not the planning board's to decide whether to grant the special exception necessary for project construction.

Darryl Jenkins, Vice President and General Manager of G2S Constructors, testified that G2S is the proposed constructor of the plant and will have an ownership interest in the plant.

BWS presented evidence that the proposed power plant should be exempt from the zoning ordinance of the Town of Bridgewater under the provisions of RSA 674:30. The proposed plant, a 15 MW wood fired electrical plant, is planned to be built, operated and maintained on Route U.S. 3, one and a half miles from exit 24 off I-93 in Bridgewater. Despite a favorable recommendation from the Town Planning Board, the Zoning Board of Adjustment denied a request for a special exception.

Witness Jenkins testified that the proposed power plant would benefit the public welfare and convenience, and would not adversely offend the neighborhood and, in fact, would conform to the uses presently existing adjacent to the premises in question.

The petitioner set forth that the proposed plant is to be an electric generating plant powered by wood (biomass). It makes a distinction between a cogeneration plant which produces electrical power as an adjunct to the use of steam which was originally produced for some other purpose and a small power producer whose sole function is to provide electricity for consumption by the public through a sale to a distribution company (PSNH) and contribute to power put into the New England Power Pool.

Site criteria were selected to minimize the impact on the environment, the availability of fuel resources, the location of the power grid, the existence of ground water and transportation access were the four general criteria considered [sic]. Sites which passed those four criteria were then subjected to specific criteria, such as, the ability of a distribution facility to accept power on a twenty-four hour basis, site suitability relative to existing land use and the availability of the selected sites.

The Company first identified all proposed and existing wood fired power plants in the State of New Hampshire. See Exhibit 16. Of the sixteen identified and plotted on a map of New Hampshire, the petitioner found the central portion, from Concord northerly to Franconia Notch, to be void of any such facilities. It then concentrated its studies on that area on the assumption that fuel availability would be more positive in that part of the state since there would be less competition from adjoining plants. From a public benefit

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standpoint, the Company contends that the establishment of a wood fired facility in that area would increase the biomass harvesting program and have a positive effect on the timberlands, the land owners and the loggers of that area.

The Petitioner then identified the existing transmission lines in the central portion of the state that had sufficient voltage to carry the power that would be generated from the proposed project, and it attempted to locate a site close enough to the existing utility grids so as not to have to extend a new transmission line to that grid. It, therefore, chose sites no more than one mile either side of the existing utility grid.

The Company then looked at the ground water studies in those areas identified by the previous constraints, utilizing a Department of the Interior, United States Government Geological Survey map, and in cooperation with the New Hampshire Water Resources Board, it identified the aquifers available that would provide sufficient water for the project.

Finally, the Petitioner identified those primary and secondary roads which would provide adequate truck access and at the same time minimize the highway impact on the local communities, with specific consideration not to proceed through any existing residential or commercial land use or congested areas of land use.

As a result of these criteria analyses, nine specific sites were identified for further evaluation. The first, in Tilton, was discounted because of the need to travel through a very highly congested area of commercial use to reach the specific site, and it was ultimately found to be unavailable for purchase. The second, in New Hampton, required truck traffic through the village of New Hampton and passed New Hampton Academy and was rejected for reasons of traffic safety. A third site, in Plymouth, required exit traffic through a very congested area and passed the Holderness School as well as the campus athletic field and field house. It was also not available for purchase. A fourth site, in South Hampton, required access through an existing wood covered bridge which would not allow truck traffic. The fifth, in North Hampton, was unavailable for purchase. The sixth site, in Thornton, is in the vicinity of condominiums and a recreation area and had no available land for sale. A seventh site, in Woodstock, was not available for purchase. An eighth in West Ossipee is adjacent to recreational facility at Mount Whittier. The ninth site, in Bridgewater, is the only identified site which satisfied all of the company's criteria.

BWS selected the proposed site because it fit into the criteria it developed to best meet the public interest. The criteria developed were: 1) availability of necessary groundwater; 2) real supply of wood; 3) suitability and proximity to powerlines. Said criteria was balanced against possible injury the proposed facility would have on the neighborhood. The petitioner states that when the criteria were balanced against each of the possible sites available for such a project, each site was eliminated except the proposed site. All other sites would not support the facility in terms of available groundwater, power lines, or available wood. Each of the other sites either were incompatible with surrounding existing uses or lacked suitable transportation access or were not available to purchase in a suitable time frame. It is the Petitioner's position that

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only the Bridgewater location had the combination of minimum impact and was suitable for its project.

Squam Lakes Association

Squam Lakes Association objected to the granting of the petition on the following grounds:

1. The Commission lack of jurisdiction to grant a zoning exemption for the reasons expressed in its Motion to Dismiss.
2. There is no basis in this case to grant an exemption;
3. There is no showing of a denial of service or a higher cost of service to electric customers if the petition is denied; and
4. It is not in the public convenience or welfare and not reasonably necessary to grant the exemption.

Squam Lakes Association presented no witnesses or exhibits to support its position but relied on the record submitted to the Commission. Mr. John W. Laveach, President of Squam Lakes Association made a public statement in opposition to the petition on environmental grounds and was concerned about the lack of knowledge as to what effect the operation of the plant would have on the primary resource of the area — the lakes.

The Town of Bridgewater

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The Town of Bridgewater objected to the relief sought by Bridgewater Steam Power Company on the following grounds:

1. The Bridgewater Steam Power Company is not an existing utility and should be denied status to seek exemption pursuant to RSA 674:30.
2. The Bridgewater Steam Power Company has not met its burden in demonstrating that public necessity and convenience require construction of its plant at any location so as to justify exemption from local zoning ordinances.
3. The Bridgewater Steam Power Company has not demonstrated any such public necessity as to justify the clear damage which would be done by their plant to the local zoning involved, and the neighborhood in which the zone affected is located.
4. The Public Utilities Commission has so violated the due process rights of the Town of Bridgewater and the other intervenors, by refusing any reasonable discovery in this case, and as to deprive said Town and its inhabitants of reasonable due process.

The Town of Bridgewater also argues that BWS' evidence is not sufficient to formulate a finding that the exemption is reasonably necessary for the public to have its facility on the site in question. The Town of Bridgewater presented no testimony or exhibits to support its position but relied on the public comments, records of the Town of Bridgewater and cross-examination of witnesses in this proceeding.

The Town of Ashland

The Town of Ashland did not file a post hearing memorandum, but it did object to the petition and relied on the memoranda of other intervenors. It presented no sworn witnesses or exhibits.

COMMISSION ANALYSIS

This petition raises three areas of concern which the Commission must consider in determining whether to grant an exemption. The first question is the jurisdictional one of whether the applicant is a public utility. Second, if the Commission determines that BWS is a public utility, then the Commission must determine whether the project proposed by the applicant is reasonably necessary for the public welfare. Finally, if the Commission finds the project to be reasonably necessary, then it must determine whether the general public interest in the project is outweighed by local concerns relative to the site in question.

Turning first to the jurisdictional question, BWS is a public utility as found herein before. We are not in a position to question the legislature's wisdom in defining BWS as a utility or in exempting facilities smaller than 50 megawatts in capacity from the siting statute, RSA Chapter 162-F; nor is it our role to question the action of the Energy Facilities Evaluation Committee in waiving jurisdiction of the project or the subsequent opinion of the Attorney General that facilities of this type do not fall within the jurisdiction of the Energy Facilities Evaluation Committee. RSA Chapter 162-H. If the Legislature believes that the present procedures do not provide for sufficient State siting review, then this is a policy question for it to address. We must exercise our authority within the existing statutory framework.

[4] Our analysis next turns to the question of whether the project proposed by the applicant is reasonably necessary for the public welfare. In determining this issue the Commission is guided by the policy adopted in legislation passed by the State of New Hampshire and by the federal government. The PURPA and LEEPA legislation enunciated a clear long range energy policy of encouraging the development of natural, renewable, non-fossil resources to produce electricity. Having experienced the oil embargo of the 1970's, this Commission finds this policy to be justified and laudible. The Petitioner's project is clearly the type of facility that the legislature contemplated in meeting the State's future energy needs. The Petitioner has also demonstrated that while there are facilities of this type in other parts of the State, there is no facility of this type in central New Hampshire. The Commission believes that the achievement of the legislature's long term energy goals requires a reasonable dispersion of wood burning facilities throughout the State. Accordingly, the Commission finds that the siting of a wood burning facility in central New Hampshire is reasonably necessary for the public welfare.

[5] While the Commission's expertise is particularly within the area of determining the long term power needs of the State, the Commission may also rely upon the expertise of other State officials and agencies relative to State environmental concerns. In this regard, the Commission particularly notes the report of the State Forester, Theodore Natti (See Exhibit 10), the testimony of Richard Schondelmeier, a licensed forester in the Governor's Energy

Office, and the testimony of Robert J. Birth, Consulting Forester, relative to the positive environmental effects of biomass harvesting to supply fuel for the plant on the timberlands of the area. The applicant also has received the appropriate permits from the State Water Resources Board and Air Quality Agency.

However, these determinations are not depositive in themselves. While the clear legislative purpose in enacting the exemption statute was that local zoning regulations shall be subordinate

to the broader public interest served by the utility, the Commission must nevertheless consider local interests in passing upon the petition. The Court has set out the appropriate areas of inquiry:

1. the suitability of the location chosen for the utility structure;
2. the physical character of the uses in the neighborhood;
3. the proximity of the site to residential development;
4. the effect on abutting owners;
5. its relative advantages and disadvantages from the standpoint of public convenience and welfare;
6. whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on local zoning scheme; and
7. whether any reasonable injury to abutting or neighboring owners can be minimized by reasonable requirements relating to the physical appearance of the structure, adequate lot size, front and rear setback as well as appropriate sideline regulating, the positioning of the structure on the lot, and by proper screening of the facility by trees, evergreens, or other suitable means. *Re Milford Water Works*, 126 N.H. 127, 489 A.2d 627 (1985).

We now turn to a consideration of each of those criteria.

Suitability of the Locus Chosen for the Utility Structure

[6] The record supports the Petitioner's position that the proposed plant is in close proximity to the necessary power lines to accept the electrical production. There are adequate groundwater supplies as well as adequate and safe transportation routes. There is an abundant amount of wood supply in the area. The seven-acre site is sufficient to install the utility plant with all its accessory needs, such as parking, etc. The land, formally a gravel pit, is not sensitive to environmental areas, such as wetlands, animal shelters, etc. The site is also topographically in a depression which blends to minimize its view from off-site areas.

Physical Character of the Uses in the Neighborhood

The physical character of the uses in the area is industrial in nature. Adjacent to the property is a construction yard with heavy equipment trucks and the railroad track. Such use is compatible with the proposed use.

Proximity of the Site to Residential Development

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The closest purely residential structure to the proposed use is a quarter of a mile away. There are no homes from which one would look directly at this site and there are adequate buffers between the proposed site and all residential developments.

The residents have expressed particular concern about noise from the proposed plant. The Commission, based upon the expert testimony about noise levels, finds that noise from the plant will not unduly affect the residential areas.

Effect on Abutting Owners

The record does not reveal any effect on abutting owners that is incompatible with uses enjoyed by the abutting owners.

Relative Advantages and Disadvantages from the Standpoint of Public Convenience and Welfare

We find that the advantage to the public welfare of having the electrical energy and capacity from the plant available to meet future energy needs outweighs any disadvantage from the siting of the plant at the proposed location.

Other or Equally Serviceable Sites Reasonably Available Having Less Impact on the Local Zoning Scheme

We find that the Petitioner has met its burden of proof in showing that there are no other sites reasonably available in the central New Hampshire area. As set forth previously, the Petitioner presented extensive evidence relative to site criteria and alternate sites.

We have reviewed the record in this proceeding and draw upon the view of the proposed site made by the Commission and conclude that the proposed use is compatible with other uses in its neighborhood. It is our opinion that if the Town of Bridgewater had an industrial zone within the Town, that industrial zone would be located in the area of question. We note in this regard the approval of the Planning Board for the proposed use.

CONCLUSION

[7] For the reasons set forth above, the Commission finds that Bridgewater Steam Power Company is a public utility and that the request for an exemption from the Bridgewater zoning ordinance is reasonably necessary for the convenience or the welfare of the public. It is further found that the proposed use of the premises in question by Bridgewater Steam Power Company conforms to the existing neighborhood scheme and is in the public interest.

The Town of Bridgewater has requested that the Commission make specific findings of fact and rulings of law. In response to its request, the Commission accepts Findings of Fact No. 1 through No. 7 submitted by the Town of Bridgewater, but rejects requested Finding of Fact No. 8. The Commission in its analysis makes specific findings of fact. The Commission denies the requested rulings of law submitted by the Town of Bridgewater but makes the following rulings of law:

a. the applicant is a public utility within the meaning of RSA 674:30 and is entitled to an exemption from the Bridgewater zoning ordinance; b. the applicant has established that public necessity and convenience justifies an exemption from the Bridgewater zoning ordinance; c. the applicant has established that the proposed use to construct the

15 MW wood power electricity production plant is compatible with other uses existing in the neighborhood and will not cause any substantial harm or detriment to the area.

In making its decision, the Commission is particularly mindful of the concern of the local

residents about noise levels engendered by an awareness of the problems experienced by some other wood plants. Therefore, approval of the exemption is conditionally granted on the basis that the noise level does not exceed 37 DBA. The Commission also notes that Bridgewater Steam Power Company as a public utility will operate under the continuing jurisdiction of this Commission's regulatory authority for all matters other than rates and financial or organizational regulation. RSA 362-A:2.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the petition for exemption from the Town of Bridgewater's zoning ordinance to construct, maintain and operate a 15 MW wood power electricity production plant is hereby granted subject to the condition that the noise level of the plant does not exceed 37 DBA; and it is

FURTHER ORDERED, that the appropriate building permits be issued.

By Order of the Public Utilities Commission of New Hampshire this sixth day of December, 1985.

FOOTNOTE

¹Squam Lakes Association has argued that the language in RSA 374-C:2 which includes small energy producers within the definition of "public utilities" for the purpose of that Chapter should be read to reflect the legislature's intent to only confer public utility status by specific statutory language. We do not accept the Squam Lakes argument. The language in RSA 374-C:2 was adopted in 1981 at a time when RSA 362-A:2 exempted small power producers from all statutes and regulations governing public utilities. The current RSA 362-A:2 language, enacted in 1983, must be accepted by the Commission as best reflecting the intention of the legislature.

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NH.PUC*12/09/85*[61269]*70 NH PUC 1030*Hollis School District

[Go to End of 61269]

70 NH PUC 1030

Re Hollis School District

DE 85-392, Order No. 17,984

New Hampshire Public Utilities Commission

December 9, 1985

PETITION by a municipal school district for exemption from regulation for water distribution system; denied, without prejudice, for lack of jurisdiction.

Public Utilities, § 56 — Regulatory status — Municipal plant — Water distribution system.

A municipal school district that owned property containing a well that was used to provide water distribution service to municipal and private customers was held not to be a regulated public utility and was outside the jurisdiction of the commission because of its municipal ownership.

By the COMMISSION:

ORDER

WHEREAS, the Hollis School District (Hollis) states that it shares water from a well, located on its property, with private consumers and the Town of Hollis; and

WHEREAS, Hollis filed a petition on November 18, 1985, seeking exemption as provided by New Hampshire statute RSA 362:4, for the operation of its well; and

WHEREAS, the Town of Hollis represents that it is the only town in the Hollis School District; and

WHEREAS, it is the opinion of this Commission that the ownership and operation of the well on the property of Hollis, represents a municipal corporation operating within the corporate limits of Hollis and thus not a public utility as provided by New Hampshire statute RSA 362:2, and not under the jurisdiction of this Commission; it is hereby

ORDERED, that the petition filed by the Hollis School District is denied without prejudice.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1985.

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NH.PUC*12/09/85*[61273]*70 NH PUC 1040*Gas Service, Inc.

[Go to End of 61273]

70 NH PUC 1040

Re Gas Service, Inc.

DR 83-345, Fourth
Supplemental Order No. 17,992

New Hampshire Public Utilities Commission

December 9, 1985

ORDER authorizing temporary surcharge to extend authorized period for collection of outstanding arrearages under previous order.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this Commission in Third Supplemental Order No. 17,782 (70 NH PUC 676) effective August 1, 1985 approved a step adjustment in rates of \$54,790, effective March 1, 1985 and "that the recoupment of the shortfall in revenues between March 1, 1985 and the effective date of this order shall be collected over a four month period, commencing with bills rendered on or after the effective date of this Order"; and

WHEREAS, by letter dated December 5, 1985, Gas Service, Inc. has advised this Commission that the Company has not collected the full \$23,825 of recoupment of the shortfall in revenues; and

WHEREAS, the Company is requesting approval, by letter of December 9, to continue billing for the remaining \$2,725 into the month of December, 1985 until the total amount of \$23,825 has been collected and having submitted Supplement No. 1, original page 7 to NHPUC No. 6-gas tariff; it is hereby

ORDERED, that the Company may bill a temporary surcharge of \$.0006 for the month of December; and it is

FURTHER ORDERED, that the Company will provide the Commission with the final accounting of the surcharge by month for the recoupment period by January 15, 1986.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1985.

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NH.PUC*12/10/85*[61270]*70 NH PUC 1031*Locke Lake Water Company, Inc.

[Go to End of 61270]

70 NH PUC 1031

Re Locke Lake Water Company, Inc.

DR 85-287, Order No. 17,985

New Hampshire Public Utilities Commission

December 10, 1985

PETITION by a water distribution utility for an order classifying existing rates as temporary rates pending resolution of an application for a permanent rate increase; granted.

Rates, § 630 — Temporary rates — Effective date.

Temporary rates are to be effective with service rendered on or after the date of the order that approves the temporary rates; the rule applied as well to the reclassification of existing rates as

temporary rates pending the resolution of an application for a permanent rate increase.

APPEARANCES Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire, for the petitioner; Daniel Lanning, Assistant Finance Director, Robert Lessels, Water Engineer, and James Lenihan, Rate Analyst, for Staff.

By the COMMISSION:

REPORT

On September 30, 1985, Locke Lake Water Company, Inc. (Locke Lake or the Company) filed a proposed increase in rates of \$30,021 (49.7%). In addition, on September 30, 1985, Locke Lake filed a petition requesting that its existing rates be fixed as temporary rates, in the event the Commission suspended the proposed permanent rate filing.

The Commission subsequently suspended the permanent rate filing and issued an Order of Notice providing a hearing date of November 21, 1985, to review the temporary rate application and to establish a procedural schedule for investigation into permanent rates.

The Company presented one witness at the November 21 hearing. Various exhibits introduced through this witness, Mr. Peter Brankman, addressed the financial position of the Company relating to the issue of temporary rates. The Income Statement part of Exhibit 1, displayed a net loss of \$6,183 for the year ended June 30, 1985.

The Company's request for temporary rates at existing rate levels is reasonable. Testimony elicited on cross-examination varied [sic] raised concern regarding the transfer of money from the Company to affiliates and substantial increases in customer accounting and supervisory expenses. Further examination of these issues will be

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required in the more protracted permanent rate hearings and we cannot put any weight on the financial statements at this time.

It has been an established precedent that the Commission delete items which may be controversial when establishing temporary rates. Re Connecticut Valley Electric Co. Inc., 68 NH PUC 556 (1983). In apparent recognition of this policy, the Company is not requesting that rates be increased on a temporary basis, but rather requests that existing rates continue as Temporary rates pending resolution of the permanent rate issue. We accordingly grant the request.

The next issue to be discussed involves the effective date of temporary rates. The Company requests that they become effective for all service rendered on or after October 1, 1985.

It is Staff's position that temporary rates be effective with service rendered on or after the date of the Order which approved said temporary rates alleging that this would provide the Company's ratepayers with proper notice of the potential change in rates.

Staff's position reflects the usual Commission practice. However, in the instant docket, the Company's situation is unique. The Company does not meter its service nor does it bill on a monthly basis. Customers who do not have metered service are not billed on the basis of their

individual usage. Thus the notice of an increase would not likely have any bearing on a customer's consumption or usage patterns.

In addition, the Company bills its customers quarterly in arrears. Establishing an effective date for temporary rates on any date other than the first day in a quarter would put undue hardship on a utility the size of Locke Lake. Separation of a billing period between old and new rates would be administratively cumbersome and unduly expensive for a small utility.

After examination of the evidence provided, this Commission has determined that temporary rates are to be effective for all bills rendered (as opposed to service rendered) on or after the date of this order. This will adequately respond to our concerns mentioned above.

The final issue concerns the procedural schedule. Staff and the Company stipulate to the following schedules with which we concur:

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

DATE EVENT

December 20, 1985 Staff data requests
January 10, 1986 Response to staff data requests
February 5, 1986 Meeting to limit issues
February 26, 1986 Hearing

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Locke Lake Water Company, Inc.'s presently effective tariff rates are hereby designated as temporary rates for the duration of the proceedings in this docket; and it is

FURTHER ORDERED, that such temporary rates shall be effective will [sic] all bills rendered on or after October 1, 1985; and it is

FURTHER ORDERED, that a tariff supplement shall be filed as provided by NHCAR PUC 1601.05, Section (m).

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1985.

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NH.PUC*12/10/85*[61271]*70 NH PUC 1033*Pennichuck Water Works, Inc.

[Go to End of 61271]

70 NH PUC 1033

Re Pennichuck Water Works, Inc.

Intervenor: Anheuser-Busch, Inc.

DR 85-2, Second Supplemental
Order No. 17,986

New Hampshire Public Utilities Commission

December 10, 1985

MOTION to strike portions of a prior order granting increase in rates for water distribution service; denied, with issuance of order suspending effect of portions of prior order pending notice and opportunity to rebut evidence.

Evidence, § 4 — Administrative notice — State commission — Separate proceeding — Matters of public record.

The commission may take administrative notice of information and facts contained in its own files, which are public records, contemporaneously with the rendering of a decision, without prior notice to parties to the decision. [1] p. 1034. Evidence, § 4 — Administrative notice — State commission — Separate proceeding — Matters outside record.

Before taking administrative notice of information and facts that are outside the public record, the commission must provide adequate notice and must provide an opportunity for rebuttal. [2] p. 1034. Evidence, § 4 — Administrative notice — State commission — Separate proceeding — Matters outside record.

Where the commission took administrative notice of testimony in a separate proceeding that was given after the closing of the record in that proceeding, the testimony was outside the public record and, accordingly, the administrative notice was improper where the commission did not provide adequate notice or an opportunity for rebuttal. [3] p. 1034. Evidence, § 4 — Administrative notice — State commission — Separate proceeding — Matters outside record.

Where it was found that portions of a commission order were based upon administrative notice taken of a separate proceeding without providing sufficient notice to parties, the portions of the order were suspended, subject to the right of parties to rebut the evidence accepted by the commission on administrative notice. [4] p. 1035.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On October 18, 1985, the Commission issued Report and Order No. 17,911 (70 NH PUC 850) which inter alia approved an increase in revenues for Pennichuck Water Works, Inc. (Pennichuck) of \$445,321 subject to revision after the conclusion of proceedings in DE 85-161, the docket concerning regarding [sic] a proposed amendment to a special contract between Pennichuck and Anheuser-Busch, Inc. (AB).¹⁽³⁹⁵⁾ Thereafter, on November 7, 1985, Pennichuck filed a Motion to

Strike (Motion) the following language from the Report accompanying Order No. 17,911: (70 NH PUC at pp. 862863):

Pennichuck has not established with any certainty that it will be issuing any common equity. While testimony in this proceeding indicates that Pennichuck has definite plans to issue equity by the end of this year, the testimony in its recently completed financing docket seems to indicate otherwise. At the September 19, 1985 hearing in DF 85-299, Charles J. Staab, Pennichuck's Treasurer, states at page 41 that an equity issuance is being contemplated ("giving serious thought") for either next year or the year after. Thus it does not appear to us that Pennichuck has any concrete plans to issue equity in 1985 or 1986. More recently, Pennichuck's management choose to issue additional debt rather than equity in its August 1985 financing and as we noted in *Re Pennichuck Water Works, Inc.*, 70 NH PUC 828 (1985) "the Company witness expressed no urgency in issuing further equity." If Pennichuck is dissatisfied with its coverage ratios, it should adjust its capital structure accordingly (with Commission approval) rather than expect this Commission to compensate for low equity ratios by increasing the allowed return on common equity.

After due consideration, we will deny the Motion.

[1-3] In its Motion, Pennichuck argues that the Commission's taking of administrative notice in a Report and Order of testimony given at a related Commission hearing subsequent to the closing of the record without providing all parties adequate notice and an opportunity to rebut that testimony is contrary to established principles of New Hampshire common law. In support thereof it cites, *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, 119 N.H. 332, 31 PUR4th 333, 402 A.2d 626 (1977). Specifically, Pennichuck cites the Court's language therein that "notice may not be taken contemporaneously with the rendering of the decision". (Id. 119 at p. 351, 31 PUR4th at p. 347.) It argues that the Commission's reference in the Report to testimony given at a subsequent Pennichuck finance hearing is therefore in error and requests that those sections of the Report which refer to that testimony be stricken.

In *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, supra, the Court held that the Commission's taking notice in its written decision of Public Service Company of New Hampshire's (PSNH) financing activity subsequent to the closing of the record was erroneous. The Court stated that the Commission "could properly take notice, however, of all records and annual reports that were in its own file and were thus matters of public record." (Id. 119 N.H. at p. 351, 31 PUR4th at p. 346.) The Court also stated as follows (119 N.H. at p. 351, 31 PUR4th at p. 347):

The commission, when taking notice of facts and information that appear neither in its own records nor in the record of the hearings, must give all parties adequate notice, providing them with an opportunity to challenge and rebut the matters to be

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administratively noticed. Id. Administrative notice may not be taken contemporaneously with the rendering of the decision.

In its Motion, Pennichuck cited only the last sentence of the above quote in support of its

position. However, the above-cited quote from *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, *supra*, when read in its entirety, seems to indicate that the Commission may take administrative notice in a decision or information in its own files — matters of public record — without providing prior notice thereof and an opportunity to rebut. The obvious inference from the Court's language is that the Commission may administratively notice its own files without prior notice to the parties.

The Court next addressed the issue of administrative notice in *Re Granite State Electric Co.*, 121 N.H. 787, 435 A.2d 119 (1981). Therein the Court clarified its holding in *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, *supra*. In *Granite State*, the Court held that the Commission may take administrative notice of specific documents in its files so long as it affords the parties "an opportunity to respond to the information contained in them." (121 N.H. at 792.)

Moreover, subsequent to *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire*, *supra*, and *Re Granite State Electric Co.*, *supra*, the New Hampshire Legislature enacted RSA 541-A, the Administrative Procedures Act, which addresses the issue of administrative or "official" notice as it is referred to therein. RSA 541-A:18V provides as follows:

V. (a) Official notice may be taken of any one or more of the following:

- (1) Any fact which could be judicially noticed in the courts of this state;
- (2) The record of other proceedings before the agency;
- (3) Generally recognized technical or scientific facts within the agency's specialized knowledge;
- (4) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(b) Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data; and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (Emphasis added.)

This statute mirrors the Court's holding in *Granite State*. Thus, the Commission may only take administrative notice of matters outside the record after providing notice thereof and an opportunity to rebut.

In this case, the Commission took administrative notice in its written Report concerning Pennichuck's rate increase request of testimony given by Pennichuck representatives at a related hearing held after the closing of the rate case record. Because notice and opportunity to rebut was not provided, that notice was clearly contrary to *Granite State* and the provisions of RSA 541-A.

[4] While we do agree with Pennichuck that our administrative notice of

the finance hearing testimony was procedurally defective, it does not automatically follow that Pennichuck's Motion should be granted and that reference to that testimony be stricken. It is still our intention to take administrative notice of that testimony. To do so, we must cure the procedural defect by providing Pennichuck notice and an opportunity to rebut that testimony. Thus, we hereby give Pennichuck notice of our intention to take administrative notice of the testimony of the September 19, 1985 hearing in Docket DF 85-299 as described in the abovequoted sections for the rate case Report. Accordingly, we will allow Pennichuck 10 days from the date of the Order accompanying this Report to file an objection, additional testimony, an affidavit, argument or any other response Pennichuck deems appropriate. Thereafter, Staff will be afforded 5 days to respond to whatever filing Pennichuck may make. The Commission will then review the documents and issue an appropriate Order.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Pennichuck Water Works, Inc. Motion to Strike be, and hereby is, denied; an [sic] it is

FURTHER ORDERED, that the inclusion of references to the testimony in DF 85-299 in the Report accompanying Order No. 17,911 (70 NH PUC 85) be, and hereby is, suspended pending the Commission review of Pennichuck's response, if any, to this Order as discussed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this tenth day of December 1985.

FOOTNOTE

¹See discussion therein at pp. 6-11 regarding the interrelationship of this docket and DE 85-161. In essence, it provides that the increase allowed therein will not take effect until a Commission decision is issued in DE 85-161.

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NH.PUC*12/10/85*[61272]*70 NH PUC 1036*New England Telephone and Telegraph Company

[Go to End of 61272]

70 NH PUC 1036

Re New England Telephone and Telegraph Company

DR 84-95, Fourth

Supplemental Order No. 17,988

New Hampshire Public Utilities Commission

December 10, 1985

ORDER reopening docket in telephone rate case proceeding to reconsider portions of rate case order pertaining to local measured service for business telephone customers; motion for rehearing denied, and prior order affirmed.

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Rates, § 539 — Telephone rate design — Local measured service — Business customers.

A prior telephone rate case order that found that local measured telephone service was preferred over unlimited service for business subscribers was affirmed. [1] p.1037.

Rates, § 539 — Telephone rate design — Local measured service — Business customers.

A prior order that adopted a transition period of over six months for the grandfathering of unlimited local telephone service for business subscribers, before the implementation of a new rule requiring local measured telephone service for business subscribers, was affirmed, where adequate notice of the grandfathering transition period was given. [2] p.1037.

 APPEARANCES: As previously noted.

REPORT

By the COMMISSION:

REPORT

On June 3, 1985, the Commission issued Report and Order No. 17,639 (70 NH PUC 496) in this docket which adjudicated the issues involved in the request of New England Telephone and Telegraph Company (NET or Company) for an increase in rates. Order 17,639 provided *inter alia*, (70 NH PUC at p. 505):

... that unlimited business service be, and hereby is, restricted to those customers currently authorized such service in their present locations, new applicants for business services to be served only on a measured basis...

Subsequent to the issuance of Order 17,639, the Commission became aware of substantial dissatisfaction with the above provision within the New Hampshire business community. Accordingly, the Commission, by Supplemental Order No. 17,837 (70 NH PUC 752) reopened this docket for the limited purposes of determining (70 NH PUC at p. 752):

1. Whether that portion of Order No. 17,639 relative to measured business service should be withdrawn.
2. Whether it should be relaxed to allow all existing customers to continue at existing rates, even if they move or increase their equipment.
3. Whether the Order should remain in force.
4. Whether the grandfathering policy established in this docket should be rescinded or

amended.

A hearing was scheduled for October 16, 1985 by a duly published Order of Notice dated September 20, 1985. At that hearing, the Commission heard the testimony of James J. McCracken, Jr., NET's District Manager for Rates and Tariffs; Bruce Ellsworth, the Commission's Chief Engineer; and Roger Aveni, a business customer intervenor. The record was closed at the conclusion of the October 16, 1985 hearing.

[1,2] On November 12, 1985, the Commission issued Report and Supplemental Order No. 17,945 (70 NH PUC 926) which adjudicated the issues noticed in Order 17,867. Order 17,945 amended Order 17,639 by providing, inter alia, that all business customers would be entitled to unlimited business service during a transition period to extend to July 1, 1986. After July 1, 1986, all business customers on

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unlimited business service will be required to transfer to measured service.

On December 2, 1985, Community Action Program (CAP) filed a Motion for Rehearing pursuant to RSA 541:3 averring that Order 17,945 is unjust, unreasonable and unlawful. CAP's claim is based on its status as a business customer rather than as a representative of low income residential customers, which was the basis of its intervention.¹⁽³⁹⁶⁾ CAP claims that it was denied due process as a business customer because it did not have adequate notice that the Commission would consider rescinding the grandfathering provision of Order 17,639.

After review and consideration, we will deny CAP's Motion. We believe that we provided adequate notice of the issues to be considered and that our findings and conclusions are based on substantial evidence of record and a proper reading of the law.

The original grandfathering provision was a part of the stipulation agreement adopted by this Commission in Order 17,639. It should be emphasized that the Commission is not required to adopt a stipulation agreement; rather it is and has been our policy to review the evidentiary support for proffered stipulation agreements to determine whether stipulated recommendations will produce just and reasonable rates or will otherwise be consistent with the public good. In this context, we are properly exercising our responsibility as an administrative agency to investigate affirmatively the matters pending before us rather than to accept without analysis a settlement. *N. H. Admin. Rules, Puc 201.02; Scenic Hudson Preservation Conference v. Federal Power Commission*, 62 PUR3d 134, 354 F.2d 608, 620 (2d.Cir.1965) ("In this case, as in many others, the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active affirmative protection at the hands of the Commission."). In our review of the stipulation agreement we relied on evidence that indicated that NET's rate design should be based more on cost of service principles and less on the value of service principles which have traditionally governed telephone rate structures. The need to move to cost of service ratemaking was balanced against the concern of customers for rate stability. Accordingly, we accepted a recommendation that moved us in the cost of service direction through the requirement of measured business service for new customers. That recommendation also recognized the rate stability interests of existing customers through the utilization of a

grandfathering provision. (See 70 NH PUC 496.)

As noted in Order 17,837, the Commission became aware of unforeseen problems with the grandfathering provision and, accordingly, reopened the docket to reconsider its previous determination. Contrary to CAP's arguments, the nature of the proceeding was fully noticed in accordance with RSA 541-A:16 III and IV. See also, N.H. Admin. Rules, Puc 203.01. Order 17,837 explicitly provided that the Commission would consider, *inter alia*

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"... whether the grandfathering policy established in this docket should be rescinded or amended." (70 NH PUC at p. 752).

The rationale for our adoption of the stipulated recommendations in Order 17,639 was not changed in Order 17,945. Based on substantial evidence of record, the Commission continued to believe, subject to subsequent determinations in Docket DR 85-182, that measured business service is to be preferred over unlimited business service because it imposes costs on customers who cause NET to incur those costs. The Commission also continued to find that customer interest in rate stability should be protected through the utilization of a transition period. The only refinement to our analysis was the recognition that all businesses should be treated the same so as not to afford an undue competitive advantage to some existing businesses over new businesses. Thus, we decided that all businesses should be eligible to take advantage of the transition period and all businesses should be required to pay measured service rates after the transition period.

The length of the transition period is a matter of Commission discretion and we exercised that discretion on the basis of the record. CAP presented no convincing argument that a transition period in excess of six months is inadequate.

We also do not believe that our ongoing generic investigation into NET's rate structure at Docket DR 85-182 prohibits the Commission's determinations in Order 17,945. Rates are only effective until changed by a subsequent Order of the Commission. RSA 365:25. Our generic investigation into the cost of providing the various elements of telephone service may result in subsequent adjustments to NET's rates. Our determination to move in the direction of cost of service pricing and our determination to establish the rates approved in Order 17,639 as modified in Order 17,945 are supported by substantial evidence of record in this docket. We cannot, however, pre-judge the record to be developed in that docket.

For the foregoing reasons, CAP's Motion for Rehearing will be denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the December 2, 1985 Motion for Rehearing filed by Community Action Program be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this tenth day of December, 1985.

FOOTNOTE

¹In response to a query regarding CAP's position in the reopened hearing, CAP's counsel represented: "I was under the impression this was a continuation of the original docket of 84-95. And therefore appearing here as a party to those proceedings. I don't plan to have an active role because it concerns mostly business customers." Transcript of October 16, 1985 at 4.

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NH.PUC*12/12/85*[61274]*70 NH PUC 1041*New Hampshire Electric Cooperative, Inc.

[Go to End of 61274]

70 NH PUC 1041

Re New Hampshire Electric Cooperative, Inc.

Intervenors: Penstock Corporation and Franconia Investment Associates

DE 85-277, Supplemental
Order No. 17,993

New Hampshire Public Utilities Commission

December 12, 1985

PETITION requesting condemnation of land owned by rural electric cooperative to clear legal title for construction of substation.

Eminent Domain, § 4 — Statutory rights — Regulated utilities.

Condemnation or eminent domain proceedings involving regulated utilities are governed by state law, RSA 371, et seq., which provides that a public utility may petition the commission for condemnation or for such rights and easements necessary for construction of an electric line, pipeline, conduit, generating station, substation, dam, or water drainage. [1] p.1043.

Eminent Domain, § 4 — Statutory rights — Electric utilities — Generating plants — Substation.

State law, RSA 371, et seq., which provides that a public utility may petition the commission for condemnation of land when it is "necessary" to construct an electric substation to meet the electric demands of the public and when the utility "cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor." [2] p.1044.

Eminent Domain, § 3 — Jurisdiction and powers — State commission — Elements — Valuation dispute.

A petition filed by a rural electric cooperative requesting the state public utilities commission to condemn land owned by the cooperative was dismissed as outside commission jurisdiction because it was impossible to prove a lack of an agreement between the utility and the landowner (which were one and the same party) concerning the value of the property. [3] p.1044.

Eminent Domain, § 3 — Jurisdictions and powers — State commission — Legal title — Disputes.

A petition filed by a rural electric cooperative requesting the state public utilities commission to condemn land owned by the cooperative was dismissed as outside commission jurisdiction because, in essence, the petition was filed to resolve a dispute concerning legal title to the land and the commission has no jurisdiction to resolve or quiet title to land. [4] p.1044.

APPEARANCES: Hall, Morse, Gallagher & Anderson by Jeffrey J. Zellers, Esquire on behalf of New Hampshire Electric Cooperative, Inc.; Hamblett and Kerrigan Professional Association by John P. Griffith, Esquire and John F. O'Connell, Esquire on behalf of Penstock Corporation; Peter Gould on behalf of Franconia Investment Associates.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

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On July 29, 1985, New Hampshire Electric Cooperative, Inc. (Coop) filed a petition pursuant to RSA 371:1 et seq. requesting that the Commission condemn land now or formerly of Franconia Investment Associates (FIA) located in Lincoln, New Hampshire. An Order of Notice was issued on September 6, 1985 setting a hearing for October 8, 1985.

Thereafter, by letter dated October 2, 1985, and received by the Commission on October 7, 1985, the Coop requested that the Commission appoint a guardian ad litem pursuant to RSA 371:5 to represent the interests of parties holding potential adverse interests who do not enter appearances in the proceeding. The Coop recommended that Russell F. Hilliard, Esquire of Concord be appointed to serve in that capacity. In addition, a petition to intervene was filed by Penstock Corporation, a Delaware Corporation with a principal place of business in Lincoln, New Hampshire.

At the October 8, 1985 hearing, the Commission granted Penstock full intervention status and allowed FIA to intervene on a limited basis. The scope of the hearing was limited to consideration of the Commission's jurisdiction under RSA 371 as applied to the circumstances of this case; the Commission took no evidence on the merits.

On October 11, 1985 the Commission issued Order No. 17,901 (70 NH PUC 847) granting the Coop's request to appoint Russell F. Hilliard, Esquire guardian ad litem pursuant to RSA 371:5.

II. POSITION OF THE PARTIES

In the spring of this year the Coop began looking for land in Lincoln, New Hampshire to house a substation which it contends is needed to meet the demand for electric service in that area. This search resulted in the Coop's purchase of a parcel of land situated between Route 112 and the Pemigewasset River in Lincoln from Franconia Investment Associates (FIA) for a

purchase price of \$10,000.00. The Coop obtained title to this parcel from FIA by quitclaim deed dated June 5, 1985 and recorded in the Grafton County Registry of Deeds on June 28, 1985 at Book 1548, Page 962. The substation is now under construction.

The title search performed for the Coop revealed a potential adverse interest in the property which the Coop characterizes as "remote". (Transcript, p.8). That potential interest is an ownership claim made by Penstock to a parcel of land of which includes the parcel purchased by the Coop. Penstock, a prior owner of the large parcel (Book 1203, Page 102, Grafton County Registry of Deeds), claims that a foreclosure on that property by CBT Business Credit Corporation (CBT), formerly Nutmeg Commercial Corporation, its mortgagee, in December, 1974 was defective. Penstock therefore claims that it is still the rightful owner of the large parcel.¹⁽³⁹⁷⁾ This potential adverse claim was recognized and addressed in the deed from FIA to the Coop. That deed explicitly provides that the conveyance from FIA to the Coop is subject to any claims arising under or connected with a mortgage dated September 11, 1973 from Penstock Corporation as mortgagor to Nutmeg

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Commercial Corp., as mortgagee or the foreclosure of said mortgage as shown by foreclosure affidavits recorded in Grafton Registry of Deeds in Book 1268, Pages 385 and 388.

The Coop contends that despite its record title, the electric service to be provided via the substation under construction on the property will be jeopardized by Penstock's potential adverse claims. Should Penstock bring suit to press its claims, the Coop is fearful that a court might shut down the substation thereby impairing the Coop's ability to provide adequate service. Moreover, as an electrical cooperative created under federal statutes, the Coop is subject to the rules and regulations of the Rural Electrification Administration (REA). They provide, inter alia, that when a cooperative purchases property, that it be free and clear of all adverse interests. As illustrated, the conveyance from FIA to the Coop does not meet that requirement. Thus, because of the cloud on its title and fears of potential future interruption of service by the courts, the Coop seeks by the present petition to condemn the parcel it has purchased from FIA.

[1] Utility eminent domain or condemnation proceedings are governed by RSA 371. RSA 371:1, entitled Petition, provides as follows:

Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, or a pipeline, conduit, line of poles, towers or wires across the land of another, or should acquire land, land for an electric generating station or electric substation, land for a dam site, or flowage, drainage or other rights for the necessary construction, extension or improvement of any plant, water power, or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes.

The Coop and Penstock stipulated at the hearing that the taking contemplated by the Coop's petition is necessary for the service requirements of the public. However, they disagree over the value of the land and the necessity and authority of the Commission to determine whether

Penstock has title to the property. On the issue of value, the Coop seeks to have the Commission determine that \$10,000.00 is just compensation. Penstock disagrees. It argues that \$10,000.00 is insufficient.

The Coop contends that the Commission lacks authority to resolve title disputes. It argues that neither RSA 371 nor any other statute gives the Commission jurisdiction to, in effect, quiet title. According to the Coop, RSA 498:5-a, entitled Real and Personal Property; Disputed Titles, confers exclusive jurisdiction in that regard in the superior court.²⁽³⁹⁸⁾ Even if the

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Commission could infer such jurisdiction, the Coop takes the position it is not necessary for the Commission to determine, as a condition precedent, from whom the property is taken. Rather, the Coop requests that the Commission, after determining the parcel's value based upon the testimony and evidence to be submitted at a future hearing, order the payment of the award into a court of jurisdiction to be held in escrow pending determination of the rights of others to that money.

Penstock did not address whether the Commission possesses jurisdiction to resolve title disputes in the exercise of its condemnation powers under RSA 371. Yet, it apparently desires the Commission to rule that Penstock still has title to the larger parcel. Penstock's entire memorandum is devoted to arguing that the foreclosure accomplished by its prior mortgagee was defective and that it is still the owner of the subject parcel. Although not argued in its memorandum, Penstock also apparently seeks to have the Commission order the Coop to place whatever payment the Commission finds to be reasonable with an escrow agent pending a Superior Court resolution of Penstock's title claims.³⁽³⁹⁹⁾

III. COMMISSION ANALYSIS

[2,3] RSA 371:1 authorizes a public utility to petition the Commission for permission to take the land of others when it is "necessary" to construct, inter alia, an electric substation to meet the electric demands of the public, and when "it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor ...". In this instance, the Coop has alleged the existence of all the statutory elements necessary for the Commission's exercise of its condemnation powers except one: the lack of an agreement with the owner of the land on necessity and value. As stated above, the Coop has already purchased the subject premises from the owner of record, FIA, for \$10,000.00 consideration and is now the owner of record. Thus the Coop can obviously not maintain that a lack of agreement with the owner as to necessity and value exists. We therefore cannot entertain the Coop's petition for condemnation. Accordingly, it will be dismissed.

[4] While characterized as a request to condemn property, the Coop's petition in essence requests the Commission to resolve a dispute concerning title to the subject parcel. The Coop agrees that RSA 371 confers no such jurisdiction on this Commission. Rather, under RSA 498:5-a, the power to quiet title rests exclusively in the superior

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court. Indeed, representations by counsel at the hearing seemed to indicate that superior court actions are currently pending. If the Coop desires to eliminate possible clouds on its title it should bring an action to quiet title in the superior court. Or, if it so desires, the Coop can await an action by Penstock regarding its claim to the parcel. In any event, we see no reason why the Coop cannot complete the substation and place it in service as the record owner of the subject property.

To the extent that this Commission has jurisdiction to determine that the subject premises should be taken by eminent domain, we find that such a taking is necessary in order to meet the reasonable requirement of electric service to the public. We encourage the parties to resolve their claim in the superior court where we believe the proper jurisdiction lies to determine the parties' interest in real property and we defer to that Court. If the Court should find that Penstock has an interest which is compensable, it can remand or forward the issue of damage to this Commission. We will reopen this docket if necessary for that purpose.

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 New Hampshire Electric Cooperative, Inc.'s petition for condemnation be, and hereby is, dismissed.

By Order of the Public Utilities Commission this twelfth day of December, 1985.

FOOTNOTES

¹After the foreclosure, the property was sold by CBT and resold a number of times, the most recent transaction being the sale to the Coop by FIA.

²RSA 498:5-a provides as follows:

498:5-a Real and Personal Property; Disputed Titles. An action may be brought in the superior court by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the same, either in fee, for years, for life or in reversion or remainder, or to have any interest in the same, or any lien or encumbrance thereon, adverse to the plaintiff, or in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, whether or not the plaintiff is entitled to the immediate or exclusive possession of such property, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the same. An action may also be brought in the superior court by the holder of a tax collector's deed who desires to quiet his title to the property conveyed under such deed. The petition in either such action shall describe the property in question and state the plaintiff's claim, interest or title and the manner in which the plaintiff acquired such claim, interest or title and shall name the person or persons who may claim such adverse estate or interest.

³Penstock's apparent position in this regard can be found in a document entitled "Proposed Stipulation Between the Parties Setting Forth A Procedure To Facilitate the Resolution of Issues Raised In This Condemnation Proceeding" submitted with its memorandum of law on October

29, 1985. That stipulation was not signed by the Coop.

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NH.PUC*12/13/85*[61275]*70 NH PUC 1045*Public Service Company of New Hampshire

[Go to End of 61275]

70 NH PUC 1045

Re Public Service Company of New Hampshire

Intervenors: Community Action Program, Volunteers Organized in Community Education, Business and Industry Association of New Hampshire, Office of Consumer Advocate, and New Hampshire Division of Human Resources

DR 82-333B, 19th Supplemental
Order No. 17,994

New Hampshire Public Utilities Commission

December 13, 1985

ORDER reviewing a targeted pilot lifeline electric rate program.

Page 1045

Rates, § 125 — Reasonableness — Social factors — Lifeline rates — Pilot program — Participation rate.

A participation rate of 21.7% in a targeted pilot lifeline electric rate program was found insufficient to cause program benefits to exceed program costs. [1] p. 1053.

Rates, § 125 — Reasonableness — Social factors — Lifeline rates — Pilot program — Participation rate.

A request to implement a targeted pilot lifeline electric rate program on a systemwide basis was rejected because predictions of the program participation rate and of its probable costs and benefits were not supported by the data generated by the pilot program. [2] p. 1053.

Rates, § 125 — Reasonableness — Social factors — Lifeline rates — Pilot program — Participation rate.

Discussion and evaluation of rate of participation in a targeted pilot lifeline electric rate program, including a cost-benefit analysis. p. 1053.

APPEARANCES: Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esquire for Public Service Company of New Hampshire; Gerald Eaton, Esquire for the Community Action Program and the Division of Human Resources; Alan Linder, Esquire for Volunteers Organized In

Community Education; Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire for the Business and Industry Association of New Hampshire; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was originally opened by the December 29, 1982 tariff filing of Public Service Company of New Hampshire (PSNH or Company). The Commission adjudicated the rate issues presented in this docket in *Re Public Service Co. of New Hampshire*, 69 NH PUC 67, 57 PUR4th 563 (1984) (Order 16, 885). The particular rate design issues which are the subject of this Order have their genesis, however, in a previous docket, *Re Lifeline Rates*, Docket No. DP 80-260, in which generic lifeline rate issues were considered and adjudicated. In *Re Lifeline Rates*, 68 NH PUC 216 (1983), this Commission after extensive proceedings adopted a non-targeted approach to lifeline rates and set forth the following standards to evaluate the adequacy of a residential electric rate design (68 NH PUC at p. 223):

- 250 KWH initial lifeline block
- 500 KWH minimum break-even point
- humped rate block ending between 700 and 1,000 for utilities currently using a humped lifeline rate.
- continued use of inverted rates for those utilities currently using an inverted lifeline rate.

The standards were designed to balance the goals of increasing the affordability of electricity to residential ratepayers in a manner most consistent with other ratemaking objectives such as economic efficiency, conservation and equity. (68 NH PUC at pp. 220-221.)

PSNH filed a Motion for Rehearing from the above Order, which Motion was denied by the Commission in *Re Lifeline Rates*, 68 NH PUC 389 (1983). In that Order, the Commission affirmed its previously adopted lifeline

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standards. The Commission went on to provide: (68 NH PUC at p. 391):

...To the extent that PSNH's argument pertains to implementation of standards already adopted by the Commission, rehearing is not the proper avenue. The issue of implementation is not ripe for consideration until compliance tariffs are filed. Thus, the proper avenue is a subsequent proceeding to review PSNH's compliance tariff filing. The issue in such a subsequent proceeding would not be the propriety of the standards adopted by the Commission; rather, it would be whether particular factors applicable to PSNH justify a waiver or exemption from Commission standards. (Footnote omitted.)

On July 1, 1983, PSNH filed a Motion to include implementation of lifeline rates as an issue in Part B of the instant docket. In *Re Public Service Co. of New Hampshire*, 68 NH PUC 489,

490 (1983) the Commission ruled:

Accordingly, the Commission will grant PSNH's Motion to the extent that it requests that "implementation of lifeline rates be included as an issue in Part B of this (DR 82-333) docket and that PSNH be permitted to include materials addressing that issue as a part of its submission in Part B." (Motion at 3). However, PSNH's Motion is denied to the extent that it implicitly requests that the effective date of its DP 80-260 compliance tariff filing be delayed pending our rate design order in this docket.

PSNH duly filed a compliance tariff, designated as Residential Rate D, when it put its proposed rate increase into effect under bond on August 1, 1983.

In the course of the rate proceedings in the instant docket, PSNH argued that it should be exempted from the Commission's general lifeline standards. In particular, PSNH claimed that it is unique for two related reasons: 1) the need to address major rate increases resulting from the completion of Seabrook; and 2) the inappropriateness of a rate design which encourages conservation given the need to address the upcoming problem of revenue erosion. See e.g., Transcript of August 22, 1985 at 84-86. In support of its claim, PSNH presented evidence about its projected costs after Seabrook becomes operational.

In *Re Public Service Co. of New Hampshire*, 69 NH PUC 67, 57 PUR4th 563 (1984), the Commission accepted the PSNH cost projections and, accordingly, its arguments that it should be exempted from the general lifeline standards because of factors that make PSNH's situation unique. The Commission went on to consider the targeted program offered by PSNH as a substitute for the Commission's general lifeline standards. The Commission stated (69 NH PUC at pp. 90, 91, 57 PUR4th at pp. 581, 587):

The acceptance of PSNH's cost projections for the purposes of this docket does not mean that we will automatically accept its proposal to implement immediately a systemwide targeted lifeline program. The

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evidence clearly indicates that PSNH's proposal is addressed to the cost situation which will exist when Seabrook becomes operational. The time period before the Seabrook operational dates is one that can appropriately be used for developing further data and planning. In addition, we have concerns about the targeted lifeline program as proposed by PSNH. Thus, we will articulate our concerns here and allow PSNH to develop a pilot targeted program which will address those concerns, develop data and aid us in planning a system-wide approach to be implemented at the appropriate time.

We are convinced that there are good reasons to consider seriously a targeted lifeline program. We believe that such a program can mitigate the hardship of electric utility rates for certain needy customers. We believe it is proper to state plainly that we will be engaging in a program of "social" ratemaking which may vary from traditional concepts in recognition of the proposed costs that will soon confront consumers. Having made this statement, the reason for our caution is clear. We are embarking in a new area and, since we are not confronted with a need for immediate action, we have a "grace" period to ensure that our decisions are properly rooted in theory, fact and law. Thus, our first and largest concern is that we act on the basis of

data generated by experience. A pilot program will address that concern.

Our second concern is that we are troubled by the delegation of the function of identifying eligible recipients to CAP. Lest we be misunderstood, we will state outright that this concern has nothing to do with the quality of CAP programs or CAP participation in our proceedings, both of which are exemplary. Rather, our concern is that the identification function appears to be one which is best performed by a government agency instead of a private organization. We will therefore direct PSNH to contact the appropriate government agencies, such as the Division of Human Resources, to attempt to enlist their aid in the development and administration of the pilot program. If, after such contacts, the Company still believes that CAP can best perform the identification function, PSNH should be prepared to address our concern in the presentation of its program.

Accordingly, we will deny PSNH's request for a system-wide exemption from our current lifeline standards at this time. PSNH has leave to develop a pilot program. After that pilot program is formally presented to us, we will allow it to be implemented if our concerns are adequately addressed.

Pursuant to the above, PSNH, Community Action Programs (CAP) and the State of New Hampshire Division of Human Resources (DHR) filed on April 17, 1984 a request for approval of a proposed pilot targeted lifeline program. The pilot program was applicable only for customers located in the City of Nashua and the Towns of Hudson, Hollis, Brookline, Milford and Wilton. Under the proposed program, CAP would identify eligible customers and certify their eligibility to PSNH. Eligible customers would be billed under a tariff designated as Rate D-TL which could save eligible customers as

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much as \$10.00 per month on electric bills.¹⁽⁴⁰⁰⁾ The proposed pilot program also contained the following provisions:

- 1) CAP would identify customers between the dates of June 1, 1984 (or as soon thereafter as possible) and September 30, 1984;
- 2) Although PSNH contemplated that Rate D (reflecting the existing non-targeted lifeline rate design) would be flattened upon implementation of a permanent program, it did not propose such a measure for the pilot program; and
- 3) PSNH did not propose to recover lost revenues for the pilot program.

By Report and Fifteenth Supplemental Order No. 17,062 (69 NH PUC 295) in this docket, the Commission approved Rate D-TL as proposed in the pilot area effective June 1, 1984 and, further, directed the parties to confer to attempt to agree on the following:

- a) specific amendments or deletions to the eligibility criteria submitted by Community Action Program; b) a proper monitoring and recordkeeping system ... (69 NH PUC at p. 299.)

On November 30, 1984, PSNH filed revised tariff pages that, in effect, adopted the proposed targeted termination program on a system-wide basis while concurrently flattening residential Rate D. The tariff filing was suspended by Order of Notice dated December 19, 1984.

Additionally, a prehearing conference was scheduled for January 18, 1985. Subsequently, the Commission issued Report and Seventeenth Supplemental Order No. 17,492, (70 NH PUC 105) which, inter alia, adopted a procedural schedule for the investigation of the proposed tariff provisions. Hearings were held on August 22 and 23, 1985 and September 3, 11 and 16, 1985. Briefs were filed on October 9, 1985 by PSNH, Volunteers Organized In Community education (VOICE), the Business and Industry Association of New Hampshire (BIA) and jointly by CAP and DHR.

II. POSITIONS OF THE PARTIES

A. Position of PSNH, CAP and DHR.

The proposed targeted termination program is, in effect, a joint Petition of PSNH, CAP and DHR. Thus, all three parties took a position in support of the proposed rate structure and, except where explicitly noted, the Commission will treat the Petitioners' position jointly.

The Petitioners propose a rate structure which will implement on a systemwide basis the pilot targeted lifeline program adopted in Order 17,062. Concurrently, the Petitioners propose to eliminate the existing non-targeted lifeline rate by flattening residential Rate D. PSNH proposes to continue to impose the cost of the lifeline rate structure on residential ratepayers. CAP and DHR argue that since the targeted approach is designed to address social needs, all classes of ratepayers should be required to pay the cost of the program.

In support of the proposal, the Petitioners presented the testimony of James T. Rodier, PSNH's Rate Research Manager; Wyatt A. Brown, PSNH's Manager of Energy Management in the Company's Supply Planning Energy

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Management Division; Gale F. Hennessey, Executive Director of Southern New Hampshire Services, a Community Action Agency for Hillsborough County; and Shannon M. Nolin, DHR's Energy Coordinator.

Mr. Rodier's testimony recommended that the Commission should substitute the targeted lifeline rate for the existing non-targeted rate. Mr. Rodier based his recommendation on six evaluative criteria which he believed should be considered by the Commission. The first criterion is whether more persons would be helped under the targeted proposal than hurt. The second criterion is the quantification of the aggregate benefits to be derived from the proposed lifeline program. The third criterion is based on an evaluation of the opportunity to participate. The fourth criterion is an evaluation of efficiency. The fifth criterion is an evaluation of how the proposed program fits in with other programs. The sixth criterion is an evaluation of whether the proposed program is consistent with proper rate policy for PSNH. Mr. Rodier testified that his analysis under the above tests supported the adoption of the proposed targeted lifeline rate.

Mr. Brown provided testimony on PSNH's existing and projected marginal and average costs. Mr. Brown testified that updated cost projections continue to support his testimony in previous phases of this docket. Mr. Brown's testimony supported a part of the analysis provided by Mr. Rodier.

Mr. Hennessey provided testimony which was directed at the needs of low income ratepayers

in PSNH's service territory. Mr. Hennessey testified that electric utility bills are becoming increasingly burdensome to low income ratepayers. The proposed targeted program, which could provide additional benefits of as much as \$10.00 per month, would have a greater positive impact on low income ratepayers than the existing non-targeted program, which provides benefits of as much as \$3.00 per month.

Ms. Nolin provided testimony on the need of low income ratepayers for the program. According to Ms. Nolin, this need is increased by the reduction in available Fuel Assistance Program (FAP) funds. Ms. Nolin further testified that the costs of the proposed lifeline program are reasonable in the context of the benefits to be derived by low income ratepayers. Ms. Nolin also provided testimony about the results of the pilot program. She acknowledged that the participation rate in the pilot was lower than anticipated, but stated that this was probably caused by factors particularly applicable to the pilot program, such as the utilization of a threemonth summer certification program.

B. Position of VOICE

VOICE opposed the Petition to implement targeted lifeline rates on a system-wide basis. VOICE based its position on its analysis of the data generated by the pilot program. VOICE argued that the data do not support system-wide implementation because of the Petitioners' failure to attain a threshold participation rate. Additionally, VOICE argued that the overall benefits of a targeted program do not exceed the burdens. Finally, VOICE argues that if a targeted approach is adopted, the cost should be borne by all classes of ratepayers.

In support of its position, VOICE presented the testimony of Lorraine Sakowicz, VOICE's Chairperson;

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Anthony L. Redington, an expert in planning, housing and low income policy and programs; and George Sterzinger, an economist with the National Consumer Law Center.

Ms. Sakowicz expressed VOICE's concern that the participation rate achieved thus far is too low. Thus, more low income customers will benefit from the existing non-targeted program than the proposed targeted program. Ms. Sakowicz recommended that, if the targeted approach is adopted system-wide, the Commission deny the concurrent request to flatten Rate D. Additionally, Ms. Sakowicz recommended that the costs of a targeted lifeline program be imposed on all ratepayers.

Mr. Redington testified with respect to: 1) issues related to poverty population and participation rates in the targeted lifeline pilot area; and 2) issues related to program design. According to Mr. Redington, the level of participation attained in the pilot program was too low. Mr. Redington testified that participation rates of 75-85% are necessary to avoid penalizing a substantial number of eligible households. Mr. Redington also testified that the design of the program should be changed to provide for self-declaration of eligibility with a follow-up if necessary. Such an approach would have the effect of increasing the participation rate.

Mr. Sterzinger reviewed and analyzed the Company's claim that the proposed program is a way of directing scarce resources to the truly needy in order to help them cope with rising

electric bills. Mr. Sterzinger's analysis encompassed the likely participation rate, concurrent with the redesign of the existing non-targeted lifeline rate; the Company's supporting analysis for the general flattening of Rate D, including the application of the inverse elasticity rule; and the benefits of the proposed targeted rate on low-income residential customers. Mr. Sterzinger's analysis led him to recommend the adoption of a targeted lifeline program concurrent with a continuation of the existing nontargeted lifeline Residential Rate D.

C. Position of the BIA

The BIA supports the implementation of the proposed targeted lifeline program so long as only residential ratepayers are required to bear the cost. If part of the cost is to be allocated to non-residential ratepayers, the BIA argues, in effect, that the program should be abandoned. The BIA bases this argument on the "social" ratemaking nature of the proposed program. The BIA contends that such a social program unduly departs from cost based ratemaking and is impermissibly discriminatory. The BIA did not present any witnesses to support its position.

D. Position of the Consumer Advocate

With respect to the adoption of the proposed targeted lifeline program, the Consumer Advocate generally supported the position of the Petitioners. With respect to the issue of the allocation of the costs of the program, the Consumer Advocate generally supported the position of CAP and DHR. The Consumer Advocate did not present any witnesses to support his position.

E. Position of Staff

The position of the Staff was submitted through the testimony of Melinda H. Butler, Staff Economist; and John

C. Cutting the Commission's Residential Conservation Coordinator.

Ms. Butler's testimony was addressed to three general areas. The first area was the general criteria which should be used to evaluate a lifeline policy. The second area was a comparison of the targeted and non-targeted programs. The third area was regulatory alternatives in the case of adoption of a targeted policy. Ms. Butler concluded that the participation rates attained in the pilot program should be indicative of the levels to be expected in a systemwide program. At such levels, Ms. Butler believed that the burdens of a targeted program exceed the benefits. Ms. Butler further recommended that if a targeted program is adopted, the cost should be borne by all classes of ratepayers.

Mr. Cutting's testimony discussed six issues. The first issue was a comparison of a pilot approach with a system approach. The second issue was an examination of participation rates in the context of public awareness. The third issue was a comparison of outreach efforts under the pilot program with the outreach efforts proposed under system-wide implementation. The fourth issue was an analysis of the level of benefits and recovery of lost revenues. The fifth issue was an analysis of administrative costs under the pilot and as they are proposed for system-wide implementation. The sixth issue concerned the use of utility funds in the certification process. Mr. Cutting recommended that the positions of the Petitioners on all identified issues be subject to extensive analysis prior to a Commission decision.

III. COMMISSION ANALYSIS

A. Introduction

The starting place for our analysis is our findings and conclusions in Order 16,885, Re Public Service Co. of New Hampshire, 69 NH PUC at pp. 88-91, 57 PUR4th at pp. 584-587. In that decision, we found that PSNH had met its burden of proving that special circumstances applicable to PSNH merited a waiver from the Commission's non-targeted lifeline policy established in Re Lifeline Rates, 68 NH PUC 216 (1983). Those special circumstances were: 1) the need to address major rate increases resulting from the completion of Seabrook; and 2) the inappropriateness of the non-targeted rate structure given the need to address the upcoming problem of revenue erosion.²⁽⁴⁰¹⁾ Even though a waiver from the Commission's standards was found to be appropriate, the Commission did not authorize system-wide implementation of a targeted lifeline program. The Commission provided for serious consideration of a targeted program, rather than implementation, because of two concerns. The first concern was articulated by the Commission as follows (69 NH PUC at pp. 90, 91, 57 PUR4th at p. 586):

We are convinced that there are good reasons to consider seriously a targeted lifeline program. We believe that such a program can mitigate the hardship of electric utility rates for certain needy customers. We believe it is proper to state plainly that we will be engaging in a program of "social" rate making which may vary

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from traditional concepts in recognition of the proposed costs that will soon confront consumers. Having made this statement, the reason for our caution is clear. We are embarking in a new area and, since we are not confronted with a need for immediate action, we have a "grace" period to ensure that our decisions are properly rooted in theory, fact and law. Thus, our first and largest concern is that we act on the basis of data generated by experience. A pilot program will address that concern.

The second concern involved the issue of whether the identification of eligible recipients is a function best performed by a state agency rather than CAP, (69 NH PUC at p. 91, 57 PUR4th at pp. 586, 587.

Given the clear standards articulated by the Commission, we will analyze the Petitioners' proposal in the context of the identified concerns. Initially, we will address the role of CAP. We will then examine the results of the pilot program to determine whether the data generated justifies the next step of system-wide implementation.

B. Role of CAP

As described above, the Commission was concerned that the function of identifying eligible recipients should be performed by a state agency rather than CAP. After review and consideration of the record developed in this phase of the proceeding, we are satisfied that both CAP and DHR are playing appropriate roles in the proposed program. Thus, we find that our concern about state agency involvement has been adequately addressed by the Petitioners.³⁽⁴⁰²⁾

C. Evaluation of Pilot Program

[1,2] The participation rate achieved in the pilot program was disappointing. In spite of an awareness rate of virtually 100%, the Petitioner's were only able to certify 1,300 customers out of an eligible population of 6,000; a participation rate of 21.7%. See e.g., Exh. TL-8, Tab C at 7 and Tab F at 1; Exh. TL-16 at 10-11; and 1 Tr. 97. If the 21.7% empirical results of the pilot program are extrapolated to the systemwide eligible population of 41,498, only 9,005 customers will be certified for the system-wide targeted lifeline program. See e.g., Exh. TL-16 at 12.

Virtually every party agreed that if the targeted lifeline program could not achieve a participation rate that substantially exceeds 9,005, the benefits of the program would not exceed the burdens. For example, PSNH witness Rodier testified that if the program could not achieve a participation rate of at least 43.4%, or 18,000 certified customers, there is some defect in the program and it should be abandoned. 1 Tr. 35. While we do not necessarily agree that a participation rate of 43.4% is sufficient to find that the benefits exceed the burdens, we need not reach that question here. There is no dispute that the achieved participation rate of 21.7% is too low.

There is also minimal dispute about the reasons why a low participation rate tips the benefit/burden balance toward the burdens. If Rate D is flattened,

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than [sic] all low-income eligible customers who are not certified will be paying higher rates. Thus, we could be confronted with the paradox that more low-income persons will be hurt by a social program than will be helped.⁴⁽⁴⁰³⁾ Additionally, the administrative costs of the program are in the nature of fixed costs. The record indicates that projected administrative costs will be \$535,000. If only 9,005 persons are certified, the cost per certification is \$59.41; about half of the maximum targeted benefit of approximately \$120 per year. However, if a participation rate of 25,000 customers is achieved, the cost per certification drops to \$21.40. While we do not find here that a cost of \$21.40 is either reasonable or unreasonable, we can definitively state that it is to be preferred over a cost of \$59.41.

On the basis of the above, we find that the 21.7% participation rate achieved by the pilot program is insufficient to cause the benefits to exceed the burdens. Thus, if a system-wide program cannot achieve a significantly higher participation rate, it should be rejected. This leads us to the remaining issue of whether the pilot results accurately predict the participation rate that is likely to be achieved on a systemwide basis.

The Petitioners contend that the pilot results cannot be indicative of the results to be achieved in a system-wide program. They point to the fact that approximately 18,000 eligible households already contact CAP offices for FAP assistance. Thus, they believe that they will, at a minimum, achieve a level of participation of 18,000. The Petitioners believe that their predicted results are more reasonable than the pilot results because the pilot program was run during the summer; a time when FAP participants do not normally contact CAP offices. The system-wide program would be run year round. 1 Tr. 182185. The Petitioners also believe that further outreach efforts will bring additional eligible households to the CAP Offices. In fact, 50% of those participating in the pilot program were nonFAP customers. If this percentage holds, a participation rate of 24,000 to 25,000 (or 57.83% to 60.24%) will be achieved. 1 Tr. 183-185.

While the Petitioner's arguments appear to be rational, they cannot be accepted because they are inconsistent with the data. As noted previously, the social ratemaking area is new. New Hampshire is one of only a few regulatory jurisdictions considering the implementation of a social targeted lifeline program. See e.g., Exh. TL-27 and TL-28. Thus, we should exercise due care in evaluating the proposed program. Projections which are intuitively rational are not always borne out.⁵⁽⁴⁰⁴⁾ In fact, our experience in this docket supports our tendency to caution. The same Petitioners who predict a participation rate of between 24,000 and 26,000 households in a system-wide program predicted a participation rate of 3,000 in the pilot program; a rate far in excess of the 1,300 rate actually achieved. See e.g., 1 Tr. 130-131, 2 Tr.

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221. This disappointing participation rate occurred despite the Commission's allowance of full latitude to the Petitioners in the timing, design and implementation of the pilot program. We are not here assigning responsibility for the disappointing pilot results, nor do we take those results as an adverse reflection on the credibility of the Petitioners. Rather, we view those results as being reflective of the pitfalls of relying on what appear to be rational predictions as a substitute for empirical results. The parties were on notice that we would move cautiously and only on the basis of data generated by experience. (69 NH PUC at pp. 90, 91, 57 PUR4th at p. 586.) We will continue to adhere to that standard. Thus, we will deny the request to implement the targeted lifeline program on a system-wide basis because it is not supported by the data generated in the pilot.

Our rejection of the request to implement targeted lifeline on a systemwide basis should not be read as the Commission's final ruling. As noted, we accepted the two reasons proffered by PSNH to allow a waiver from the Commission's non-targeted lifeline standards. Those reasons allowed us a "grace" period of 17 to 18 months before Seabrook was to be commercially operable. See e.g., 1 Tr. 91. The revisions to the projected completion date of Seabrook which have occurred since Order 16,885 was issued in February, 1984 mean that we currently have a similar "grace" period. 1 Tr. 91-92. The Petitioners argue that they would have achieved an acceptable participation rate if they had run the pilot program during the winter. They will be given the opportunity to validate that argument through the development of additional pilot data. Thus, the request to implement a targeted lifeline program on a system-wide basis will be rejected without prejudice. The Petitioners have leave to continue to engage in the pilot program to the end of the 1985-1986 winter season. If the data developed in the course of the winter pilot program support system-wide implementation, the Petitioners may renew their request.

D. Remaining Issues

We have denied without prejudice the request to implement targeted lifeline rates on a system-wide basis. Thus, we need not here reach any remaining issues, such as the allocation of the cost of the program. However, several issues merit additional attention.

As noted, the BIA supported the implementation of this social program only if the cost of the program is imposed solely on residential ratepayers. If the Commission decides to impose any costs on non-residential ratepayers, the BIA argues that the program is inconsistent with the discretion allowed the Commission by law and, accordingly, the program should be

rejected.⁶⁽⁴⁰⁵⁾ In *Re Public Service Co. of New Hampshire*, 69 NH PUC at pp. 88-91, 57 PUR4th at pp. 584-587, we concluded that we have the legal authority to adopt a properly designed and supported lifeline rate. The Commission also has the legal authority to determine at the appropriate time how the cost of a lifeline program will be

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allocated. Given our decision here to reject the proposed system-wide implementation of a targeted lifeline program, it is not necessary to reach the issue of how the cost of such a program will be allocated. That issue is reserved until such time, if any, that the Commission allows the program to be implemented on a systemwide basis.

Since we will allow the Petitioners the opportunity to renew their request, one further issue needs to be addressed here. Mr. Rodier's criterion 5 was an evaluation of how the proposed program fits with other programs. However, Mr. Rodier acknowledged that PSNH had not studied how the proposed targeted program fit in with other PSNH programs to address Seabrook rate-shock. 1 Tr. 111. Since we expect PSNH to develop a comprehensive approach to present to the Commission for review, the lack of such a study here is a significant omission. Future targeted lifeline proposals should address this issue with appropriate empirical or theoretical support.

IV. CONCLUSION

For the reasons set forth above, the Petitioners' request to implement the proposed targeted lifeline program on a system-wide basis and concurrently flatten Residential Rate D will be denied without prejudice. The Petitioners' will be permitted to continue the pilot program as it was designed, or with appropriate modifications, subject to the approval of the Commission, over the 1985-1986 winter period.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the request of Public Service Company of New Hampshire, Community Action Program and the Division of Human Resources to implement a targeted lifeline program on a system wide basis be, and hereby is, denied without prejudice; and it is

FURTHER ORDERED, that tariff pages NHPUC No. 29 — Electricity, Public Service Company of New Hampshire, 2nd Revised Page 2, 3rd Revised Page 23, 4th Revised Pages 24, 25, 28, 29, 42, and 43, Supplement No. 1, Revised Cover Page, 2nd Revised Page 1, and 3rd Revised Pages 2 and 4 be, and hereby are, rejected without prejudice; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire may allow existing Residential Rate D-TL to be effective, as previously approved or with such modifications as are approved by the Commission, for the 1985-1986 winter season.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of December, 1985.

FOOTNOTES

¹The savings will vary depending on electricity usage.

²The non-targeted rate had as one of its objectives, the conservation of electricity. (68 NH PUC at pp. 220-221.) PSNH argued that increased energy sales after Seabrook completion will have the effect of lowering per kwh costs because Seabrook fixed costs can be spread over a greater number of kwh energy sales.

³We are herein addressing only the roles of CAP and DHR. We are not in this part of our Report addressing the administrative costs to be paid by PSNH ratepayers to CAP. As discussed infra that issue turns on our evaluation of the likely participation rate in a targeted lifeline program.

⁴If the 21.7% pilot results continue to be applicable, then 78.3% of PSNH's eligible lowincome customers would be hurt. Exh. TL-16 at 19.

⁵The experience of the Wisconsin Public Service Commission with a targeted lifeline rate reinforces the need to act on the basis of empirical data rather than intuitively rational judgments. There, a targeted lifeline program was abandoned because it was not providing sufficient benefits to low income customers and because other programs, such as conservation, provide more meaningful benefits. Exh. TL-28; Re Madison Gas Docket No. 3270-UR-13, July 26, 1985.

⁶We understand that the BIA in brief asked us to disregard their second argument (i.e., that a social program is inconsistent with the law) if we decide not to impose the cost of the program on non-residential ratepayers. This Commission has the responsibility to evaluate all arguments placed before it and must affirmatively satisfy itself that it has the legal authority to grant the relief requested. Thus, we could not ignore the BIA second argument.

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NH.PUC*12/16/85*[61276]*70 NH PUC 1057*New Hampshire Electric Cooperative, Inc.

[Go to End of 61276]

70 NH PUC 1057

Re New Hampshire Electric Cooperative, Inc.

DR 81-340, Order No. 17,995

New Hampshire Public Utilities Commission

December 16, 1985.

ORDER transferring unrecovered fuel charges to a deferred account for current fuel charge over and under recoveries.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. (Cooperative) in compliance with

NHPUC Order No. 15,586, and beginning on November 15, 1982, added an incremental amount of \$.0013 to the kilowatt hour charges of each rate in its tariff in effect for recoupment of fuel charges paid purchased power suppliers by the Cooperative prior to November, 1982, not previously recovered in retail sales; and

WHEREAS, by letter dated November 20, 1985, to the Commission, the Cooperative terminated the billing of the incremental amount of \$.0013 per kilowatt hour as of November 1, 1985, since recoupments made during the period beginning November 15, 1982, through October 31, 1985, totaled within \$2,037 of the original recoupment amount of \$1,494,483 as specified in the "Report of Recoupment of Fuel Charges. ..." attached to the November 20, 1985, letter to the Commission; and

WHEREAS, the Cooperative requested that the remaining \$2,037 be transferred to the deferred account for current fuel charge over and under recoveries, which as of October 31, 1985, had an over recovery of \$80,104; and

WHEREAS, on November 21, 1985, the Cooperative filed with the Commission 1st revised page 17 which would cancel the incremental amount of \$.0013 per kilowatt hour and the provisions for recoupment of fuel charges paid wholesale power suppliers prior to November, 1982, not previously recovered in retail rates; it is hereby

ORDERED, that the proposed NH PUC No. 13 Electricity, 1st revised page 17 issued on November 1, 1985, for effect on November 1, 1985, be and hereby is approved; and it is

FURTHER ORDERED, that the Cooperative's request to transfer the remaining \$2,037 in unrecovered fuel charges to the deferred account for current fuel charge over and under recoveries, be and hereby is approved.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1985.

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NH.PUC*12/16/85*[61277]*70 NH PUC 1058*Northern Utilities, Inc.

[Go to End of 61277]

70 NH PUC 1058

Re Northern Utilities, Inc.

DR 85-406, Order No. 17,996

New Hampshire Public Utilities Commission

December 16, 1985

ORDER authorizing an increase in borrowing limitation for short-term debt.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire corporation having its principal place of business in Portsmouth, New Hampshire, and operating as a gas utility, under the jurisdiction of this Commission, on November 27, 1985, filed with this Commission a petition to increase its short-term borrowing limitation to \$6,000,000, and requests the authorization to be effective December 15, 1985 and to terminate June 30, 1986; and,

WHEREAS, as of September 30, 1985, the net fixed capital of the Company had \$3,200,000 of short-term notes payable; and,

WHEREAS, the Company expects the short-term notes payable to rise to approximately \$3,700,000 by November 30, 1985 and anticipates an increasing need for additional short-term debt over the 1985-86 heating season due to the working capital requirements of financing seasonal fuel purchases and customer accounts receivables in addition to on-going working capital needs to cause an increase in excess of the \$4,000,000 currently allowed by the Commission in Order 17,436 dated February 5, 1985 (70 NH PUC 363) which will expire December 31, 1985; and,

WHEREAS, the Company states that a long-term financing project can be realized in the first quarter of 1986 and that at such time it is management's intent to review Northern's financial position and complete a permanent financing of the Company's short-term debt; it is

ORDERED, that Northern Utilities, Inc., be, and hereby is authorized to issue and sell, and from time to time renew, for cash its notes or notes payable due less than 12 months after the date thereof in an aggregate principal amount not exceeding \$6,000,000, and it is

FURTHER ORDERED, that the authority to renew these notes up to an aggregate amount of \$6,000,000 shall expire June 30, 1986, at which time the aggregate level will be redetermined; and it is

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FURTHER ORDERED, that the notes shall bear interest at the most economical rates the Company can obtain; and it is

FURTHER ORDERED, that on or before January 1 and July 1 of each year, the Company shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of the notes herein authorized until the expenditures of the whole of said proceeds shall be fully accounted for.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1985.

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NH.PUC*12/16/85*[61278]*70 NH PUC 1059*Claremont Kiwanis Arrowhead, Inc., d/b/a Arrowhead Skiway

[Go to End of 61278]

70 NH PUC 1059

Re Claremont Kiwanis Arrowhead, Inc., d/b/a Arrowhead Skiway

DE 85-399, Order No. 17,999

New Hampshire Public Utilities Commission

December 16, 1985

ORDER granting an interim license authorizing installation and operation of a customer-owned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DE84-152, DE84-159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned, coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Claremont Kiwanis Arrowhead, Inc., PO Box 278, Claremont, N. H. 03743-0278, dba Arrowhead Skiway, filed with this Commission on November 25, 1985 a petition seeking status as a public utility for the limited purpose of installing and operating one COCOT in the Base Lodge of said Arrowhead Skiway; and

WHEREAS, Robert A. Easter, President of said organization assures the Commission that the instrument to be installed and operated is manufactured by Automatic Electric and bears the FCC registration number B4X8NY13913, CX-R; and

WHEREAS, Mr. Easter also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED, that interim license be, and hereby is, granted to Claremont Kiwanis Arrowhead, Inc. (CKA) for the operation of one COCOT to be located at the base lodge of the cited Skiway in Claremont, New Hampshire; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules

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regarding the operation of COCOTs in the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1985.

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NH.PUC*12/16/85*[61279]*70 NH PUC 1060*Joe Blecharczyk d/b/a J-Don's Variety

[Go to End of 61279]

70 NH PUC 1060

Re Joe Blecharczyk d/b/a J-Don's Variety

DE 85-387, Order No. 18,000

New Hampshire Public Utilities Commission

December 16, 1985

ORDER granting an interim license authorizing installation and operation of a customer-owned, coin-operated telephone.

By the COMMISSION:

ORDER

WHEREAS, on March 11, 1985, this Commission issued its Order No. 17,486 in Dockets DF 84-152, DE84159 and DE84-174 (70 NH PUC 89) in which it authorized the use of customer-owned coin-operated telephones (COCOT) subject to certain rules and regulations to be established by said Commission; and

WHEREAS, such rules and regulations are in process, but not yet finalized; and

WHEREAS, Joe Blecharczyk, dba J-Don's Variety, 1081 W. Hollis Street, Rural Route 6, Nashua, N. H. 03262, filed with the Commission on November 14, 1985 a petition seeking status as a public utility for the limited purpose of installing and operating one COCOT at the foregoing address; and

WHEREAS, Mr. Blecharczyk assured the Commission that the instrument to be installed and operated is manufactured by International Communications, Inc, 1336 American Drive, Neenah, Wisconsin, 54596, and bears FCC registration number EEQ6CH-14382CX-E; and

WHEREAS, Mr. Blecharczyk also assures the Commission that his instrument meets all requirements set forth in cited order and further agrees to comply with all rules and regulations now existing, or to be established, for COCOTs; it is

ORDERED; that interim license be, and hereby is, granted to Joe Blecharczyk dba J-Don's Variety for the operation of one COCOT to be located at the Nashua address cited above; and it is

FURTHER ORDERED, that noncompliance with guidelines and rules regarding the operation of COCOTs in

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the state of New Hampshire will result in revocation of said license; and it is

FURTHER ORDERED, that the COCOT specified be connected only to a measured business service line as specified in the applicable tariff.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1985.

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NH.PUC*12/16/85*[61280]*70 NH PUC 1061*Gas Service, Inc.

[Go to End of 61280]

70 NH PUC 1061

Re Gas Service, Inc.

DR 85-377, Order No. 18,001

New Hampshire Public Utilities Commission

December 16, 1985

ORDER approving a special private rate contract for emergency interruptible gas utility service.

By the COMMISSION:

ORDER

WHEREAS, Gas Service, Inc., a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 39 with W. R. Grace & Company, effective upon approval by Commission order, for Gas Service at rates other than those fixed by its schedule of general application, and

WHEREAS, this contract is for emergency interruptible service which was requested as a result of failures within W. R. Grace's fuel oil storage systems, and

WHEREAS, upon investigation and consideration, this Commission finds that the contract rate is based upon an equivalent cost of propane, that there will be no subsidy by other ratepayers, and that there will be no adverse impact on the company's distribution system as a result of this increased load, and that these circumstances render the terms and conditions just and consistent with the public interest, it is

ORDERED, that said contract is effective during the limited period of November 1, 1985, to December 31, 1985.

By order of the Public Utilities Commission of New Hampshire this 16th day of December, 1985.

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NH.PUC*12/16/85*[61281]*70 NH PUC 1062*Gas Service, Inc.

[Go to End of 61281]

70 NH PUC 1062

Re Gas Service, Inc.

DR 85-416, Order No. 18,002

New Hampshire Public Utilities Commission

December 16, 1985

ORDER approving a special private rate contract for gas utility service.

By the COMMISSION:

ORDER

WHEREAS, Gas Service, Inc., a utility selling gas under the jurisdiction of this Commission is filed with this Commission Special Contract No. 38 with Nashua Corporation, effective on approval by Commission order, for gas service at rates other than those fixed by its scheduled or general application; and

WHEREAS, upon investigation and consideration this Commission is of the opinion that special circumstances exist relative thereto which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective on the dates specified in the contract.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1985.

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NH.PUC*12/18/85*[61282]*70 NH PUC 1063*First Energy Associates

[Go to End of 61282]

70 NH PUC 1063

Re First Energy Associates

DR 85-379, Order No. 18,005

New Hampshire Public Utilities Commission

December 18, 1985

ORDER rejecting filing of a long term rate for sales of electricity by a qualifying cogeneration facility.

Cogeneration, § 24 — Rates — Filing requirements.

A long term rate for the sale of electricity by a qualifying cogeneration facility was rejected where the filing did not include a signed interconnection agreement and the proposed rate was rounded to the nearest one thousandth of a cent, instead of the nearest one hundredth of a cent, as required by commission rules.

By the COMMISSION:

ORDER

First Energy Associates (FEA) filed a long term rate petition November 5, 1985, for its Concord Cogeneration Facility pursuant to Re Small Energy Producers and Cogenerators, (70 NH PUC 753, 69 PUR4th 365 (1985); and

WHEREAS, the filing requirements in Re Small Energy Producers and Cogenerators, (69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104) continue to apply to all filings made under Docket No. DR 85-215 and are outlined in the New Hampshire Regulatory Handbook for Small Scale Electricity Generators (Handbook), Appendix D at page 35; and

WHEREAS, the Commission finds that FEA's long term rate petition is not consistent with the filing requirements as outlined in the Handbook; and

WHEREAS, Order No. 17,104 requires that a Small Power Producer or Cogenerator (SPP) file an Interconnection Agreement signed by the SPP as part of the long term rate petition; and

WHEREAS, FEA's petition does not include a signed Interconnection Agreement; and

WHEREAS, Order No. 17,104 set forth that long term rates will be rounded to the nearest one hundredth of a cent (at page 7) and the Commission finds that consistency in the proper evaluation of long term rates warrant rates rounded to the nearest one hundredth of a cent; and

WHEREAS, the long term rates set forth in Exhibits B-1 and B-2 of FEA's petition are rounded to the nearest one thousandth of a cent; it is therefore

ORDERED, that FEA's long term rate petition is rejected without prejudice and may be refiled with the corrections to the above noted errors.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1985.

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NH.PUC*12/18/85*[61283]*70 NH PUC 1064*Manchester Water Works

[Go to End of 61283]

70 NH PUC 1064

Re Manchester Water Works

DE 85-393, Order No. 18,006

New Hampshire Public Utilities Commission

December 18, 1985

PETITION for authority to extend water utility distribution service and mains into a municipality; granted.

Certificates, § 125 — Water utility service.

A water distribution utility was granted authority to extend service and mains into an area of a municipality not franchised to any other water utility.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission by a petition filed November 19, 1985, seeks authority under RSA 374:22 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, after investigation and consideration, this 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 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 13, 1986; and it is

FURTHER ORDERED, that Manchester Water Works effect said notification by publication of an attested copy of this Order once, in a newspaper having general circulation in that

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portion of the State in which operations are proposed to be conducted, such publication to be no later than December 27, 1985 and designated in an affidavit to be made on a copy of this Order and filed with this office; 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: and it is

Beginning at a point along the center line of Morrill Road, said point being 400 feet plus or

minus, easterly of its intersection with the center line of Mammoth Road, from this point, turning southerly following along the center line of proposed Un-Named Road a distance of 660 feet plus or minus, to its end, as shown on a map filed in this case, with limits shown as shading and proposed extension of limits shown as cross-hatched lines. Meaning and intending to provide water service to Lots 39-16-1 through 9, along UnNamed Road, as shown more specifically on attached map.

FURTHER ORDERED, that such authority shall be effective on January 14, 1986 unless a request for a 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 eighteenth day of December, 1985.

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NH.PUC*12/18/85*[61284]*70 NH PUC 1065*D.J. Pitman International Corporation

[Go to End of 61284]

70 NH PUC 1065

Re D.J. Pitman International Corporation

Intervenor: Public Service Company of New Hampshire

DR 85-171, Supplemental
Order No. 18,007

New Hampshire Public Utilities Commission

December 18, 1985

PETITION for authority to file long term rates for sale of electricity by a qualifying cogeneration and small power production facility; denied, without prejudice, for failure to provide adequate notice to a local electric distribution utility.

Page 1065

Cogeneration, § 24 — Rates — Long term tariff — Filing — Notice — Adequacy.

The failure to notify the local electric distribution utility at least 45 days before petitioning for a long term rate for a qualifying cogeneration and small power production facility, to allow time for an interconnection study, is reason to reject the long term rate petition. [1] p. 1067.

Cogeneration, § 24 — Rates — Long term tariff — Filing — Notice — Adequacy.

Contact between an electric distribution utility and the developer of a qualifying cogeneration and small power production facility does not necessarily place the electric utility upon notice that a long term rate petition will be filed. [2] p. 1067.

Cogeneration, § 24 — Rates — Long term tariff — Filing — Notice — Adequacy.

A petition for authority to file long term rates for the sale of electricity by a qualifying cogeneration and small power production facility was denied, without prejudice, because of the failure by the applicant to provide adequate notice (45 days) to the local electric distribution utility to allow for an interconnection study. [3] p. 1067.

By the COMMISSION:

REPORT

The Commission issued Order No. 17,851 (70 NH PUC 775) in this docket approving nisi the long term rate petition (Petition) of D.J. Pitman International Corporation (D.J. Pitman) for the Wadleigh Falls Hydroelectric project (project or site). Pursuant to Order No. 17,851 Public Service Company of New Hampshire (PSNH) filed comments and exceptions (September 30, 1985) regarding the Petition of D.J. Pitman.

The Commission found PSNH's comments and exceptions warranted further review and issued Order No. 17,904 (70 NH PUC 848) suspending Order nisi 17,851 until further order of the Commission. In response to PSNH's objections D.J. Pitman filed with the Commission a letter and attachments (Oct. 18, 1985) supporting a request that the Commission allow Order nisi No. 17,851 to remain in effect. PSNH responded on October 25, 1985 by letter including attachments. This Report and Order adjudicates the issues raised in this matter.

Position of Parties

PSNH objects to the approval of the Petition of D.J. Pitman "on grounds that D.J. Pitman did not contact PSNH for an interconnection study forty-five days prior to the rate filing as required by Commission Order No. 17,104. [69 NH PUC 352, 61 PUR4th 132]." Comments and Exceptions, Paragraph 1. It further objects to the approval of the Petition "until such data for the D.J. Pitman project is received by PSNH and an interconnection study is initiated." Comments and Exceptions, Paragraph 2.

In its response, D.J. Pitman represented that the project was first proposed for development by Mr. Paul Quinn (Quinn) of Quinn Hydrotech Corporation. D.J. Pitman contended that contacts made between Quinn and PSNH regarding the site provided PSNH with notice of the proposed project since September 1982. In support of this contention, D.J. Pitman offered 3 exhibits which were copies of written correspondence between Quinn and PSNH regarding the project during 1982. D.J. Pitman asserts that it would be "inappropriate to utilize the 45 day interconnection study request to deny an otherwise valid rate filing in the case of a project that PSNH has been aware of since 1982."

In its October 25, 1985 letter, PSNH

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responded that it had a contract with Mr. Paul Quinn and therefore had no reason to believe a rate filing was imminent. PSNH also represented that it was only a result of the rate filing being

made that it became aware that a project in the same location as Quinn's was proposed and that the capacity of the facility was the same as Quinn's. Also, PSNH represented that it never completed an interconnection study for Quinn's project and that any estimates done in 1982 would be outdated due to changes in the system and increased costs.

Additionally, PSNH represented that it receives inquiries from numerous parties interested in developing the same hydroelectric project. PSNH asserts that inquiries by one developer cannot provide notice to PSNH staff of the intentions of all developers interested in a particular project.

Commission Analysis

[1] Having reviewed the position of the parties, the Commission finds that the long term rate petition of D.J. Pitman should be rejected without prejudice. The Commission's decision in *Re Concord Regional Waste/Energy Co.*, 70 NH PUC 736 (1985), concluded that failure to contact PSNH for an interconnection study at least 45 days before petitioning for a long-term rate is grounds for rejecting a long-term rate petition. We find no special circumstances in the instant docket that cause us to apply a different standard to D.J. Pitman.

[2,3] In this case, D.J. Pitman neither requested an interconnection study 45 days prior to filing, nor made any other contact with PSNH. We disagree with D.J. Pitman's assertion that contacts made with a previous developer are sufficient to inform PSNH of its own Project. The Commission is aware that some hydroelectric projects have numerous parties interested in development. We cannot expect inquiries by one developer to provide notice to PSNH of the intentions of all developers interested in a particular project. In particular, we cannot expect that contact between Quinn and PSNH to have "provided a notice to PSNH staff that a rate filing could be imminent and therefore to allow it ample time to become familiar with the small power project" proposed by D.J. Pitman. (*Re Concord Regional Waste*, 70 NH PUC at pp. 737, 738.) To the contrary, it appears that PSNH only became aware of the project proposed by D.J. Pitman after the long term rate filing had been made.

The Commission notes that nothing in this Report and Order precludes D.J. Pitman from initiating an interconnection study and submitting a new petition under *Re Small Energy Producers and Cogenerators*, 70 NH PUC 753, 69 PUR4th 365, (1985). The Commission is aware that the avoided costs have been updated since D.J. Pitman's original petition resulting in lower long-term rates. As we stated in *Re Concord Regional Waste*, this is not sufficient cause to waive the requirement that a developer contact PSNH 45 days prior to filing for a long term rate.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that D.J. Pitman International Corporation's long term rate petition for the Wadleigh Falls

Hydroelectric Project is rejected without prejudice.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of

December, 1985.

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NH.PUC*12/18/85*[61285]*70 NH PUC 1068*Concord Steam Corporation

[Go to End of 61285]

70 NH PUC 1068

Re Concord Steam Corporation

DR 85-304, Order No. 18,008

New Hampshire Public Utilities Commission

December 18, 1985

ORDER accepting and suspending filing of a new tariff for a steam utility service and rejecting a tariff filed and suspended previously by the commission and still pending.

By the COMMISSION:

ORDER

WHEREAS, Concord Steam Corporation filed on December 9, 1985 certain revisions to its tariff providing for an increase to \$10.00 per thousand pounds of steam sold; and

WHEREAS, Concord Steam Corporation has previously filed 6th Revised Page No. 11 of its tariff NHPUC No. 2, providing for an increase to \$9.05 per thousand pounds of steam sold, which stands suspended by Commission Order No. 17,617 in Docket DR82-239 (70 NH PUC 403); and

WHEREAS, Concord Steam Corporation is now requesting that the Commission reject its filing of 6th Revised Page No. 11; it is

ORDERED, that 6th Revised Page No. 11 is rejected and 7th Revised Page No. 11 of tariff NHPUC No. 2, Concord Steam Corporation, be, and hereby is suspended pending investigation and decision thereon.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1985.

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NH.PUC*12/18/85*[61286]*70 NH PUC 1069*Fuel Adjustment Clause

[Go to End of 61286]

70 NH PUC 1069

Re Fuel Adjustment Clause

Intervenor: Littleton Water and Light Department

DR 85-421, Order No. 18,009

New Hampshire Public Utilities Commission

December 18, 1985

ORDER implementing a fuel surcharge filed by a municipal utility.

By the COMMISSION:

ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water & Light Department that FAC hearings will not be automatically scheduled unless requested by said utilities maintaining a monthly FAC; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing; it is

ORDERED, that 144th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 - Electricity, providing for a fuel surcharge of \$.92 per 100 KWH for the month of December, 1985, be, and hereby is, permitted to become effective December, 1985.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1985.

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NH.PUC*12/19/85*[61287]*70 NH PUC 1070*Southern New Hampshire Water Company, Inc.

[Go to End of 61287]

70 NH PUC 1070

Re Southern New Hampshire Water Company, Inc.

Additional respondent: Policy Water Systems, Inc.

DE 85-354, Order No. 18,010

New Hampshire Public Utilities Commission

December 19, 1985

PETITION for authority to purchase a water utility plant in neighboring municipalities and to acquire operating rights; granted.

Consolidation, Merger, and Sale, § 20 — Approval — Factors considered — Purchase price — Water utility plant.

A price of approximately \$400 per customer (\$400,000 in total) for the acquisition by a water

distribution utility of a water utility plant located in neighboring municipalities was held reasonable where the purchaser currently collected annual revenues of approximately \$262 and \$301 per residential customer in two of its operating divisions; the fact that the water company selling the assets had only collected about \$140 in annual revenues from residential customers located in the acquired service territory resulted from the zero rate base of the selling utility, which, over time, would be increased in value because of anticipated capital improvements by the purchasing utility. [1] p.1071.

Valuation, § 67 — Purchased utility plant — Rate base — Acquisition adjustment.

The approval of the purchase by a water distribution utility of a water utility plant located in neighboring municipalities for a price of \$400,000 did not constitute authority for the purchaser to add \$400,000 to its rate base. [2] p.1071.

APPEARANCES: Edmund J. Boutin, Esquire, for Southern New Hampshire Water Company, Inc.; Eugene F. Sullivan, Finance Director and Robert B. Lessels, Water Engineer, for the Commission Staff.

By the COMMISSION:

REPORT

I. HISTORY

By a petition filed on October 9, 1985, Southern New Hampshire Water Company, Inc. (Southern or the Company) and Policy Water Systems, Inc. (Policy) seek authority under RSA 374:22, 26, 28, and 30 for the sale and transfer of certain assets of Policy or Southern and the transfer of certain territory and franchises granted to Policy in dockets DE 74-49, Order No. 12,969 (62 NH PUC 318), and DE 82-324, Order No. 16,096 (67 NH PUC 978). The sale and transfer would also include an as yet unfranchised water system in the Town of Derry, known as Beacon Hill.

II. COMMISSION ANALYSIS

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[1, 2] In testimony presented by Robert W. Phelps, Vice President and Director of Southern, the company states that it is purchasing the assets of Policy, and its owner Robert W. Christian, for the amount of \$400,000, of which 50% or \$200,000, will be paid in cash and 50% or \$200,000, will be in the form of a ten year note, at 11% interest, to Mr. Christian.

The purchase price of \$400,000 equates to \$400 per customer and in our analysis we note that annual revenues from customers of Southern in its Hudson system equal to \$262 for an average residential customer and \$301 for a similar customer on the Litchfield system. Policy's customers, who are now mostly unmetered, pay an annual charge of \$140. This charge reflects Policy's zero rate base and was the subject of a rate adjustment proceeding early in 1985 that was withdrawn in light of the pending sale of the water systems. In conclusion, it is our opinion that a purchase price based on a charge of \$400 per customer, is not unreasonable.

It is further recognized by the Commission and Southern that capital improvements are required in the near and long term. These improvements will, over time, build a rate base and to the extent that related expenses are reasonably incurred, will eventually be reflected in higher rates. For the present, Southern has stated that it will continue the existing rates under Policy's tariff while certain capital and operating improvements are being made.

Southern proposes to conduct an original cost study of the Policy systems and upon completion, to approach the Commission for rate adjustments based on this study, capital additions made and an operating history to establish expenses.

III. CONCLUSION

It is our opinion that the proposed sale and transfer of the franchises and certain assets of Policy to Southern would be in the public good and we so rule. It shall be understood that the granting of this authority does not reflect Commission approval for the inclusion of the purchase price of \$400,000 to the rate base for these water systems. It shall also be understood that the original cost study to be undertaken by Southern, will be subject to Commission review and approval as to methodology and conclusions. In the interim, the existing books and accounts of Policy shall be maintained and continued by Southern until further study, analysis and Commission review dictate otherwise.

ORDER

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

ORDERED, that Policy Water Systems, Inc., be and hereby is, authorized to sell and transfer to Southern New Hampshire Water Company, Inc. certain of its assets as detailed in the foregoing Report; and it is

FURTHER ORDERED, that upon completion of said sale and transfer, Policy Water Systems, Inc. be, and hereby is, authorized to discontinue operations as a public utility in the franchise areas granted in dockets DE 74-49 and Order No. 12,969, and DE 82-324 and Order No. 16,096; and it is

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FURTHER ORDERED, that Southern New Hampshire Water Co., Inc. be, and hereby is, authorized to operate as a public utility in the above mentioned areas, including the area served in the Town of Derry, known as Beacon Hill; and it is

FURTHER ORDERED, that Southern New Hampshire shall file with the Commission, a description of the Beacon Hill service area, in metes and bounds; and it is

FURTHER ORDERED, that upon final completion of the purchase and sale, Southern New Hampshire shall file a tariff supplement as required by NHCAR PUC 1601.05(m).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1985.

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NH.PUC*12/19/85*[61288]*70 NH PUC 1072*Southern New Hampshire Water Company, Inc.

[Go to End of 61288]

70 NH PUC 1072

Re Southern New Hampshire Water Company, Inc.

DF 85-295,
Supplemental Order No. 18,011

New Hampshire Public Utilities Commission

December 19, 1985

ORDER authorizing issuance and sale of first mortgage bonds.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS our Order No. 17,975 dated December 2, 1985, issued in the above-entitled proceeding, authorized Southern New Hampshire Water Company to sell and issue for cash One Million Two Hundred Thousand Dollars (\$1,200,000) of its First Mortgage Bonds, Series F, 10-14% at par, in accordance with terms and conditions set forth in the Petition and subject to final approval when negotiated; and

WHEREAS, in compliance with said Order No. 17,975, the Company has submitted to this Commission details concerning the issue of the First Mortgage Bonds, Series F, including the principal amount, the term thereof, and the interest rate thereon, the principal amount of the Series F First Mortgage Bonds being \$1,200,000, said term being seven (7) years, due in 1992, said interest rate being 11.35% per annum under its present Indenture of Mortgage as amended by a Sixth Supplemental Indenture, in accordance with the terms and conditions set forth in the Petition filed August 8, 1985 and the Request dated December 13, 1985 and Exhibits A, B, C and D, and

WHEREAS, after due consideration, it appears that the issue and sale of said First Mortgage Bonds, Series F herein above set forth or referred to, is consistent with the public good; it is

ORDERED, that Southern New Hampshire Water Company, Inc. be, and hereby is, authorized to issue and sell for cash One Million Two Hundred Thousand Dollars (\$1,200,000) of its First Mortgage Bonds, Series F, 11.35% at par, due 1992, such Bonds to be issued and sold in accordance with the terms and conditions set forth in the

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Petition filed August 8, 1985 and the Request dated December 13, 1985, and substantially in accordance with the terms and conditions set forth in Exhibits A, B, C and D to the Request; and it is

FURTHER ORDERED, that in connection with said sale and issuance of bonds Southern

New Hampshire Water Company, Inc., be, and hereby is, authorized to execute and deliver to the trustee a Bond and a Sixth Supplemental Indenture that are substantially in the form of Exhibits C and D to the Request and to execute and deliver to the purchaser of the bond a Bond Purchase Agreement that is substantially in the form of Exhibit B to the Request, and it is

FURTHER ORDERED, that all other provisions of said Order No. 17,975 of this Commission are incorporated herein by reference, and it is

FURTHER ORDERED, that on January 1st and July 1st in each year, Southern New Hampshire Water Company, Inc. shall file with this Commission a detailed statement, duly sworn to by its treasurer or assistant treasurer, showing the disposition of the proceeds of said bonds being authorized 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 December, 1985.

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NH.PUC*12/20/85*[61289]*70 NH PUC 1073*Public Service Company of New Hampshire

[Go to End of 61289]

70 NH PUC 1073

Re Public Service Company of New Hampshire

Additional petitioners: Community Action Program and Office of the Governor, Division of Human Resources

Intervenors: Volunteers Organized in Community Education and Office of Consumer Advocate

DRM 85-309,
Supplemental Order No. 18,012

New Hampshire Public Utilities Commission

December 20, 1985

PETITION for authority to implement a system-wide program allowing termination of electric utility service for nonpayment of bills during winter heating season.

Page 1073

Payment, § 33 — Enforcement — Termination of service — Winter heating season — Low-income ratepayers.

A proposal to expand a targeted pilot program allowing the termination of electric utility service for nonpayment of bills during the winter heating season, to allow such termination on a system-wide basis, and to implement a separate mechanism for identifying and assisting

low-income ratepayers, was denied, where it was found that such a program would assist only one segment of the ratepaying public and that the majority of ratepayers would incur the cost of the program without any benefits. [1] p. 1076.

Payment, § 33 — Enforcement — Termination of service — Winter heating season — Prohibition — Health and safety.

The need for protection of electric utility ratepayers from the unwarranted termination of electric utility service for nonpayment of bills during the winter heating season is related to concerns for health and safety and is not related to income level. [2] p. 1076.

APPEARANCES: Thomas F. Getz, Esquire for Public Service Company of New Hampshire; Gerald M. Eaton, Esquire for Community Action Program and Division of Human Resources; Alan Linder, Esquire for Volunteers Organized in Community Education; Michael W. Holmes, Esquire for the Consumer Advocate; Larry M. Smukler, Esquire, General Counsel, Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

On July 29, 1985, Public Service Company of New Hampshire (PSNH or Company), Community Action Program (CAP) and Office of the Governor, Division of Human Resources (DHR) (jointly referred to as Petitioners) filed a Petition for a Rulemaking in Docket DRM 84-205 pursuant to RSA 541-A:6. The Petitioners seek to implement on a system-wide basis a targeted winter termination program, which had previously been implemented on a pilot basis in a limited portion of PSNH's service territory. See, Re Public Service Co. of New Hampshire, 69 NH PUC 599 (1984). On August 28, 1985, the Commission issued Report and Supplemental Order No. 17,831 (70 NH PUC 741) in Docket DRM 84-205 which, inter alia, denied without prejudice the Petition, closed Docket DRM 84-205, opened the instant docket and provided for the issuance of an Order of Notice. The Commission reasoned that DRM 84-205 was opened for the purpose of considering a pilot program and that the issues involved in evaluating pilot data for the purpose of systemwide implementation were significant enough to warrant a separate docket. Concurrently, on August 28, 1985, the Commission issued an Order of Notice opening the instant docket " ... for the purpose of determining whether the Petitioners' proposed system-wide targeted termination program should be implemented and, if so, the best regulatory mechanism to accomplish the Commission's objectives ... " The Order of Notice also scheduled a procedural hearing and prehearing conference for September 20, 1985. Pursuant to the Order of Notice, a prehearing conference was convened on September 20, 1985. The parties agreed on a proposed procedural schedule which was submitted to the Commission. That schedule was adopted by Order 17,912 (October 23, 1985). In accordance with Order 17,912, evidentiary hearings were held

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on November 14 and 15, 1985. In addition to the Petitioners, the Consumer Advocate and

Volunteers Organized In Community Education (VOICE) participated as full party intervenors in the matter.

POSITION OF THE PARTIES

A. Position of the Petitioners

The Petitioners propose a program which would remove the winter termination protection afforded by N.H. Admin. Rules, Puc 303.08(k). Those rules provide, inter alia, that residential customers may not be terminated for non-payment of electric bills during the winter period if the customer's accumulated winter arrearage is \$175 or less.¹⁽⁴⁰⁶⁾ The Petitioners contend that the existing protection actually hurts consumers because it allows them to accumulate arrearages (e.g., up to \$175) which they cannot repay and because all customers must pay for PSNH's increased uncollectible debt expense. As a substitute to the existing protection, the Petitioners propose a program in which CAP will identify and certify low income customers.²⁽⁴⁰⁷⁾ Those certified customers will be entitled to CAP counseling and CAP assistance in negotiating payment arrangements with PSNH. Since certified customers may also be eligible for the CAP administrated Fuel Assistance Program (FAP), CAP may also assist those customers, to some extent, in the payment of electric bills.

In support of their Petition, the Petitioners presented the testimony and exhibits of Daniel D. McManus, Manager of PSNH's Customer Accounts Division; Joan E. Rinker, an Analyst with PSNH's Customer Accounts Division; Wilbur C. Beaupre, Customer Accounts Manager of PSNH's Customer Accounts Division; Shannon M. Nolin, Energy Coordinator at DHR; Cheryl Hook, Utility Project Coordinator with Belknap/Merrimack CAP; James A. Stitham, Fuel Assistance Director and Energy Programs Director with Southwestern Community Services; Phil Guiser, Energy Programs Coordinator with Tri-County CAP; and Paulette P. Lowrey, Utility Specialist with CAP's termination protection program.

Mr. McManus reviewed the history of the Commission's winter termination rules and noted the Commission's encouragement to utilities to submit alternative proposals. Mr. McManus stated that the existing rules are deficient because: 1) all customers are protected regardless of need; 2) customers are only protected during a four month winter period; 3) customers can be disconnected regardless of need if arrearage levels are exceeded; and 4) customers are confronted with unmanageable arrearages at the conclusion of the winter season. The proposed program was developed to address those deficiencies. Under the program, no certified elderly customers would be terminated without specific Commission approval. Other PSNH customers who are at or below 150% of federal poverty guidelines would be eligible for the protection afforded by the program. Arrearage levels are not a part of the eligibility criteria. Additionally, the program will operate year round; needy customers will not find themselves without protection during the non-winter months. Mr. McManus also

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discussed the reluctance of customers to provide PSNH with age or income information. Thus, CAP and DHR have a vital role to play in determining eligibility. CAP will also provide counseling to reduce the number of needy customers facing unmanageable arrearages at the conclusion of the winter season.

Ms. Rinker described PSNH's termination procedures as applied to certified customers and all other customers. In essence, certified customers are given notice that they have 10 days to enter into payment arrangements with PSNH in place of PSNH's first threatening termination notice. Ms. Rinker was also responsible for collecting and presenting the data developed to evaluate the pilot targeted termination program.

Mr. Beaupre calculated the benefits to the Company resulting from a yearround targeted termination program in lieu of the existing Commission rules. Most of those benefits occur because of projected changes in the Company's accounts receivable.

Ms. Nolin's testimony updated the proposed implementation plan that had previously been filed with the Commission. Ms. Nolin's update included additional data on participation costs and monitoring results. Ms. Nolin also testified on eligibility criteria, the difficulty of measuring the effectiveness of the program and the need for the program.

Ms. Hook, Mr. Stitham, Mr. Guiser and Ms. Lowrey testified as a panel. Their testimony described CAP programs and certification procedures. The panel also testified on CAP's perception of the value of the targeted termination program.

B. Position of VOICE

VOICE generally opposed the targeted termination program, claiming that the program does not increase benefits to the poor, but rather eliminates benefits already provided. VOICE also argued that the benefit of flexible payment arrangements should be available to all customers experiencing difficulty paying utility bills, rather than only to those customers who fall below 150% of federal poverty guidelines. VOICE noted that the purpose of the winter termination rules is to protect customers from termination of service at times when there could be an undue risk to health and safety, so long as arrearage limits were not exceeded.

In support of its position, VOICE presented the testimony of Lorraine Sakowicz, the Chairperson of VOICE. Ms. Sakowicz stated VOICE's position and summarized her concerns about the proposed program. Those concerns include the level of protection to be afforded, the number of participants who will be protected, the effect of lifting the existing termination rules and the effect of the proposed program on those who cannot or do not participate.

C. Position of the Consumer Advocate

The Consumer Advocate supported the proposed targeted termination program. He argued that the proposed program will benefit low income ratepayers and will reduce the number of customers subject to disconnect. The Consumer Advocate also argued that the counseling aspect of the program, to be provided by CAP, will be particularly valuable.

COMMISSION ANALYSIS

[1] The Petitioners are seeking

approval for a program which, in essence, abandons the winter termination protection previously required and substitutes in its place a mechanism for identifying and assisting low-income ratepayers. While there are some valuable elements to the proposed program, we

conclude that the request to move to system-wide implementation should be denied because the program as a whole only assists one segment of the ratepaying public and because such assistance is of limited value.

The Commission notes that the record contains a large quantity of data gathered as a result of the pilot program. Much of that information is useful. However, in the course of an overall examination of the record, it has been difficult to ascertain how the data should be analyzed to review the Petitioners' proposal. In this context, Exhibit No. 7 submitted by Staff is useful for the purpose of determining the definition of the targeted population and the nature of the benefits.

It is undisputed that the population entitled to the targeted benefits are low-income ratepayers, defined as those with incomes at or below 150% of the federal poverty guidelines, and elderly ratepayers. Those ratepayers who are entitled to the benefits are considered to be "eligible" in which case they may be certified if they apply for such certification at their local CAP office. Thus, the ratepaying public is divided into two broad categories: 1) those who are the certified eligible; and 2) all other ratepayers. Our initial concern is for the second category of "all other ratepayers".

It is immediately apparent that the second category of ratepayers form the vast majority of the ratepaying public. If the proposed program is implemented, those ratepayers will be asked to bear much of the cost of the proposed program. Those ratepayers will also be left without any of the protection of either the targeted program or the existing winter-termination rules.

We are cognizant of the testimony by PSNH witnesses which reflects PSNH's willingness to work with the noncertified group of ratepayers to arrive at fair payment arrangements. PSNH's policy in this area is to be commended. However, we have been unable to identify any differences between how noncertified ratepayers will be treated under the various alternative programs. Given that PSNH treats ratepayers as they should be treated under all alternatives, the regulatory choice, as it pertains to non-certified ratepayers, is a narrow one: either continue to afford the existing winter termination protection or revert to the regulatory situation which existed prior to the development of the existing protection.

[2] Our view of the needs of the ratepaying public have not changed since the adoption of the existing winter termination rules. We believe that protection is warranted. Although the protection need not necessarily take the form of the existing rules, it should address the health and safety concerns inherent in the winter termination of vital utility service. Those health and safety concerns do not stop at certain arbitrary income or age levels. Our concerns would not be addressed by the proposed program; if anything, projected post-Seabrook rate levels indicate that the difficulty of the ratepaying public in meeting its obligations to PSNH will be increased. Thus, in the absence of a program which provides a means by which PSNH can take the responsibility to work directly with

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those ratepayers who, regardless of age or income, may need assistance of one form or another, we cannot approve a waiver from the existing winter termination rules.³⁽⁴⁰⁸⁾

Having identified the program deficiencies as they pertain to the vast majority of the

ratepaying public, it remains to address the benefits of the program to those ratepayers who are certified. As noted, that group is defined as those elderly or income eligible ratepayers who apply for certification at their local CAP offices. After review, we find that the benefits to be derived by certified participants are insufficient to overcome the burdens to all other ratepayers.

Initially, we must take note of the record evidence that indicates that one significant group of eligible ratepayers does not need the assistance provided by the proposed program. That group is the elderly. The evidence indicates that, as a group, the elderly have fewer bill-paying problems than other identified groups of ratepayers. It should also be noted that those few elderly ratepayers who are in need of protection have that protection under the existing Commission rules. N.H. Admin. Rules, Puc 303.08(k)(4). To the extent that an elderly ratepayer elects not to go through the CAP certification process, the existing protection would be lost under the proposed program. The revocation of existing winter termination protection for the non-certified elderly raises substantial health and safety concerns.

The remaining eligible ratepayers are those with incomes at or below 150% of the federal poverty guidelines. If those ratepayers elect to be certified, they are entitled to CAP assistance in working with PSNH to make payment arrangements. Additionally, PSNH sends such participants a letter directing them to make payment arrangements in lieu of its standard termination notice. Those certified ratepayers who do not participate in the program or who fail to adhere to payment arrangements are subject to winter termination of service. Unlike the existing rules, termination can take place regardless of the level of the arrearages.

The effect of the above is to interpose an extra step for eligible ratepayers. They must be certified by CAP. Additionally, eligible ratepayers have the ability to work through CAP to reach mutually acceptable payment arrangements. This has the effect of insulating PSNH from direct dealing with those low-income or elderly ratepayers who are confronted with the hardship of paying utility bills. While we recognize that there are customers who do not trust PSNH and prefer to work through CAP, we do not believe that this factor should in itself relieve PSNH from the responsibility of dealing directly with the electric bill-paying difficulties of its customers.

On the basis of the above analysis, we cannot find that the benefits of the program are sufficient to outweigh the burdens. Accordingly, the Petition will be denied.

We note however, that there are several elements of the proposed program that have value. In the interest of encouraging the development of alternative winter termination policies, such elements should be cited with favor. One such element is the counseling

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function to be performed by CAP. Such counseling has the ability to provide a benefit to all of PSNH's residential ratepayers and, to the extent that future programs include such a counseling function by CAP, we would entertain a request to include reasonable payments to CAP within PSNH's cost of service. Another such element is the year-round nature of the program. We have been persuaded by Petitioners' evidence that ratepayer bill-paying difficulties do not start and stop with the winter and summer solstices. Year round programs in which PSNH proposes to address directly the needs of all its residential ratepayers will go far in addressing the

deficiencies in the instant proposal.

Our Order will issue accordingly. December 20, 1985

SUPPLEMENTAL ORDER

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

ORDERED, that the request of Public Service Company of New Hampshire, Community Action Program and Office of the Governor, Division of Human Resources for approval of a system-wide implementation of a targeted termination program with concurrent waivers from Commission winter termination rules be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1985.

FOOTNOTES

¹Electric heating customers may not be terminated during the winter if their accumulated arrearage is \$300 or less.

²Low income customers are defined as those with incomes at or below 150% of the federal poverty guidelines.

³The Commission has approved other proposals when utilities have implemented programs to address directly the bill-paying problems of ratepayers. See e.g., Re Exeter & Hampton Electric Co., 68 NH PUC 660 (1983). The Petitioners were not familiar with this alternative program already adopted in this jurisdiction.

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NH.PUC*12/20/85*[61290]*70 NH PUC 1079*Alexandria Power Corporation

[Go to End of 61290]

70 NH PUC 1079

Re Alexandria Power Corporation

DR 85-413, Order No. 18,014

New Hampshire Public Utilities Commission

December 20, 1985

PETITION for approval of long term rates for sale of electricity by a qualifying cogeneration and small power production facility; granted, subject to a 10 day period for filing of exceptions.

Page 1079

By the COMMISSION:

ORDER

WHEREAS, on December 9, 1985, Alexandria Power Corporation (Alexandria) filed a long term rate petition; and

WHEREAS, the Petition requested inter alia a twenty year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to Alexandria's Petition for a 20-Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984), 70 NH PUC 753, 69 PUR4th 365 (1985); it is therefore,

ORDERED NISI, that Alexandria's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1985.

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NH.PUC*12/26/85*[61291]*70 NH PUC 1080*Pittsfield Aqueduct Company, Inc.

[Go to End of 61291]

70 NH PUC 1080

Re Pittsfield Aqueduct Company, Inc.

DR 80-125,

13th Supplemental Order No. 18,015

New Hampshire Public Utilities Commission

December 26, 1985

ORDER authorizing increase in rates to cover cost of meter installation.

Page 1080

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission in this Docket and Order No. 15,556 (67 NH PUC 250, 251)

has stated "... that it (Pittsfield Aqueduct Co.) must immediately proceed with the annual addition of 50 new meters until all customers are metered.", and further that "At the completion of the installation of the 50 meters, we will accept a filing by Pittsfield for the purpose of making a step increase based on actual costs." and

WHEREAS, Pittsfield Aqueduct Company has submitted that the capital cost of 50 meters installed during 1985 is \$7,397.50 and the increased operating costs incurred with these installations is \$430, resulting in increased operating revenues required of \$2,060; it is hereby

ORDERED, that Pittsfield Aqueduct Company may increase its revenues, effective with its January 1, 1986 billing, by \$2,060.

By order of the Public Utilities Commission of New Hampshire this twentysixth day of December, 1985.

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NH.PUC*12/26/85*[61292]*70 NH PUC 1081*TDEnergy, Inc.

[Go to End of 61292]

70 NH PUC 1081

Re TDEnergy, Inc.

DR 85-41, Order No. 18,017

New Hampshire Public Utilities Commission

December 26, 1985

ORDER approving long term rates and interconnection for sale of electricity by a qualifying cogeneration and small power production facility upon condition of tender of performance bond.

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By the COMMISSION:

ORDER

WHEREAS, on January 25, 1985, TDEnergy (TDE) filed a long term rate petition; and

WHEREAS, TDE filed amendments to its petition on January 31, 1985, February 8, 1985, and December 5, 1985; and

WHEREAS, the Petition requested inter alia, a twenty-year rate order; and

WHEREAS, pursuant to Re TDEnergy Inc., 69 NH PUC 397 (1984) such rate order will be granted to the Petitioner conditioned by "the submission of a performance bond to PSNH by TDE no later than the operational date of the facility or some equivalent form of surety such as an escrowed maintenance account and/or revised rate design incorporating a lesser amount of frontend loading"; and

WHEREAS TDE avers that it is negotiating with PSNH regarding the performance bond and other alternative forms of security to reduce ratepayer risk (letter from Robert Olson, Esq. of November 15, 1985); and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to TDE's Petition for a twentyyear rate order; and

WHEREAS, TDE's petition appears to be consistent with the requirements of Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) in all respects other than the security arrangements; it is therefore

ORDERED NISI, that TDE's Petition for a twenty-year rate order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet are approved conditional on the submission by TDE to PSNH of a performance bond or its equivalent no later than the operational date of the facility; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 20 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 30 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this twentysixth day of December, 1985.

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NH.PUC*12/27/85*[61293]*70 NH PUC 1083*Concord Natural Gas Corporation

[Go to End of 61293]

70 NH PUC 1083

Re Concord Natural Gas Corporation

Additional respondent: Gas Service, Inc.

DE 85-423, Order No. 18,018

New Hampshire Public Utilities Commission

December 27, 1985

ORDER approving amendment to special contract authorizing installation of tie-in between take stations.

By the COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Corporation and Gas Service, Inc. propose an amendment

to Special Contract No. 9 which will authorize the installation of a tie-in between the GSI take station and the CNGC take station in Concord for the purpose of providing emergency natural gas service to Concord, and

WHEREAS, under the agreement CNGC will pay to GSI for gas used through a metered bypass based on GSI most expensive gas sent out each day that it is used, plus 5% and

WHEREAS, upon investigation the Commission finds that the proposed tie-in is in the public interest and will provide an economical emergency supplemental source of supply to Concord, it is

ORDERED, that Paragraph 23 to Special Contract No. 9 between Gas Service, Inc. and Concord Natural Gas Corporation be and hereby is approved.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of December, 1985.

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NH.PUC*12/27/85*[61294]*70 NH PUC 1084*Southern New Hampshire Water Company, Inc.

[Go to End of 61294]

70 NH PUC 1084

Re Southern New Hampshire Water Company, Inc.

DR 85-166, Order No. 18,019

New Hampshire Public Utilities Commission

December 27, 1985

PETITION for authority to implement rates for newly constructed "Sawmill" water utility distribution system; granted.

Rates, § 595 — Water utilities — New distribution system — Surrogate cost data.

In setting water service rates for the newly constructed "Sawmill" water utility distribution system for which there was no actual operating data for an entire year, it was held appropriate to adopt rates effective in another operating division as surrogate rates pending the availability of actual historical cost data for the new system. [1] p.1084.

Rates, § 235 — Initiation of tariffs — Initial rates — Temporary effect.

Where water service rates for the newly constructed "Sawmill" water utility distribution system were set temporarily on the basis of rates effective in another operating division, pending the availability of actual historical cost data for the new system, such rates were properly characterized as initial permanent rates based upon estimated data, rather than "temporary" rates. [2] p.1085.

Rates, § 250 — Effective date — Retroactive ratemaking — Initial rates.

Where the effective date of new water service rates for the newly constructed "Sawmill" water utility distribution system was set retroactively for all bills rendered after the date that service was commenced, the approval of rates did not represent retroactive ratemaking, because the utility had not yet issued any billings. [3] p.1085.

APPEARANCES: For Fryer, Boutin, Warhall and Solomon, P.A., Edmund J. Boutin, Esquire, representing Southern New Hampshire Water Company, Inc.; Dr. Sarah Voll, Daniel Lanning, Robert Lessels and James Lenihan for Staff.

By the COMMISSION:

[1] On May 20, 1985, Southern New Hampshire Water Company, Inc. (Southern) filed a petition requesting temporary rates for its Sawmill division, a newly constructed water system located in Litchfield, New Hampshire. The Commission issued its Order No. 17,659 on June 10, 1985, suspending the filing pending investigation.

In developing Sawmill division's proposed rates, Southern utilized the rates of its Londonderry division as a surrogate. Southern is of the opinion this is necessary because the Sawmill division does not have a full year of actual costs on which to base rates. It then seemed appropriate to identify another

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Southern water division with like characteristics and use its rates as a surrogate temporarily until a history of actual costs can be established.

Southern's original filing consisted of a letter on the proposed tariff page. At staff's request, Southern refiled using the Commission's filing requirements. Based on the evidence provided in the revised filing, we find that the rate proposed for the Sawmill division is just and reasonable.

[2] There are two other issues which need discussion herein. The first is whether this filing is truly a petition for temporary rates under RSA 378:27, or simply a filing to establish permanent rates based on estimated data, in lieu of known and measurable costs. The Commission believes the latter is correct.

The Commission's rules and regulations do not specifically provide for this situation. This particular problem is manifested in new utility franchises. These are proposed utilities, in particular water systems, which have capital expenditure outlays and stand ready to provide a service, yet do not have a tariff nor the historical data base on which to develop such.

This Commission has firmly established the precedent that a utility's rates are based on an historical cost of service. These utilities obviously cannot provide an historical cost of service. In similar cases in the past, the Commission has accepted estimated data which was used to develop a rate.

The Commission finds that such use of estimated data is appropriate in this case as opposed to the establishment of temporary rates pursuant to RSA 378:27. We will allow the surrogate rates to become effective until such time that the utility's Sawmill division can establish a record

for revenue and expenditures. At that time the division shall petition for an adjustment in rates based on the historical cost of service. This also precludes any recoupment of shortfall in revenue which may transpire during the period that surrogate rates are in effect as permanent rates. This decision is consistent with our past practice for new franchises and is also consistent with Southern's petition in this docket.

[3] The other issue to be discussed is the effective date of the proposed filing. Southern requests that the rates be effective for all bills rendered after July 15, 1985, the date service began in this division.

This would appear to be a retroactive approval for rates. This is not the case however. Southern has not issued any billings. The customers, of course, cannot expect that the service they have received is free.

Further, Southern has published the Commission's Order of Notice for these rates on July 1, 1985 and again on July 8, 1985. This, in part, does provide notice of the rates. In the absence of any billing rate during the period, a customer must presume that the filed rates may be applicable and thereby adjust their usage accordingly.

Therefore, the Commission will allow the proposed effective date as filed. Southern has provided the service and requires just and reasonable remuneration. The customer has received adequate notice of the rate to be paid.

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 Order No. 17,659, dated June 10, 1985, which suspended Original Page 18D of tariff NHPUC No. 7, Southern New Hampshire Water Company, Inc., is rescinded; and it is

FURTHER ORDERED, Original Page 18D shall bear the effective Date of July 15, 1985, and notation as required by NHCAR PUC 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twentyseventh of December, 1985.

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NH.PUC*12/27/85*[61295]*70 NH PUC 1086*Southern New Hampshire Water Company, Inc.

[Go to End of 61295]

70 NH PUC 1086

Re Southern New Hampshire Water Company, Inc.

DR 85-167, Order No. 18,020

New Hampshire Public Utilities Commission

December 27, 1985

PETITION for authority to implement rates for newly constructed "Amherst" water utility distribution system; granted.

Rates, § 595 — Water utilities — New distribution system — Surrogate cost data.

In setting water service rates for the newly constructed "Amherst" water utility distribution system for which there was no actual operating data for an entire year, it was held appropriate to adopt rates effective in another operating division as surrogate rates pending the availability of actual historical cost data for the new system. [1] p.1086.

Rates, § 235 — Initiation of tariffs — Initial rates — Temporary effect.

Where water service rates for the newly constructed "Amherst" water utility distribution system were set temporarily on the basis of rates effective in another operating division, pending the availability of actual historical cost data for the new system, such rates were properly characterized as initial permanent rates based upon estimated data, rather than "temporary" rates. [2] p. 1087.

Rates, § 250 — Effective date — Retroactive ratemaking — Initial rates.

Where the effective date of new water service rates for the newly constructed "Amherst" water utility distribution system was set retroactively for all bills rendered after the date that service was commenced, the approval of rates did not represent retroactive ratemaking, because the utility had not yet issued any billings. [3] p. 1087.

APPEARANCES: For Fryer, Boutin, Warhall and Solomon, P.A., Edmund J. Boutin, Esquire, representing Southern New Hampshire Water Company, Inc.; Dr. Sarah Voll, Daniel Lanning, Robert Lessels and James Lenihan for Staff.

[1] On May 20, 1985, Southern New Hampshire Water Company, Inc. (Southern) filed a petition requesting temporary rates for its Amherst division, a newly constructed water system located in Amherst, New Hampshire. The Commission issued its Order No. 17,659 on June 10, 1985, suspending the filing pending investigation.

In developing Amherst division's proposed rates, Southern utilized the rates

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of its Londonderry division as a surrogate. Southern is of the opinion this is necessary because the Amherst division does not have a full year of actual costs on which to base rates. It then seemed appropriate to identify another Southern water division with like characteristics and use its rates as a surrogate temporarily until a history of actual costs can be established.

Southern's original filing consisted of a letter on the proposed tariff page. At staff's request,

Southern refiled using the Commission's filing requirements. Based on the evidence provided in the revised filing, we find that the rate proposed for the Amherst division is just and reasonable.

[2] There are two other issues which need discussion herein. The first is whether this filing is truly a petition for temporary rates under RSA 378:27, or simply a filing to establish permanent rates based on estimated data, in lieu of known and measurable costs. The Commission believes the latter is correct.

The Commission's rules and regulations do not specifically provide for this situation. This particular problem is manifested in new utility franchises. These are proposed utilities, in particular water systems, which have capital expenditure outlays and stand ready to provide a service, yet do not have a tariff nor the historical data base on which to develop such.

This Commission has firmly established the precedent that a utility's rates are based on an historical cost of service. These utilities obviously cannot provide an historical cost of service. Similar cases in the past, the Commission has accepted estimated data which was used to develop a rate.

The Commission finds that the instant case is similar to the above situation, and not temporary rates as described in RSA 378:27. We will allow the surrogate rates to become effective until such time that the utility's Amherst division can establish a record for revenue and expenditures. At that time the division will petition for an adjustment in rates based on the historical cost of service. This also precludes any recoupment of shortfall in rates which may transpire during the period that surrogate rates are in effect as permanent rates. This decision is consistent with our past practice for new franchises and is also consistent with Southern's petition in this docket.

[3] The other issue to be discussed is the effective date of the proposed filing. Southern requests that the effective date be on all billings rendered after July 15, 1985, which is the date service began in this division.

This would appear to be a retroactive approval for rates. This is not the case however. Southern has not issued any billings. The customers, of course, cannot expect that the service they have received is for free. It is, therefore, reasonably assumed that some charge for the service is forthcoming.

Further, Southern has published the Commission's Order of Notice for these rates on July 1, 1985 and again on July 8, 1985. This, in part, does provide notice of the rates. In the absence of any billing rate during the period, a customer must presume that the filed rates are the standard and thereby measure their usage accordingly.

Therefore, the Commission will allow the proposed effective date as filed. This is because Southern has provided the service and requires just and reasonable remuneration for such and the

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customer has received adequate notice of the rate to be paid.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Order No. 17,659, dated June 10, 1985, which suspended Original Page 18D of tariff NHPUC No. 7, Southern New Hampshire Water Company, Inc., is rescinded; and it is

FURTHER ORDERED, Original Page 18D shall bear the effective Date of July 15, 1985, and notation as required by NHCAR PUC 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twentyseventh of December, 1985.

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NH.PUC*12/27/85*[61296]*70 NH PUC 1088*Southern New Hampshire Water Company, Inc.

[Go to End of 61296]

70 NH PUC 1088

Re Southern New Hampshire Water Company, Inc.

DR 85-308, Order No. 18,021

New Hampshire Public Utilities Commission

December 27, 1985

PETITION for authority to implement rates for newly constructed "Avery" water utility distribution system; granted.

Rates, § 595 — Water utilities — New distribution system — Surrogate cost data.

In setting water service rates for the newly constructed "Avery" water utility distribution system for which there was no actual operating data for an entire year, it was held appropriate to adopt rates effective in another operating division as surrogate rates pending the availability of actual historical cost data for the new system. [1] p.1088.

Rates, § 235 — Initiation of tariffs — Initial rates — Temporary effect.

Where water service rates for the newly constructed "Avery" water utility distribution system were set temporarily on the basis of rates effective in another operating division, pending the availability of actual historical cost data for the new system, such rates were properly characterized as initial permanent rates based upon estimated data, rather than "temporary" rates. [2] p.1089.

Rates, § 250 — Effective date — Retroactive rate making — Initial rates.

Where the effective date of new water service rates for the newly constructed "Avery" water utility distribution system was set retroactively for all bills rendered after the date that service was commenced, the approval of rates did not represent retroactive rate making, because the

utility had not yet issued any billings. [3] p.1089.

APPEARANCES: For Fryer, Boutin, Warhall and Solomon, P.A., Edmund J. Boutin, Esquire, representing Southern New Hampshire Water Company, Inc.; Dr. Sarah Voll, Daniel Lanning, Robert Lessels and James Lenihan for Staff.

By the COMMISSION:

[1] On May 20, 1985, Southern New Hampshire Water Company, Inc. (Southern) filed a petition requesting temporary rates for its Avery division, a newly constructed water system located in Londonderry, New Hampshire. The Commission issued its Order No. 17,659 on June 10, 1985,

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suspending the filing pending investigation.

In developing Avery division's proposed rates, Southern utilized the rates of its Londonderry division as a surrogate. Southern is of the opinion this is necessary because the Avery division does not have a full year of actual costs on which to base rates. It then seemed appropriate to identify another Southern water division with like characteristics and use its rates as a surrogate temporarily until a history of actual costs can be established.

Southern's original filing consisted of a letter on the proposed tariff page. At staff's request, Southern refiled using the Commission's filing requirements. Based on the evidence provided in the revised filing, we find that the rate proposed for the Avery division is just and reasonable.

[2] There are two other issues which need discussion herein. The first is whether this filing is truly a petition for temporary rates under RSA 378:27, or simply a filing to establish permanent rates based on estimated data, in lieu of known and measurable costs. The Commission believes the latter is correct.

The Commission's rules and regulations do not specifically provide for this situation. This particular problem is manifested in new utility franchises. These are proposed utilities, in particular water systems, which have capital expenditure outlays and stand ready to provide a service, yet do not have a tariff nor the historical data base on which to develop such.

This Commission has firmly established the precedent that a utility's rates are based on an historical cost of service. These utilities obviously cannot provide an historical cost of service. In similar cases in the past, the Commission has accepted estimated data which was used to develop a rate.

The Commission finds that the instant case is similar to the above situation, and not temporary rates as described in RSA 378:27. We will allow the surrogate rates to become effective until such time that the utility's Avery division can establish a record for revenue and expenditures. At that time the division will petition for an adjustment in rates based on the historical cost of service. This also precludes any recoupment of shortfall in rates which may transpire during the period that surrogate rates are in effect as permanent rates. This decision is

consistent with our past practice for new franchises and is also consistent with Southern's petition in this docket.

[3] The other issue to be discussed is the effective date of the proposed filing. Southern requests that the effective date be on all billings rendered after July 15, 1985, which is the date service began in this division.

This would appear to be a retroactive approval for rates. This is not the case however. Southern has not issued any billings. The customers, of course, cannot expect that the service they have received is for free. It is, therefore, reasonably assumed that some charge for the service is forthcoming.

Further, Southern has published the Commission's Order of Notice for these rates on July 1, 1985 and again on July 8, 1985. This, in part, does provide notice of the rates. In the absence of any billing rate during the period, a customer must presume that the filed rates are the standard and thereby measure their usage accordingly.

Therefore, the Commission will allow the proposed effective date as filed.

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This is because Southern has provided the service and requires just and reasonable remuneration for such and the customer has received adequate notice of the rate to be paid.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is made a part hereof; it is hereby ORDERED, that Order No. 17,659, dated June 10, 1985, which suspended Original Page 18D of tariff NHPUC No. 7, Southern New Hampshire Water Company, Inc., is rescinded; and it is

FURTHER ORDERED, Original Page 18D shall bear the effective Date of July 15, 1985, and notation as required by NHCAR PUC 1601.05(k).

By order of the Public Utilities Commission of New Hampshire this twentyseventh of December, 1985.

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NH.PUC*12/27/85*[61297]*70 NH PUC 1090*Manchester Gas Company

[Go to End of 61297]

70 NH PUC 1090

Re Manchester Gas Company

DR 85-317, Order No. 18,022

New Hampshire Public Utilities Commission

December 27, 1985

ORDER approving special private contract for gas utility service.

By the COMMISSION:

WHEREAS, Manchester Gas Company, a utility selling gas under the jurisdiction of this Commission has filed with this Commission Special Contract No. 27 with Pandora Industries, Inc., effective on approval by Commission order, for gas service at rates other than those fixed by its schedule of general application; and

WHEREAS, upon investigation and consideration this Commission is of the opinion that special circumstances exist relative thereto which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract may become effective on the date specified in the contract.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of December, 1985.

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NH.PUC*12/27/85*[61298]*70 NH PUC 1091*Paul T. Phillips/Exeter River Hydro Mainstream Associates

[Go to End of 61298]

70 NH PUC 1091

Re Paul T. Phillips/Exeter River Hydro Mainstream Associates

DR 85-384, Order No. 18,023

New Hampshire Public Utilities Commission

December 27, 1985

ORDER approving long term rates and interconnection for sale of electricity by a qualifying cogeneration and small power production facility.

By the COMMISSION:

ORDER

WHEREAS, on November 7, 1985, Paul T. Phillips/Exeter River Hydro (ERH) filed a long term rate petition; and

WHEREAS, ERH filed amendments to its filing on December 13, 1985 for the Project; and

WHEREAS, the Petition requested inter alia a twenty year rate order; and

WHEREAS, the Commission will allow Public Service Company of New Hampshire (PSNH) the opportunity to respond to ERH's Petition for a 20Year Rate Order; and

WHEREAS, the filing appears to be consistent with the requirements of Re Small Energy

Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984) and 70 NH PUC 753, 69 PUR4th 365 (1985); it is therefore,

ORDERED NISI, that ERH's Petition for a 20-Year Rate Order for approval of its interconnection agreement with PSNH and for approval of rates set forth on the long term worksheet is approved; and it is

FURTHER ORDERED, that PSNH may file comments, exceptions or such other response to the instant Petition as it deems necessary no later than 10 days from the date of this Order; and it is

FURTHER ORDERED, that this Order Nisi shall be effective 20 days from the date of this Order unless the Commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twentyseventh day of December, 1985.

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NH.PUC*12/27/85*[61299]*70 NH PUC 1092*Nuclear Emergency Planning

[Go to End of 61299]

70 NH PUC 1092

Re Nuclear Emergency Planning

DE 85-380,

Third Supplemental Order No. 18,024

New Hampshire Public Utilities Commission

December 27, 1985

ORDER approving schedule for payment to state treasury of fines assessed against an electric utility operating division in connection with preparation and implementation of radiological emergency response plan.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on November 14, 1985, Chairman Vincent J. Iacopino issued Report and Order No. 17,947 (70 NH PUC 934) in which the New Hampshire Yankee Division of Public Service Company of New Hampshire was assessed \$947,370 pursuant to RSA 107-B in connection with the New Hampshire Civil Defense Agency's preparation and implementation of radiological emergency response plans for the New Hampshire Yankee Division of Public Service Company of New Hampshire; and

WHEREAS, the New Hampshire Civil Defense Agency and the New Hampshire Yankee Division of Public Service Company of New Hampshire have agreed that this amount be

submitted to the State of New Hampshire Treasurer by the New Hampshire Yankee Division of Public Service Company of New Hampshire according to the following schedule:

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

January 1, 1986	\$236,842.50
January 1, 1986	236,842.50
March 30, 1986	236,842.50
June 15, 1986	236,842.50
Less balance on	
June 30, 1985	-207,301.44
Net due on	
June 15, 1986	29,541.06

and

WHEREAS, the Chairman finds this proposed schedule to be reasonable; it is hereby

ORDERED, that the New Hampshire Yankee Division of Public Service Company of New Hampshire submit \$947,370 to the State of New Hampshire Treasurer according to the above-stated schedule.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of December, 1985.

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NH.PUC*12/31/85*[61300]*70 NH PUC 1093*Public Service Company of New Hampshire

[Go to End of 61300]

70 NH PUC 1093

Re Public Service Company of New Hampshire

Intervenors: Office of Consumer Advocate and Community Action Program

DR 85-398, Order No. 18,028

New Hampshire Public Utilities Commission

December 31, 1985

PETITION for authority to modify rate under energy cost recovery mechanism.

Automatic Adjustment Clauses, § 17 — Energy cost recovery clauses — Indirect costs — Generating plants — Operational testing — Energy requirements.

A proposal to change the method of calculation of the energy cost recovery mechanism to recover, on a marginal cost basis, the increase in fuel costs associated with additional electricity used to conduct tests of the Seabrook nuclear generating station was rejected; instead, the energy cost recovery mechanism continued to be applied by allocating the average system energy costs among rate classes on the basis of electric consumption. [1] p. 1095.

Automatic Adjustment Clauses, § 11 — Energy cost recovery clauses — Direct costs — Coal

inventories.

An expense adjustment to reflect a correction in the amount of coal inventories was allocated only to prime sales customers and was not required also to be allocated to coal handling usage and construction power. [2] p. 1096.

Automatic Adjustment Clauses, § 28 — Energy cost recovery clauses — Credits — Plant availability incentive.

A proposed change to the energy cost recovery mechanism to modify the "unit availability incentive" for the length of planned outages at electric generating plants by establishing a time period during which there would be no incentive or penalty was rejected. [3] p. 1097.

Automatic Adjustment Clauses, § 13 — Energy cost recovery clauses — Direct costs — Purchased power — Capacity exchange agreement.

Energy costs to be incurred under a proposed agreement for the exchange of capacity entitlements between two electric utilities, designed to minimize capacity costs during periods of planned outages, were to be reflected in the energy cost recovery mechanism (ECRM); however, unit maintenance costs incurred under the agreement were not allowed to be reflected in the ECRM. [4] p. 1098.

Automatic Adjustment Clauses, § 32 — Energy cost recovery clauses — Rights and duties — Fuel procurement — Competitive bidding.

An electric utility was directed prospectively to solicit competitive bids for the procurement of fuel oil, with such bidding tabulations to remain on file subject to commission review in connection with the utility's energy cost recovery mechanism. [5] p. 1099.

Automatic Adjustment Clauses § 11 — Energy cost recovery clauses — Direct costs — Fossil fuel — Oil.

Discussion of factors used to calculate projected residual oil prices for inclusion in

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rate collected under energy cost recovery mechanism. p. 1094.

APPEARANCES: For Sulloway Hollis & Soden, Eaton W. Tarbell, Jr., Esquire representing Public Service of New Hampshire; Michael W. Holmes, Esquire, Consumer Advocate; for the Community Action Program (CAP), Gerald Eaton, Esquire; for staff, Larry Smukler, Esquire.

By the COMMISSION:

REPORT

This docket was initiated by a petition filed on November 22, 1985, by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the July through December, 1985, rate of \$2.98/100 KWH to a rate of \$3.386/100 KWH for January through

June, 1985. On November 27, 1985, PSNH revised this request from the rate of \$3.386/ 100 KWH to \$3.416/100 KWH.

Duly noticed hearings were held at the Commission's offices in Concord on December 18 and 19, 1985, at which time PSNH presented eleven (11) witnesses and twenty-three (23) exhibits.

In response to a staff data request, PSNH submitted an updated ECRM rate of \$3.408/100 KWH. PSNH indicated that it would not object to this rate but did not amend its petition to request the rate because the update was not prepared until after the ECRM filing date (November 31, 1985). This was in keeping with a Commission request made during prior ECRM proceedings to avoid last minute changes in the filing which would not give the parties to ECRM an adequate opportunity to prepare.

Prior to the hearings, the Commission staff submitted nineteen data requests. The Company's responses to these requests were submitted and marked as exhibits 18 and 19.

During the course of the hearings, several aspects of the filings were explored, some of which were:

1. Oil price estimates, and contracts with oil suppliers;
2. Natural gas purchases, and possibilities of additional gas fired electric generation;
3. A sales growth estimate of 3.7% for the first half of 1986;
4. The Schiller conversion fixed adder and individual cost components;
5. A Merrimack Station coal inventory adjustment;
6. Generation "swap" between PSNH and Connecticut Power and Light;
7. The unit availability incentive feature in ECRM;
8. The effect of the Seabrook Hot functional test on ECRM;
9. A change in the method of forecasting qualified facilities and the effect it has on ECRM;
- and 10. The Schiller agreement between wholesale customers and PSNH.

Several of these items merit additional discussion:

I. OIL PRICE ESTIMATES AND TRENDS

PSNH's projected residual oil prices for the ECRM period ending June, 1986, show a gradual rise in price from \$22.60/bbl. in January to \$23.03/bbl. in

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March. Prices are projected to fall to \$21.35/bbl. by June of 1986. In calculating its oil prices, the Company used a first-in first-out accounting method, and then estimated the monthly quantities of oil to be burned during the period. Future delivered oil costs were established by taking into account the following:

- 1) Current outlook for crude oil prices
- 2) Historical price movements

- 3) Current market situation for residual oil
- 4) Data Resources, Inc. — Monthly Energy Outlook: October, 1985
- 5) U.S. Department of Energy — Short Term Energy Outlook: DOE/EIA-0202(85/2Q)
- 6) A telephone survey of utility fuel buyers and suppliers

The company combined all the above information in making a final monthly estimated cost of oil to be burned. The most recent Department of Energy Short-Term Energy Outlook DOE/EIA 0202 (85/4Q) projects the retail residual fuel oil-average all sulfur content to be \$23.92/bbl. for the first half of 1986. Given that the company uses a low viscosity high btu content residual oil, the slightly lower company projections appear to be consistent with the DOE forecast. To assure that the Company's estimates remain reasonably accurate, we will continue to request monthly updates on the actual versus estimated cost of oil.

II. THE EFFECT OF THE SEABROOK STATION HOT FUNCTIONAL TEST ON ECRM

[1] During the hearings, staff and CAP questioned the cost of power used in the testing of Seabrook Station's hot functional facilities. They argued that this test was an extraordinary item which created an unusually large demand for electricity and, in turn, increased the average cost of electricity for all customers.

This is inherent in the ECRM computation. The cost of energy for retail sales, wholesale sales, coal handling, and construction power is "pooled" in ECRM and allocated to each class on the basis of consumption. Mathematically this simply allocates the average PSNH system energy cost to each class and does not consider the additional demand which one class may require over another, and the additional costs which may be related thereto.

Exhibit 21 indicates that the hot functional test at Seabrook Station could have increased the average cost of energy by \$0.09/MWH. This assumes that the hot functional test is responsible for PSNH's marginal electric demand during the period the test was in operation.

The Commission is not ready to make this assumption, nor does the Commission wish to alter the method of calculating ECRM at this time. The Commission believes that at this time it is important to calculate the instant ECRM consistently with prior periods.

Staff's assertion requires a change in the mechanism to reflect economic factors which are outside the current ECRM methodology. To take this into consideration now would be inconsistent with past practice. In a regulated environment consistency is a major consideration. Accordingly, ECRM will not be adjusted for additional costs which may have been incurred during the hot functional test at Seabrook Station.

III. MERRIMACK STATION COAL INVENTORY ADJUSTMENT

[2] During the second half of 1985, PSNH contracted a surveyor to measure the coal pile at the Merrimack Station in Bow, New Hampshire. The results of this survey indicated that the physical inventory was 27,841 tons less than recorded in PSNH's book inventory. A PSNH witness testified that a preliminary investigation revealed that at least one of the coal scales at

the station was not accurate. This caused an erroneous reading of the volume of coal delivered to the Station's silos.

The adjustment to ECRM for this was a charge of \$983,775. In recent history when similar surveys have been conducted the adjustment has always been a credit. PSNH has offered to provide the Commission with an explanation for the charge resulting from this survey pending final determination thereof, and we hereby require that they do so.

The Commission staff inquired about the calculation of the coal inventory adjustment during the hearing. Staff's concern related to the allocation of costs between all classes of energy users in ECRM.

PSNH's response to staff data request I. 1, Attachment 3, Page 2 of 3 (Exh. 18) displays the allocation of the coal inventory adjustment. This schedule clearly indicates that this charge is allocated only to the prime sales customers. The Staff argued that this charge should also be allocated to coal handling usage and construction power.

PSNH did not agree. It asserted that, in the past, the methodology used to allocate the coal inventory adjustment did not include an allocation to coal handling and construction power. This methodology was approved by the Commission, and PSNH argues, it does not seem appropriate or consistent to abandon this methodology now simply because the adjustment is a charge rather than a credit.

The Staff agreed that there should be consistency but argued that the Commission should change the methodology to be consistently correct where it is of the opinion that currently the methodology is wrong.

The Commission has already provided its opinion concerning consistency for this docket (see Section II). We will uphold PSNH's position and remain consistent with the past methodology in calculating the coal inventory adjustment. Our review of the adjustment and the effect staff's change would have on ECRM indicates that such a change would have no impact on the ECRM rate as filed. It therefore appears proper to postpone the issue until the next coal pile survey contracted by PSNH. At that time, PSNH is to consider itself duly noticed that the methodology for allocating any adjustment will be subject to review.

IV. QUALIFIED FACILITIES (QF)

PSNH responded to a staff data request (exh. 18) that the forecast of QF purchased power has been based on the information provided to PSNH by the QF's. PSNH has the capability of establishing its own estimates which are considerably more accurate. In future ECRM filings, PSNH will use its own estimate in order to provide accuracy in the filing. It is imperative that PSNH's ECRM rate be as accurate as possible in order to provide rate continuity and the proper price signals during the forecasted period.

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V. ECRM UNIT AVAILABILITY INCENTIVE FEATURE

[3] The ECRM is designed to collect all energy costs for PSNH. In addition, there are two incentive features which allow PSNH to collect: 1) capacity costs for short term economical

purchases; and 2) a reward or penalty tied to the availability of PSNH controlled electric generating units. In the current proceeding, PSNH has petitioned for an adjustment to the latter.

This incentive feature is divided into two parts. The first is targeted planned outages. The second is targeted unplanned outages. Planned outages are estimated at the beginning of an ECRM period by PSNH. The length of the planned maintenance outages are reviewed and approved by the Commission during the ECRM proceedings. The unplanned outages are calculated using the historical availability for the units.

Once the targets for planned and unplanned outages are established, PSNH will attempt to meet or beat said targets. A reconciliation of the estimate to actual outages are made in the next succeeding ECRM period. If the energy cost in ECRM is less than forecasted due to better than estimated availability of units, then PSNH is allowed to retain 10% of the savings. If the energy cost in ECRM is greater than forecasted because the unit availability was not better than estimated, then PSNH does not collect 10% of the additional cost from ratepayers.

PSNH asserts that the incentive feature for planned outages has reached a point where there is no longer an incentive, and in fact, the circumstances have changed so that now this feature may be a disincentive. It is PSNH's opinion that because it is projecting minimal periods for planned outages it should not be subject to a penalty if its schedule for these outages were to slip a small amount.

To be specific, for the first half of 1986 PSNH is forecasting a four-week planned outage for Merrimack Unit 2. PSNH believes it is necessary to establish a margin of safety for itself whereby if the planned outage betters the four-week estimate, PSNH would be allowed a reward and if the planned outage slips to five weeks, there would be no penalty. Beyond five weeks, the penalty would be applied. PSNH additionally proposes a similar feature for the Newington Station's planned outage.

The Company believes it should not be penalized for not meeting the stringent targets it has established. It also believes that it must project these targets because it is management's goal to attain such, and to estimate anything different for ECRM would compromise its standards.

CAP and staff object to a change in the incentive feature. CAP believes the additional week is estimated in the PROSIM computer model used to develop the proposed ECRM rate (a week of unplanned outage was added to the planned outage at Merrimack Unit 2; Exh. 4, Page 3 of 10). In addition, both Staff and CAP argue that the incentive feature should not be changed when it appears that the ability of PSNH to attain awards has diminished and ratepayers now have an opportunity to realize their benefits from the feature.

The Commission appreciates PSNH's high standards and expects it to retain them. The Commission also appreciates staff's and CAP's positions on the issue.

ECRM has evolved into an extremely

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complex mechanism which becomes more difficult to monitor with each small change. These changes in turn add to the esoteric nature of ECRM making it all the more difficult for the typical ratepayer to understand what he is paying for and why.

As stated earlier in this report, the Commission believes that ECRM calculations should be consistent. Changing the incentive feature at this time will interrupt the macro effect of the ECRM and inequitably provide PSNH with a protective device against a potential penalty in a way which was not contemplated in the original ECRM agreement.

The ECRM has provided PSNH with ample reward for improvements to unit availability (see Exh. 1B, Data Response I.3). Once the company has reached the optimum availability for these units, the incentive feature's intent implicitly changes to become a feature which monitors unit availability. Thus, it requires PSNH to maintain said optimum availability. This protects the ratepayers against availability slippage by penalizing PSNH when such slippage occurs.

The Commission finds that the current ECRM methodology is adequate. There should be no changes to the methodology prior to the rate case in which PSNH requests recognition of the Seabrook Station in rate base. This is due to the extraordinary effect this one facility will have on PSNH. At that time, the Commission will determine what the appropriate fuel adjustment clause should be and review the ECRM incentive features. Accordingly, the request for special recognition of the planned outages incentive feature is denied. This will provide the consistency in ECRM needed by ratepayers, stockholders and management.

VI. MAINTENANCE COSTS APPLICABLE TO THE NEWINGTON STATION "POWER SWAP"

[4] During the hearings, PSNH presented testimony on a "power swap" between The Connecticut Light & Power Company (CL&P) and itself. This swap will exchange 200 megawatts of PSNH's Newington unit for a 100 megawatt entitlement in both Montville 6 and Middletown plus 25 megawatts of gas turbine capacity from CL&P. PSNH believes this exchange will save \$8,114,742 by the time the contract for the swap expires.

The savings will principally result from energy cost reductions when purchasing or generating replacement power for Newington outages during the contract term. If PSNH did not have the capacity available from CL&P when Newington has scheduled or unplanned outages it would be required to purchase high cost energy from NEPOOL or use its own more expensive units to replace the capacity. For this reason PSNH argues that it is appropriate to allow all the costs associated with this exchange to be passed through ECRM.

CAP and staff have questioned whether all costs associated with this exchange are appropriate ECRM related costs. More specifically, included in the contract for the swap is a clause which provides for reimbursement of unit maintenance costs. Unit maintenance costs normally are not considered ECRM related costs.

PSNH argued that these costs are like the capacity costs which are permitted to flow through ECRM if they relate to short term economic purchases. In PSNH's opinion this

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exchange is an economic purchase creating a savings in energy costs which would not otherwise have been realized had it not entered into the agreement.

The Commission is not convinced that the maintenance costs are ECRM related costs. The

exchange agreement speaks directly about maintenance costs for the gas turbine capacity purchases, but is silent about maintenance costs for Newington, Montville, and Middletown. For the latter three units the only reference to these costs are that they will be billed on a "net basis" (Exh. 17, testimony of Ralph S. Johnson, Attachment 1, page 5). This clearly is not enough information on which to base a decision.

In addition, Mr. Johnson has stated in his testimony: "At the time PSNH entered into the agreement, the Company expected this extra capacity [the 25MW gas turbine capacity] to provide some extra protection against the costs of a NEPOOL Capability Responsibility shortfall should actual customer loads exceed this winter's forecasted loads." (Exh. 17, testimony, page 3). This does not appear to be an economic purchase but instead an entitlement purchase used for the purpose of meeting PSNH's capability responsibility. However, here again the Commission does not have enough evidence to make a meaningful decision.

The energy costs for this swap is an allowable cost; however, the Commission will reserve judgment on the appropriateness of the maintenance costs until PSNH attempts to pass the actual charges through ECRM. At that time the Company is to present evidence in support of its position regarding the recoupment of these costs. Such evidence will identify the total cost related to maintenance as well as the justification thereof.

VII. THE APEX OIL CONTRACT

[5] PSNH recently extended its contract with Apex Oil Company for a one year period. The company did not seek competitive bids prior to awarding this extension to Apex. Staff questioned this practice. The Commission does also.

Although the terms of this contract appear favorable, if competitive bidding is not sought there will always be some doubt as to whether PSNH's management had negotiated the best contract for itself and its ratepayers. In fact, the Company may have found that under the pressure of competitive bidding Apex may have offered additional concessions in order to retain PSNH as a customer.

When this and all other current contracts for procurement of fuel have expired, PSNH is to seek bids and renegotiate said contract(s) accordingly. The bidding tabulations are to remain on file subject to Commission review.

VIII. CONCLUSION

In order to maintain a continuity in the ECRM, the Commission has determined in this order that the methodology used in computing the energy charge will not change until the Seabrook Station is generating electricity and/or becomes an issue in a future rate proceeding. We feel this is in the best interest of ratepayers, investors and PSNH management. Further petitions by any party to change ECRM will be reviewed by the Commission using this decision as a guide.

This decision does not change the ECRM rate, as filed by PSNH.

However, the Commission has three different rates which have been filed by the company. As mentioned earlier PSNH has requested the second filing of \$3.416/100KWH. At staff's

request the Company refiled the ECRM rate to reflect corrections for certain errors in the proposed filing and to include energy costs for Millstone 3 (see exh. 20). The correction of these omissions and errors reduces the ECRM rate to \$3.408/100KWH.

In section IV of this report we state that the ECRM rate should be as accurate as possible. Logically, the most accurate rate is the rate which includes the omission and corrects all known errors. It would be unjust and unreasonable to accept a rate which does not reflect these corrections. Our intention in utilizing a cut-off date in past proceedings was to minimize the risk that the parties' preparation would be superceded by updated information. Here, the new filing is not based on updated information; rather the update corrects methodological errors which are the responsibility of PSNH. It would not be good regulatory policy to establish an ECRM based on a record which reveals that the underlying data are erroneous. Therefore we will approve the rate of \$3.408/100KWH for the period of January through June, 1986.

Our order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of \$3.408/100 KWH for January through June, 1986; and it is

FURTHER ORDERED, that the Small Power Producer rates for the hourly period categories of: "On-Peak" at \$0.0589/KWH; "Off-Peak" at \$0.0437/ KWH; and "All" at \$0.0503/KWH for January through June, 1986, be, and hereby are, approved.

By Order of the Public Utilities Commission of New Hampshire this thirtyfirst day of December, 1985.

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NH.PUC*12/31/85*[71166]*70 NH PUC 1101*Southern New Hampshire Water Company, Inc.

[Go to End of 71166]

70 NH PUC 1101

Re Southern New Hampshire Water Company, Inc.

Additional respondent: Policy Water Systems, Inc.

DR 85-354, Supplemental Order No. 18,029

New Hampshire Public Utilities Commission

December 31, 1985

ORDER authorizing issuance, sale and transfer of common stock in conjunction with purchase of water utility plant in neighboring municipalities and acquisition of operating rights.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, this Commission in its Order No. 18010, (70 NH PUC 1070), authorized Policy Water Systems, Inc., to sell and transfer to Southern New Hampshire Water Co. Inc., certain of its assets; and

WHEREAS, Southern New Hampshire Water Company, Inc. filed an amendment to its petition on November 14, 1985 stating that part of the consideration required to be paid is \$200,000, in cash, at the closing of the sale of Policy to Southern New Hampshire Water Company, Inc.; and

WHEREAS, Southern New Hampshire Water Company, Inc., has agreed to sell to Consumers certain authorized but unissued shares of Southern's common stock for Two Hundred Thousand (\$200,000) at the time of closing; and

WHEREAS, the issuance of these securities will be in the public good; it is hereby

ORDERED, that the amendment to the Petition of Southern New Hampshire Water Company, Inc., is approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc., is authorized to sell and transfer to Consumers shares of common stock in the amount of \$20,000; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc., file with this Commission a detailed statement showing the disposition of the proceeds as soon as the transaction is completed.

By order of the Public Utilities Commission of New Hampshire this thirty first day of December, 1985.

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Endnotes

1 (Popup)

¹We note that in recent history Granite State estimates are accurate and the Company has not utilized the cap.

2 (Popup)

¹Exhibit 15 was issued under a Commission Protective Order and will not become a part of the Commission files.

3 (Popup)

²See discussion under caption "Reward for postponement of Planned outages. ..."

4 (Popup)

³See the discussion under the caption "Oil Price Estimates. ..."

5 (Popup)

¹Those remaining issues include all matters which enter into a determination of whether the proposed financing is in the public good as construed by the Court in *Re Easton*, 125 N.H. 205, 480 A.2d 88, (1984).

6 (Popup)

²The March 8, 1985 deadline will be applicable for initial data requests. All parties will be permitted to submit reasonable data requests on an ongoing basis. However, if a party wishes to receive responses in time to use the information contained therein for the purpose of preparing prefiled testimony and exhibits, the request must be filed by the March 8, 1985 deadline.

7 (Popup)

³As with the discovery of the intervenors and Staff, the Co-op will be permitted to submit reasonable data requests on an ongoing basis. However, in order to receive responses by the April 15, 1985 deadline, the Co-op must submit its requests by the April 2, 1985 due date.

8 (Popup)

¹In my Report and Order No. 17,127 (69 NH PUC 391), I applied a subjective standard to a similar motion by the Consumer Advocate. There, I concluded: "The facts demonstrate and the Chairman represents that he has no precuniary [sic] interest in the case, entertains no ill will toward the parties, will approach the matter with an open mind, will render a decision based on the record evidence and has no bias or prejudgment concerning issues of fact or of the outcome of the proceedings." (69 NH PUC at p. 393.) Although the subjective standard is not determinative, I believe that it is still important that I satisfy myself that I will approach each case without bias or prejudgment. Accordingly, I can represent that the above-quoted statement also applies to the instant matter.

9 (Popup)

¹The Commission established such a schedule in Report and Ninth Supplemental Order

No. 17,464 (70 NH PUC 71) (Procedural Order) which provides for the conclusion of evidentiary hearings on April 26, 1985.

10 (Popup)

²This analysis is applicable to numbered assertions 2 and 7 listed above.

11 (Popup)

³This analysis is applicable to numbered assertion 3 listed above.

12 (Popup)

⁴The record indicates that those consequences could include the loss of the benefits of the Coop's Seabrook ownership share without concomitant recovery of sunk costs.

13 (Popup)

⁵The finding that the proposed financing was in the public good was implicit in the Decision. To the extent that any Movant believes that a more explicit finding is necessary, we will state here that we have found that an interim financing in the amount of \$5,290,484 is in the public good as defined in RSA Chapter 369. See also, SAPL II; SAPL I; and Easton.

14 (Popup)

⁶This analysis is applicable to assertions 1, 5, and 6 listed above.

15 (Popup)

⁷We also anticipate that the record will be supplemental on this issue in the upcoming proceedings.

16 (Popup)

⁸This analysis is applicable to numbered assertion 4 listed above.

17 (Popup)

¹The testimony summarized below may be found generally at Tr. 7509-7510.

18 (Popup)

²See also, *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 (1984), slip opinion at 5-6 where the Court stated: "We reason today as we reasoned in *Re Seacoast Anti-Pollution League*, supra that the commission did not act illegally or unreasonably in the circumstances of this case when it chose to defer the Easton inquiry. Those circumstances include the small amount of the financing that will go for new construction, and the very small proportion of that amount compared to the company's investment in Seabrook to date, of more than a billion dollars; the commission's finding of the risk, if not the certainty, of bankruptcy if consideration of this financing were to await an Easton hearing; and the existence of a genuine opportunity for an Easton hearing in the near future in connection with the Newbrook financing."

19 (Popup)

¹See e.g., New Hampshire Rules of Evidence, Rule 201 which will be effective on July 1, 1985.

20 (Popup)

¹On August 21, 1984 N.H. Yankee applied to the Commission pursuant to RSA 374:22 for permission to engage in business as a public utility and concurrently, pursuant to RSA 369 et seq, for authority to issue and sell 100 shares of common stock. In Docket No. DF 84-229, after public hearings, the Commission issued Order No. 17,245 (69 NH PUC 590) authorizing N.H. Yankee to engage in business as a public utility within the town of Seabrook for the sole purpose of acting as managing agent for the construction of the Seabrook nuclear power project and further authorizing it to issue and sell its common stock.

On November 9, 1984, N.H. Yankee filed a petition for (a) an order authorizing acquisition of its stock by the joint owners of the Seabrook nuclear power facility and (b) for a specifically limited enlargement of its authority to do business as a public utility within the town of Seabrook so that it may act as managing agent for the Joint Owners in the operation of the Seabrook plant (Docket No. DF 84-339). A public hearing was held on December 20, 1984 and the petition has been taken under advisement by the Commission.

21 (Popup)

²Orders No. 17,057 (69 NH PUC 275) and 17,076 (69 NH PUC 326).

22 (Popup)

³Re Campaign For Ratepayers' Rights, Docket No. 84-325; Re Campaign For Ratepayers' Rights, Docket No., 84-379; and Re Seacoast Anti-Pollution League, Docket No. 84-313. These three dockets were consolidated by the Supreme court for appeal purposes and oral arguments were heard on January 8, 1985.

23 (Popup)

⁴Seacoast Anti-Pollution League previously appealed an order of the Commission in the same docket claiming that the scope of the proceedings as defined by the Commission was too narrow in light of Re Easton, 125 N.H. 205, 480 A.2d 88 (1984) and claiming that the Chairman of the Commission should have recused himself from the proceedings. The Court upheld the Commission's definition of scope, but held that the Chairman should have recused himself from the proceedings. The case was remanded for the latter reason. Re Seacoast antipollution League, 125 N.H. 465, 482 A.2d 509 (1984) (SAPL I). On September 10, 1984, following the SAPL I decision, the PUC Chairman recused himself from this Docket in Order No. 17,197. (69 NH PUC 500). Pursuant to a request from the Commission in Order No. 17,196 (69 NH PUC 499) and RSA 363:20, the Governor, with the consent of the Executive Council, appointed John N. Nassikas as Special Commissioner in DF 84-167 and DF 84-200 and related matters. The Commission subsequently appointed Special Commissioner Nassikas as presiding officer in this docket.

24 (Popup)

⁵SAPL II, 125 N.H. 708, 482 A.2d 1196.

25 (Popup)

⁶The NHEC did not participate in the proceedings.

26 (Popup)

⁷First Procedural Order (69 NH PUC at p. 450).

27 (Popup)

⁸See e.g., Supplemental Order No. 17,332 (69 NH PUC 670); Second Supplemental Order No. 17,333 (69 NH PUC 671); Third Supplemental Order No. 17,343 (69 NH PUC 679); Fourth Supplemental Order No. 17,359 (69 NH PUC 690).

28 (Popup)

⁹Report and Fifth Supplemental Order No. 17,430 (70 NH PUC 42).

29 (Popup)

¹⁰Exh. 3 at 9.

30 (Popup)

¹¹Report and Third Supplemental Order No. 17,343 (69 NH PUC 679).

31 (Popup)

¹²Id. at 4.

32 (Popup)

¹³2 Id. at 5.

33 (Popup)

¹⁴Id. at 6.

34 (Popup)

¹⁵Id. at 7.

35 (Popup)

¹⁶Order No. 17,222 (69 NH PUC at p. 541).

36 (Popup)

¹⁷Exh. 173 at 3.

37 (Popup)

¹⁸Id. at 4.

38 (Popup)

¹⁹2 Tr. 212

39 (Popup)

²⁰See, Exh. 3 at 8, 9.

40 (Popup)

²¹Exh. 173 at 7.

41 (Popup)

²²Exh. 174 at 7.

42 (Popup)

²³Id.

43 (Popup)

²⁴Id.

44 (Popup)

²⁵Id.

45 (Popup)

²⁶Id.

46 (Popup)

²⁷Mr. Hildreth of Merrill Lynch testified that with further delays, Unit I becomes less economic, the longer the delay the more likely the occurrence to adverse events which could affect the Joint Owners and the more likely the Joint Owners would lose the advantage of the momentum gained since the liquidity crisis (5 Tr. 945).

47 (Popup)

²⁸Testimony was also presented by Staff and Commission witnesses Bruce Ellsworth, Sarah Voll, Mark Vaughn and Donald Trawicki. However, inasmuch as the Staff is not a party, as such, it has not filed a brief or otherwise taken an advocacy position in this proceeding. See, N.H. Admin. Rules, Puc 203.15.

48 (Popup)

²⁹Although PSNH estimates that the incremental cost of Seabrook is \$882 million, the proposed financing is based on the assumption that it will cost \$1 billion to complete construction. This prefinancing level was a requirement of the Seabrook Joint Owners. See Exhibit 23; Exhibit 106; PSNH Brief at 16.

49 (Popup)

³⁰As discussed above, the Company also presented the testimony of Mr. Derrickson, Mr. Plett and Mr. Brown to support several of the underlying assumptions of Mrs. Hadley's analysis. Since those assumptions have been previously identified, the summary of the testimony of Mr. Derrickson, Mr. Plett and Mr. Brown will not be repeated.

50 (Popup)

³¹The Consumer Advocate witness Amory Lovins stated that he was offering no forecast or projection of PSNH long term demand (10 Tr. 1-37).

51 (Popup)

³²Although the court referred to the Commission's Report and Supplemental Order No. 17,138 (69 NH PUC 412) in Re PSNH, DF 84-167 rather than to the Commission's August 2, 1984 Order of Notice in the instant docket, it is important that it was precisely the quoted language in the July 30, 1984 Order which was deferred to this proceeding.

52 (Popup)

³³Several Intervenors or their witnesses believed that such an allocation is irrational and recommended that a mechanism be developed to allow the Commission to allocate fairly the sunk cost in abandoned plant. See e.g., Brief of CLF at 2-3; Testimony of Consumer Advocate witness Lovins at 11, Tr. 1923-24.

53 (Popup)

³⁴Of course, even if 100% of the sunk costs are excluded from ratebase for ratemaking purposes, debt investors would still be entitled to recovery to the extent that PSNH is not relieved of such obligations in a bankruptcy proceeding.

54 (Popup)

³⁵Common facilities are those facilities which are necessary to the operation of both units. An example of common facilities would be the portion of the plant devoted to the storage of nuclear waste.

55 (Popup)

³⁶This \$4 million per week and the subsequent increase to \$5 million per week are total project costs. PSNH's share of those costs are proportionate to its 35.56942% ownership share in the facility.

56 (Popup)

³⁷Most of that \$50 million is attributable to the cost of financing which is booked as AFUDC. Since the calculation is a total project calculation, the AFUDC component is based on the average AFUDC rate for all the Joint Owners. Since PSNH's AFUDC is the highest of all Joint Owners, the Company's share of the cost of delay is higher than 35% of \$50 million.

57 (Popup)

³⁸The allowance item is money reserved to pay for costs that have a high probability of occurring, such as rework. A contingency is for costs that have not yet been anticipated. 2 Tr. 365.

58 (Popup)

³⁹This is to be contrasted with the 3% contingency included in prior estimates. See e.g., Re Public Service Co. of New Hampshire, 68 NH PUC 257 (1983). Mr. Derrickson acknowledged that such a 3% contingency would be too low. 2 Tr. 366.

59 (Popup)

⁴⁰We recognize that although construction expenditures are increasing on a per week basis, See e.g., Report and Seventh Supplemental Order No. 17,495 (70 NH PUC 110), that the project may continue to be subject to further delays due to, inter alia, the inability of other Joint Owners to obtain timely regulatory financing approvals. See e.g., Order of April, 4, 1985 of the Massachusetts Department of Public Utilities. PSNH has specified the effect of such delays on the cost and schedule of the project in Exhibit No. 11. To the extent that the information contained in Exhibit 11 is applicable to the period of time up to fuel load and to the extent that such delays are actually experienced, we accept the Company's analysis as summarized in

Exhibit 11 as a basis of estimating the effect of those delays on the projected cost and schedule of Seabrook Unit I.

60 (Popup)

⁴¹The four month interval supported by the Company is one month longer than the 3 month interval set forth in the Westinghouse manual and which had previously been the Company's official estimate from the beginning of construction. DE 81-312, (68 NH PUC 257).

61 (Popup)

⁴²We also note that we will deny the Company's request to apply \$30 million of the proceeds of the Unit financing to the proposed financing. See, *infra* at p. 269. Accordingly, the Company will have those funds available in the last months of Seabrook construction should they be necessary.

62 (Popup)

⁴³Mr. Trawicki employed a pessimistic assumption of an October of 1987 COD with an associated cost of \$1.3 billion in his financial feasibility analysis. See e.g., Exh. 95 at Schedule 1-2.

63 (Popup)

⁴⁴The record reflects that the parties used the term "availability factor" in addition to "capacity factor". Those terms have different meanings. An availability factor measures the percentage of the time a plant can be used if the generating utility wishes to use it. The capacity factor measures the percentage of kwhs that are actually generated at the plant as compared to the number of kwhs which would be generated if the plant were generating at 100% of capacity for every hour of the year. 11 Tr. 1998-99. Despite the different definitions, it appears that the terms are used synonymously throughout the record. This is not inappropriate because Seabrook Unit I is designed as a baseload plant, i.e., a plant which is designed to run at full capacity 24 hours per day.

64 (Popup)

⁴⁵It is noteworthy that although PSNH in brief argued that the capacity factor estimates of Dr. Rosen and Mr. Chernick should be rejected, it did not choose to argue directly in favor of its own estimate.

65 (Popup)

⁴⁶Exh. 63 at 79.

66 (Popup)

⁴⁷Exh. 4 at IV-6.

67 (Popup)

⁴⁸DE 81-312, (68 PUR4th 257).

68 (Popup)

⁴⁹Exh. 4 at IV-2.

69 (Popup)

⁵⁰Exh. 4 at IV-3.

70 (Popup)

⁵¹Exh. 63 at 89.

71 (Popup)

⁵²The distinction between total and incremental cost arises because PSNH has already prepaid certain nuclear fuel costs. Thus, they could have been considered "sunk." However, the use of a total cost estimate more accurately reflects the actual cost of operating the plant. Thus, PSNH's methodology was proper.

72 (Popup)

⁵³It is important to emphasize that this assumption, which acknowledges uncertainty and lack of actual experience, is being used solely for the purpose of an incremental cost analysis of alternatives. We do not intend this assumption to carry into any determinations we may be required to make as to the assumed useful life of the plant for accounting or ratemaking purposes. Those determinations must await the development of an appropriate record in a properly noticed future proceeding.

73 (Popup)

⁵⁴PSNH appropriately assumed that the cost of the proposed financing would be at the high end of the range for which approval is sought.

74 (Popup)

⁵⁵The 16.1% return on equity is the same as that allowed by the Commission in the Company's latest rate case. Re Public Service Co. of New Hampshire, 69 NH PUC 67, 57 PUR4th 563, 578-581 (1984).

75 (Popup)

⁵⁶In its financial runs, PSNH depicted rates as the average cents per kwh for all customer classes. See e.g., 30 Tr. 5669. If it had depicted residential rates only, the cents per kwh figures would be higher. Id. It is appropriate to use a blended assumption for consumer discount rates as it is to project future energy prices.

76 (Popup)

⁵⁷We have previously discussed conservation and cogeneration potential in the need for power portion of this Order. The instant discussion is based on the testimony of Mr. Hilbert and Mr. Lovins which suggest that aggressive utility investment programs in conservation and cogeneration would be a least cost substitute for Seabrook Unit I power.

77 (Popup)

⁵⁸Exh. 4 at Attachment Staszowski 4. The assumption that small power contributions stay constant between cancellation and completion alternatives is not precisely accurate. The record reflects that such contributions may increase in the cancellation case. 12 Tr. 2080. However, given the testimony of Mr. Ellsworth and Dr. Voll about the level of dependable small

power capacity (See e.g., 25 Tr. 4649-66), we cannot conclude that the change would be of sufficient magnitude to disturb the results of the comparison.

78 (Popup)

⁵⁹A jet is a combustion turbine unit. The turbine is generally small and similar to the jet engine of an aircraft. The turbine is connected to a generator which produces the electricity. The capital cost of a jet is usually low, but the operating cost is much higher than that of a nuclear or coal unit. 8 Tr. 1345-46.

79 (Popup)

⁶⁰Dr. Rosen testified that the most significant differences between his analysis and Mr. Staszowski's had to do with the applicable Seabrook assumptions in the completion alternative. 13 Tr. 2200.

80 (Popup)

⁶¹The proposed new financing adds a positive dimension to the net benefit of Seabrook. The incremental cost to complete Seabrook is lower than the cost in the Exh. 43 analysis due to lower AFUDC costs attributable to the new financing. The costs are based on 35.6594% ownership of Seabrook or 409 MW of capacity since sale of 38 MW of Seabrook to the NHEC is not required in this financing proposal. Assuming an in service date of October 31, 1986, the incremental cash cost is \$392 million (incremental cash \$311 million plus incremental AFUDC \$81 million). Assuming an in service date of March 31, 1987, the incremental cost is \$500 million (incremental cash \$392 million plus incremental AFUDC \$108 million). Exh. 136 at 2.

81 (Popup)

⁶²Several intervenors argued that Mr. Staszowski incorrectly assumed that PSNH would have to continue to service the debt incurred to finance Seabrook sunk costs in the cancellation scenarios. Since those debt service costs will exist in both completion and cancellation cases (the only issue is how the cost of servicing the debt will be allocated), the assumption is proper for an incremental cost analysis (36 Tr. 6901-02).

82 (Popup)

⁶³The capability responsibility for the UNITIL load will remain a New England obligation.

83 (Popup)

⁶⁴In his testimony in this proceeding, Mr. Robert Harrison, PSNH's Chief Executive Officer renounced his voluntary offer of a cost cap on PSNH's 35.56942% share of a \$4.5 Billion investment in Seabrook I for ratemaking purposes, Exh. 161 at 2-3, on the ground that regulatory uncertainty involving financing by the Joint Owners creates too much regulatory risk for such a voluntary undertaking. 37 Tr. 43-44, 71.

84 (Popup)

⁶⁵PSNH had earlier requested that the Commission take administrative notice of the report. Various Intervenors objected to the PSNH motion because such an evidentiary mechanism would preclude cross-examination of the authors of the report. Subsequently, the

BIA reported that the authors of the report were prepared to present a witness to support the authenticity, analysis and conclusions of the report. No objection to the proffer of a witness to support the report was interposed by any party. The Commission endorsed the concept of a supporting witness subject to cross-examination as a reasonable approach to test the reliability of the analysis and conclusions of the report. Report and Fourth Supplemental Order No. 17,359 (69 NH PUC 690).

85 (Popup)

⁶⁶Dean Viles also testified that bankruptcy policy under Chapter 11 is to allow a debtor relief from creditors to preserve the enterprise as an ongoing business. While we acknowledge this policy to be the case, we cannot find on this record that the risks and uncertainties of a bankruptcy of PSNH would be resolved in a manner that best balances ratepayer and investor interests. Cf., RSA 363:17-a (Commission as arbiter between interests of ratepayer and interests of Company).

86 (Popup)

⁶⁷We reject Intervenor argument that the real barrier to financing is RSA 378:30-a, rather than the effect of being in bankruptcy. While the antiCWIP law certainly is a factor in the access of PSNH to financial markets, it is more accurate to conclude that any existing financing difficulties would be substantially exacerbated if the inability to recover the sunk cost in cancelled plant (or in plant under construction) triggered a Chapter 11 filing.

SUPPLEMENTAL ORDER

87 (Popup)

¹Re New England Electric Transmission Corp., 68 NH PUC 153 (1983).

88 (Popup)

²Id.

89 (Popup)

³Exhibit 4, Attachment Staszowski 2 at 1 and Table IV-8 at IV-17.

90 (Popup)

⁴Source: Exhibit 114, data provided by PSNH.

91 (Popup)

⁵Source: Exhibit 112, Table 1, data provided by PSNH.

92 (Popup)

⁶Exhibit 119.

93 (Popup)

⁷Id.

94 (Popup)

⁸PSNH Reply Brief at 11.

95 (Popup)

⁹Exhibit 4, Tables IV-8, IV-9.

96 (Popup)

¹⁰BIA Brief at 42, PSNH Brief at 91, 107.

97 (Popup)

¹¹The 63 MW figure is based upon the 1984 load forecast which assumes completion of both Seabrook units. The 1985 load forecast adjusts for Seabrook 2.

98 (Popup)

¹²SAPL Reply Brief at 4-7.

99 (Popup)

¹³Concord and Exeter & Hampton have received approval from NEPOOL for membership. (Exhibit 151) Consequently, future purchase agreements between the two utilities would be between NEPOOL member utilities each with their own capability responsibility.

100 (Popup)

¹⁴Exhibit 131, PSNH Petition to FERC.

101 (Popup)

¹⁵Id., reference to PSNH request to continue contracts until 1992.

102 (Popup)

¹⁶UNITIL believes that capacity is available in excess of their requirements from other sources, including NEPOOL, New York, Canada and SPPs. (Exhibit 151). Commission evaluation of their alternate supply plans is beyond the scope of this docket. However, the problem of raising capital in bankruptcy would not apply to UNITIL, whereas it is an issue if it is assumed that PSNH would be required to meet this capability responsibility.

103 (Popup)

¹⁷The NO NEWBROOK Scenario assumes the same level of demand as the Seabrook completion scenarios.

104 (Popup)

¹⁸Calculated from data on industrial sales contained in Exhibits 33 and 129.

105 (Popup)

¹⁹Elasticity of demand is the measure of the percent change in the quantity demanded given a percent change in the price of the product.

106 (Popup)

²⁰Assumptions I find appropriate for financial and economic analysis are discussed in detail starting infra at 294.

107 (Popup)

²¹In the optimistic case, prime sales are projected to increase at a 4% compounded rate. The base case incorporates the prime sales estimates in the PSNH 1984 load forecast. The pessimistic case reduces prime sales from the 1984 load forecast estimates by 4.8% each year after October 1, 1987. (Exhibit 95, Schedule 1-2).

108 (Popup)

²²It was not clear in the prior proceeding (DR 84-167) exactly what was contributing to the rising equity ratios because the long term effects of the financing were not investigated.

109 (Popup)

²³Exhibit 165 at 7.

110 (Popup)

²⁴Public Service Company of New Hampshire Preliminary Prospectus dated September 14, 1984 at 6.

111 (Popup)

²⁵Id.

112 (Popup)

²⁶Decision of Vermont Public Service Board, Docket No. 4701 (December 28, 1984) at 14.

113 (Popup)

²⁷For purposes of economic analysis it does not matter whether UNITIL is part of the PSNH capability responsibility. It is the revenue from sales to UNITIL that is important.

114 (Popup)

²⁸Pierce, Richard J. Jr., "The Regulatory Treatment of Mistakes in Retrospect: Canceled Plants and Excess Capacity," 132 U. Pa. L. Rev., 497, 513.

115 (Popup)

²⁹Id. See also, National Regulatory Research Institute, Commission Treatment of Overcapacity in the Electric Power Industry, September 1984 at 86-90.

116 (Popup)

³⁰Dissenting Opinion of Commissioner Aeschliman, DF 84-167, Report and Order No. 17,222 at 20, 21.

117 (Popup)

³¹Administrative Notice taken by Commission.

118 (Popup)

³²Supra at 25.

119 (Popup)

³³This estimate is based on the October 31, 1984 balance sheet (Exhibit 87); an updated balance sheet (Exhibit 94) shows a higher amount of unencumbered assets because of the maturity of some first mortgage debt in the interim.

120 (Popup)

¹RSA 369:1 provides, inter alia: "The proposed issue and sale of securities will be approved by the commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the commission may find to be necessary in the public interest.... "

121 (Popup)

¹In its May 3, 1985 Motion, the NHEC requested authority to borrow an additional \$2,682,017. In its May 7, 1985 argument supporting its Motion, the NHEC modified its request to \$3,260,581. The NHEC stated that the previous request did not contain sufficient funds to carry it through the rehearing process.

122 (Popup)

²Our findings with respect to the consequences of default are based in part on Exhs. 6-1 to 6-15; documents which were part of the record prior to the time of the remand.

123 (Popup)

³The approval granted herein will, of course, be subject to, inter alia, modification or other conditions which may or may not be imposed in our Order adjudicating the Easton issues.

124 (Popup)

¹Unless otherwise specifically indicated, a reference to Seabrook in this Order is directed at Seabrook Unit I and common facilities. It is not intended that such a general reference include Seabrook Unit II.

125 (Popup)

²The Campaign for Ratepayers Rights (CRR) and the Seacoast Anti-Pollution League (SAPL) joined in the CLF Motion. SAPL also joined in the Motion of the Consumer Advocate. No other parties joined in the PSNH Motion.

126 (Popup)

³This ground is inconsistent with that argued at paragraph 3.

127 (Popup)

⁴As noted in the Report, the only negative NPV's resulted from scenarios which postulated unlikely events (100% loss of UNITIL sales and 100% life extensions) on top of the most "pessimistic" of assumptions. (70 NH PUC at p. 233, 66 PUR4th at p. 411.)

128 (Popup)

⁴As noted in the Report, the only negative NPV's resulted from scenarios which postulated unlikely events (100% loss of UNITIL sales and 100% life extensions) on top of the most "pessimistic" of assumptions. (70 NH PUC at p. 233, 66 PUR4th at pp. 411.)

129 (Popup)

¹DE 83-152 was opened in April 1983 to investigate ways of mitigating rate shock, and DE 83-331 was opened in October 1983 to consider a Seabrook cost cap. Both of these dockets were closed in April 1985 by Chairman McQuade without consultation with or notice to the other Commissioners. DE 83-153 to investigate long term conservation and load management was also closed.

130 (Popup)

²See National Regulatory Research Institute, The Prudent Investment Test In The 1980's, April 1985 at 170-175.

131 (Popup)

¹Prior to this repromulgation, the Commission's rules were last readopted in 1980. The 1982 reenactment was undertaken to meet the requirements of RSA 541-A:2 IV which at that time provided that no rule could be effective for a period longer than two years.

132 (Popup)

²In August, 1983, the New Hampshire Legislature enacted a substantial revision of RSA 541-A which included, inter alia, an extension from 2 to 6 years of the time an agency's rules may remain in effect without further action. If applicable, the Commission's rules would have been in effect until 1988. However, according to the Office of Legislative Services' interpretation of the statute, the revision only applied to rules promulgated subsequent to its August, 1983 enactment. Thus repromulgation was necessary in 1984.

133 (Popup)

¹It should be noted that the Company's pro forma rate base contained in its filing contains several items currently under construction, otherwise known as "construction work in progress" (CWIP) for ratemaking. Inclusion of these items in rate base is specifically prohibited by RSA 378-30:a. The Company revised its calculation (Exhibit 1) to omit these CWIP items at the hearing for the purpose of determining temporary rates.

134 (Popup)

²In its original filing, the Company calculated its allowed rate of return to be 11.77%. In response to Staff cross-examination at the April 2, 1985 hearing, the Company revised its calculation and so notified the Commission by letter dated April 8, 1985. This reduction was due to the use of a higher deferred tax figure and is discussed in greater detail below.

135 (Popup)

¹Transcript of February 8, 1984 hearing at 52.

136 (Popup)

²Report and Supplemental Order No. 16,915 (69 NH PUC 137), citing transcript of February 16, 1984 at 4 to 6. Commissioner Aeschliman dissented from this opinion and would have included the NHEC's continued participation in Seabrook II within the scope of the proceeding.

137 (Popup)

³Id. 69 NH PUC 137. The majority opinion was by Chairman McQuade and Commissioner Iacopino each of whom elaborated on their individual positions in separate opinions. Commissioner Aeschliman dissented.

138 (Popup)

⁴New Hampshire Supreme Court Case No. 84-188, Re Easton, 125 N.H. 205, 480 A.2d 88 (1984); Case No. 84-204, Re Holmes; Case No. 84-207, Re McCool. By Order dated May 18, 1984, the Court consolidated these three cases for oral argument.

139 (Popup)

⁵Order No. 17,060 (69 NH PUC 283).

140 (Popup)

⁶Id., 69 NH PUC 283.

141 (Popup)

⁷Supreme Court Order dated June 15, 1984 in consolidated appeal of Case Nos. 84-188, 84-204, and 84-207. In the same order, the Court established a briefing and oral argument schedule for the remaining \$54 million.

142 (Popup)

⁸Orders No. 16,915 and 16,965.

143 (Popup)

⁹Re Easton, 125 N.H. 205, 480 A.2d 88 (1984) (Re Easton or Easton).

144 (Popup)

¹⁰Id., 125 N.H. at p. 211, emphasis in original.

145 (Popup)

¹¹Id., 125 N.H. at p. 214.

146 (Popup)

¹²The Yankee Atomic projects are Maine Yankee, Vermont Yankee, Massachusetts Yankee and Connecticut Yankee.

147 (Popup)

¹³Report to Fourth Supplemental Order No. 17,132 (69 NH PUC 384).

148 (Popup)

¹⁴Mr. Easton's Motion for Rehearing was filed on July 16, 1984 and Mr. McCool's Motion for Rehearing was filed on July 17, 1984.

149 (Popup)

¹⁵Sixth Supplemental Order No. 17,143 (69 NH PUC 426).

150 (Popup)

¹⁶Report and Seventh Supplemental Order No. 17,165 (69 NH PUC 453).

151 (Popup)

¹⁷SAPL filed an oral Motion to Intervene on January 3, 1985 for the purpose of participating as a party in the proceedings conducted subsequent to that date. See, Tr. of January 3, 1985 at 4. The Motion to Intervene was granted. *Id.*; See also, Tr. of January 30, 1985 at 2.

152 (Popup)

¹⁸Report and Eighth Supplemental Order No. 17,411 (70 NH PUC 26).

153 (Popup)

¹⁹*Id.*.

154 (Popup)

²⁰*Id.*

155 (Popup)

²¹See, *Re Public Service Co. of New Hampshire*, 69 NH PUC 522 (1984) *aff'd Re Seacoast AntiPollution League*, 125 N.H. 465, 482 A.2d 509 (1984) (SAPL I); See also, *Re Seacoast Anti-Pollution League*, 125 N.H. 708, 482 A.2d 1196 (1984) (SAPL II).

156 (Popup)

²²Report and Eighth Supplemental Order No. 17,411.

157 (Popup)

²³*Id.*

158 (Popup)

²⁴*Id.*

159 (Popup)

²⁵Ninth Supplemental Order No. 17,464 (70 NH PUC 71). The procedural schedule allowed for the conclusion of evidentiary hearings on April 26, 1985.

160 (Popup)

²⁶Concurring opinion of Chairman McQuade, Report and Ninth Supplemental Order No. 17,464.

161 (Popup)

²⁷*Id.*

162 (Popup)

²⁸CLF, SAPL and Mr. McCool asked for rehearing only on Order 17,411, *supra*, which authorized the second emergency financing. On March 7, 1985, Intervenor Easton filed a Motion for Rehearing regarding the second emergency financing. In that motion, he asked for a rehearing of Chairman McQuade's denial of Intervenor McCool's Motion for Recusal. Chairman

McQuade denied Mr. Easton's Motion for Rehearing on the issue of recusal on March 18, 1985 in Eleventh Supplemental Order No. 17,501. (70 NH PUC 117).

163 (Popup)

²⁹Re McCool, 125 N.H. —, — A.2d — (1985).

164 (Popup)

³⁰The Court also held that Chairman McQuade is disqualified to sit further in this docket. Special Commissioner John N. Nassikas, who served as presiding officer for the Commission as Special Commissioner in prior PSNH Seabrook financings Dockets DF 84-167 and 84-200, assumed Chairman McQuade's responsibilities as presiding officer in this docket subsequent to the date of this Supreme Court Order.

Chairman McQuade did not participate in the second emergency financing and Order 17,411 accordingly was signed only by Commissioners Aeschliman and Iacopino. Therefore, the Chairman's disqualification did not affect the validity of said order.

165 (Popup)

³¹Re McCool, *supra*.

166 (Popup)

³²On April 18, 1985, the Commission issued Report and Ninth Supplemental Order No. 17,558 (70 NH PUC 164, 66 PUR4th 349) in the PSNH Seabrook financing, Docket DF 84-200. In said Order, the Commission conditionally approved the PSNH petition for authority to prefinance the completion of Seabrook Unit I.

167 (Popup)

³³Report and Thirteenth Supplemental Order No. 17,514 (70 NH PUC 127).

168 (Popup)

³⁴Fourteenth Supplemental Order No. 17,568 (70 NH PUC 319).

169 (Popup)

³⁵*Id.*

170 (Popup)

³⁶*Id.*

171 (Popup)

³⁷*Id.*

172 (Popup)

³⁸*Id.*

173 (Popup)

³⁹RSA 369:1 provides, in pertinent part, that "The proposed issue and sale of securities will be approved by the Commission where it finds that the same is consistent with the public good. Such approval shall extend to the amount of the issue authorized and the purpose or

purposes to which the securities or the proceeds thereof are to be applied, and shall be subject to such reasonable terms and conditions as the Commission may find to be necessary in the public interest. ..."

174 (Popup)

⁴⁰Id., 70 NH PUC at pp. 321, 322.

175 (Popup)

⁴¹Id.

176 (Popup)

⁴²Id.

177 (Popup)

⁴³Report and Order No. 17,568, supra.

178 (Popup)

⁴⁴Id.

179 (Popup)

⁴⁵Id.

180 (Popup)

⁴⁶Id., 70 NH PUC at p. 326.

181 (Popup)

⁴⁷Id., 70 NH PUC at p. 327.

182 (Popup)

⁴⁸Order No. 17,558, supra.

183 (Popup)

⁴⁹Thirteenth Supplemental Order No. 17,514 (70 NH PUC 138).

184 (Popup)

⁵⁰Id.

185 (Popup)

⁵¹Id.

186 (Popup)

⁵²Tr. 1822.

187 (Popup)

⁵³NHEC Motion to Enlarge Order No. 17,411 dated May 3, 1985 at 1.

188 (Popup)

⁵⁴Sixteenth Supplemental Order No. 17,599. The NHEC originally requested authority to

borrow the ultimately approved amount of \$2,682,017 but, during the proceedings, it increased the amount requested to \$3,260,581.

189 (Popup)

⁵⁵See e.g., Re McCool, *supra*, and Order No. 17,411.

190 (Popup)

⁵⁶Order No. 17,599.

191 (Popup)

⁵⁷*Id.* In its Order, the Commission indicated that the specific circumstances included: 1) a balancing of the risks and benefits of granting or denying the requested relief; 2) the practical impossibility of issuing an Easton Order by May 14, 1985, the date on which the Order No. 17,411 emergency relief was based, despite the best efforts of the Commission and all the parties to bring the matter to a timely conclusion; and 3) the tailoring of the relief granted herein to the particular circumstances confronting the NHEC.

192 (Popup)

⁵⁸Re Public Service Co. of New Hampshire, 64 NH PUC 262 (1979).

193 (Popup)

⁵⁹*Id.*

194 (Popup)

⁶⁰*Id.* 64 NH PUC at p. 269.

195 (Popup)

⁶¹The Commission suspended its authority to transfer the 1% interest in Seabrook to Central Vermont Public Service Company in Fourth Supplemental Order No. 13,829, 64 NH PUC 326, 328 (1979).

196 (Popup)

⁶²*Id.*

197 (Popup)

⁶³Re Public Service Co. of New Hampshire, 64 NH PUC 286, 287 (1979).

198 (Popup)

⁶⁴Re Public Service Co. of New Hampshire, 64 NH PUC 485 (1979).

199 (Popup)

⁶⁵*Id.*, 64 NH PUC at pp. 485, 486.

200 (Popup)

⁶⁶Re New Hampshire Electric Co-op., Inc., 66 NH PUC 139, 140 (1981); Re Public Service Co. of New Hampshire, 64 NH PUC 485 (1979); Re Public Service Co. of New Hampshire, 64 NH PUC 262, 265 (1979).

⁶⁶ASee Exh. R-1 at 6. This figure excludes Unit II, nuclear fuel, nuclear fuel AFUDC, transmission support, transmission support AFUDC and working capital. See e.g., Exh. R-3.

201 (Popup)

⁶⁷In their May 14, 1984 resolution, the joint owners agreed to finance under the assumption of a \$1.3 billion cost to go and an October 1987 commercial operation date. On December 10, 1984, the joint owners amended the May 14, 1984 resolution so that the applicable financing assumption was \$1 billion cost to go. See, Re PSNH, DF 84-200, Exh. 23. In subsequent resolutions, the joint owners continued to adhere to the \$1 billion cost to go assumption. See, January 16, 1985 resolution, Id. at Exh. 23-A; February 19, 1985 resolution, Id. at Exh. 23-B. None of the above resolutions addressed the October, 1987 completion date assumption. PSNH witness Staszowski calculated that the change of the to go cost assumption from \$1.3 billion to \$1.0 billion should move the completion date from October 1987 to April, 1987. Id. at Exh. 43. Management Analysis Corporation (MAC), in its evaluation of the project cost and schedule estimates, concluded that the plant can be expected to complete its 100 hour warranty run by May of 1987. Id. at Exh. 106 at 23.

202 (Popup)

⁶⁸See generally, Exh. R-33. Representative Easton is also a pro se Intervenor in this proceeding. Thus, his testimony summarizes his own position as well as that of the Consumer Advocate.

203 (Popup)

⁶⁹The original request for \$49,580,000 has been reduced to \$46,898,000 in view of Order No. 17,599 issued May 10, 1985 (70 NH PUC 363) approving emergency financing for the NHEC in the amount of \$2,682,017.

204 (Popup)

⁷⁰The payment from PSNH is not a direct payment of interest charges, but rather the return component included in the cost of service.

205 (Popup)

⁷¹The application for a Certificate of Site and Facility was filed on May 17, 1985; two weeks after the last hearing day in the instant proceeding. The matter has been docketed as DSF 85-155.

206 (Popup)

⁷²State law: The Limited Electrical Energy Producers Act (LEEPA) RSA Chapter 362-A, Federal law: The Public Utility Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. §§796(17)(A) 824a-3, (1976 ed, Supp. IV). FERC rules promulgated pursuant to that are found in 18 C.F.R. Part 292.

207 (Popup)

⁷³The Commission recognized this pricing context in Re: Purchases for Non Generating Utilities, 67 NH PUC 825 (1982) when it found that although theoretically QF's should be paid the avoided cost of the generator regardless of which utility purchased the power, given the

problems of regulatory lag in adjusting the wholesale rates, it was preferable to establish a two-tier purchase power rate for non-generating utilities. Utilities which refused to wheel to the generating supplier were required to pay the full avoided cost of their supplier. QFs who refused to have their power wheeled were eligible for the wholesale purchased power rate.

208 (Popup)

⁷⁴"The Cooperative agrees to not actively pursue such cogeneration or power from small power producers to replace its Seabrook entitlement or partial requirements service." Exh. R-8.

209 (Popup)

⁷⁵PSNH wholesale rates have been calculated for this docket based on PSNH financial forecasts. We see no reason to employ different assumptions from those accepted by the Commission for projections of wholesale rates (avoided costs) for QF purposes.

210 (Popup)

⁷⁶2) Whether the purpose of the proposed financing is in the public good, including, inter alia: a) the quantification of the incremental cost of completing Seabrook Unit I; and b) an evaluation of the long term alternatives to completion of Seabrook Unit I in the context of the above determined incremental cost and the assumptions found by the Commission to be reasonable in recent Orders. ..."

211 (Popup)

⁷⁷Termination of the NHEC's participation in Seabrook Unit I does not necessarily mean that the facility will be abandoned. The Court has not commented on the applicability of RSA 378:30-a to the unrecovered cost of an ownership share of a plant which is sold when that plant is ultimately completed.

212 (Popup)

⁷⁸Those findings were: 1) Seabrook incremental cost would be \$1 billion (70 NH PUC at p. 223, 66 PUR4th at p. 402); 2) A commercial operation date of December, 1986 is attainable (70 NH PUC at p. 223, 66 PUR4th at p. 402); 3) Capital additions will cost \$15 million in 1984 dollars escalating at 7.5% per year (70 NH PUC at pp. 223, 224, 66 PUR4th at pp. 402, 403); 4) Capacity factor will range between 52.5% and 72% with 60% as a reasonable assumption (70 NH PUC at pp. 224-226, 66 PUR4th at pp. 403-405); 5) Nuclear fuel costs will be 1.41/kwh in 1986 escalating to 2.4/kwh in 2005 (70 NH PUC at p. 226, 66 PUR4th at p. 405); 6) Operating and Maintenance expenses will be \$64 million escalating within a range of 0—4% per year in real terms (the Commission assumed an escalation rate of 1.5 to 2.0% per year within that range) (70 NH PUC at p. 226, 66 PUR4th at p. 405); 7) Decommissioning costs will range between \$170 million to \$311 million in 1984 dollars (the Commission assumed that the cost would be \$170 million within that range) (70 NH PUC at p. 226, 66 PUR4th at p. 405); 8) Plant life will range from 30 to 40 years (the Commission assumed that the life would be 35 years within that range) (70 NH PUC at pp. 228, 229, 66 PUR4th at p. 407); 9) PSNH's cost of capital, used for both retail and wholesale rate purposes, will average 15.4% (70 NH PUC at p. 229, 66 PUR4th at pp. 407, 408); and 10) The consumer discount rate will range between 10% and 15.4% (the Commission found that a 15% assumption within that range would be reasonable (70 NH PUC at pp. 229-231, 66 PUR4th at pp. 408, 409).

213 (Popup)⁷⁹Id.**214 (Popup)**

⁸⁰Mr. Anderson also allocated costs between Seabrook Unit I and Seabrook Unit II on the basis of a Coopers and Lybrand study. PSNH did not use that study in its allocation. Additionally, that study has not been accepted by the Seabrook Joint Owners. The issue of whether the allocation was properly carried out is not before us in this proceeding. Thus, we reserve judgment until we evaluate a record developed in an appropriately noticed docket.

215 (Popup)

⁸¹As discussed *infra* at IV.D., NHEC witness Smith correctly treated the AFUDC on sunk costs the same within both the continued participation and termination alternatives. This treatment is consistent with the above analysis.

216 (Popup)

⁸²Cost to go of \$882 million; PSNH financing as approved in Re PSNH, DF 84-200; inclusion of Unutil load; No recovery of the cost of Seabrook II. See, Exh. R-21A.

217 (Popup)

⁸³Cost to go of \$882 million; PSNH financing as approved in Re PSNH, DF 84-200; No Unutil load; Recovery of cost of Seabrook II. See, Exh. R-21A.

218 (Popup)

⁸⁴Cost to go of \$1.3 billion; PSNH financing as approved in Re PSNH, DF 84-200; 60% capacity factor; inclusion of Unutil load no recovery of cost of Seabrook II. See, Exhs. R-21B, R-36A, R-36B & R-36C.

219 (Popup)

⁸⁵Cost to go of \$1.3 billion; PSNH financing as approved in Re PSNH, DF 84-200; 60% capacity factor; No Unutil load; recovery of cost of Seabrook II. See Exhs. R-21-B, R-35A, R-35B & R-35C.

220 (Popup)

⁸⁶Assumptions are reflected in Intervenor Request No. 10 in Re PSNH, DF 84-200. See, Exh. R21C and Re PSNH, DF 84-200, Exh. 174.

221 (Popup)

⁸⁷See e.g., Exhs. R-16B, R-19 and R-32.

Dissenting in Part

222 (Popup)

¹DF 84-200, Re Public Service Co. of New Hampshire, (70 NH PUC at pp. 278, 279, 66 PUR4th at pp. 449, 452, separate Opinion of Commissioner Aeschliman.

223 (Popup)

²Id., 70 NH PUC at pp. 284, 285, 66 PUR4th at pp. 454-456.

224 (Popup)

³Id., 70 NH PUC at pp. 300-303, 66 PUR4th at pp. 470, 471-473; and Report and Tenth Supplemental Order No. 17,601 (70 NH PUC 367), Opinion of Commissioner Aeschlimann. The basic principle embodied in this regulatory treatment is that customers should only be charged for plant that is necessary and economic.

225 (Popup)

⁴For example, the Commission is precluded by RSA 378:30- a from including in rates cost recovery for abandoned plant.

226 (Popup)

⁵If Seabrook II were completed and the Cooperative had 50 MW of Seabrook baseload power, it could have been in the situation of having excess capacity and energy during certain periods and that was apparently what was contemplated in the original sell back agreement of March 30, 1981 where it was provided that "the Cooperative agrees to sell and PSNH agrees to purchase capacity and related energy which is temporarily in excess of the Cooperative's needs from Seabrook Units No. 1 and 2...." (Exhibit R-8).

227 (Popup)

⁶There is actual recognition of this point in the Partial Requirements Agreement. (Exhibit R-6, p. 4.)

228 (Popup)

⁷It is possible that the heavier weighting of Seabrook power for the Cooperative could be advantageous in the later years of the plant's life, but we do not have information to make this evaluation.

229 (Popup)

⁸The projected rates are based on a \$1.3 billion Seabrook cost to go from July 1984, which the Cooperative witnesses testified was essentially the same as a \$1 billion cost to go from January 1985. (1 Tr. 71-73). Under this scenario Ms. Smith found it advantageous for the Cooperative to sell back all of its Seabrook power during the first 10 years. (Exhibit R-21-B. Workpapers 1 revised.)

230 (Popup)

⁹Projected Retail Rates for PSNH have been obtained by factoring out the wholesale portion from the projected rates for PSNH Prime Sales. The Adjustment factor is an arithmetic mean of the last 7 year (1978-84) percent relationship of rates for Prime sales and rates for Prime Sales net of Electric Utilities. This relationship is expressed below.

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

(Prime Sales Rate Net Electric Utilities)

(Prime Sales Rates) + = (Adjustment Factor)

The projected rates for Prime Sales are multiplied by the adjustment factor to arrive at the Retail Rate for the years 1985-2003.

Projected Prime Sales Rate x
----- = Projected Retail Rate.
Adjustment Factor

This adjustment has been made based upon data from Exhibits 33 and Exhibit 173 (Statistical Supplement) in DF 84-200.

231 (Popup)

¹⁰DF 84-200, 30 Tr. 5684, 5685.

232 (Popup)

¹¹Re Connecticut Valley Electric Co., 69 NH PUC 319 (1984); and Re Granite State Electric Co., 69 NH PUC 1 (1984).

233 (Popup)

¹²See National Regulatory Research Institute, The Narragansett Doctrine: An Emerging Issue in Federal-State Electricity Regulation, December 1984 at iii and 1.

234 (Popup)

¹³64 NH PUC 262-269, 485-486. 7 Tr. 1306.

235 (Popup)

¹⁴National Regulatory Research Institute, supra, at iv. See also, Re Connecticut Valley Electric Co., supra, appeal pending, Re Sinclair Machine Products, S.Ct. Docket No., 84-380.

236 (Popup)

¹⁵Id. See also, Re Concord Electric Co., 69 NH PUC 701 (1984).

237 (Popup)

¹⁶It should be noted in this regard that Mr. Harrison, Chief Executive Officer of PSNH, has recognized as a policy matter that this Commission has well founded concerns relative to the need for New Hampshire to regulate what PSNH charges for Seabrook power. (Exhibit R-13).

238 (Popup)

¹⁷The Limited Electrical Energy Producers Act (LEEPA) RSA 362-A, (Supp. 1982-2); The Public Utility Regulatory Policies Act of 1978 (PURPA 210) 16 U.S.C. § 796(17)(A), 824a-3, (1976 ed, Supp. IV).

239 (Popup)

¹Re Public Service Co. of New Hampshire, 69 NH PUC 558 (1984), aff'd Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984); Re Public Service Co. of New Hampshire, 69 NH PUC 275 (1984), appeal pending, Re Campaign for Ratepayers' Rights, Docket Nos. 84-325, 84-379, 84-313.

240 (Popup)

²See e.g., *Re Public Service Co. of New Hampshire*, 70 NH PUC 24 (1985); 70 NH PUC 66 (1985); Secretarial Letter of May 14, 1985.

241 (Popup)

³The Commission took administrative notice of the Recommendations of the Parties Concerning the Schiller Coal Conversion, October 22, 1982 (Settlement Agreement) and the Report of the Mediator to the New Hampshire Public Utilities Commission, October 22, 1982 (Mediators Report) which were Exhs. M and N respectively in *Re Conversion of Schiller Stations*, supra. See, Tr. at 105.

242 (Popup)

⁴We note that there is no allegation of noncompliance with other aspects of the Settlement Agreement. For example, the Company promptly informed the Commission in writing of the facts causing the delay. Exh. 1. Additionally, the parties have had several opportunities to meet to agree on whether or not the delay was caused by a force majeure and to recommend a change in the schedule for conversion. No such agreements have been proffered to the Commission.

243 (Popup)

⁵PSNH's concern about its ability to finance the Schiller conversion from general corporate funds as distinguished from some type of project financing is also reflected in the June 25, 1982 preliminary financial feasibility study by Kidder, Peabody & Co., a portion of which is Exh. 2 in this docket. PSNH claims that Exh. 2 is addressed to bankruptcy rather than unavailability of credit and that PSNH was not a party to that particular document. However, the record reflects that the feasibility study was prepared for PSNH at its request. Tr. at 155. Additionally, we do not believe that PSNH intended to argue that bankruptcy and unavailability of credit are unrelated.

244 (Popup)

⁶The record reflects that the Company's bankers requested an amendment of the short term credit agreement to address the banks' concerns that Seabrook costs may continue to escalate. Thus, on April 25, 1983, PSNH agreed to an amendment which stated that it would no longer be entitled to borrow further sums if there was a material variance from the base case Seabrook construction forecast unless two thirds of the participating banks agreed to a waiver. Tr. at 167-168. To accept the PSNH contention that the termination of short term credit was not in reasonable contemplation, we would have to find that management agreed to an amendment to its credit agreement which it believed had no meaning or weight and represented no increased risk despite the fact that the amendment was proposed by the bankers themselves after the revolving credit agreement had been in effect for a significant period of time.

245 (Popup)

⁷Given the unprecedented nature of this [ratepayer's trust financing] proposal, the participants concluded, after lengthy consideration, that it would be beyond the scope and intent of their negotiations to recommend any particular means of enhancing the financing of the

conversion other than through rate design. At the same time, the consensus of the participants was that the rate mechanisms recommended in the Settlement Agreement should be flexible enough to accommodate innovative financing approaches while, in any event, resulting in an enhancement of the Company's ability to raise capital."

246 (Popup)

¹Our regulation is a restatement of the statutory standard. For convenience, we will hereafter refer to the Commission regulation.

247 (Popup)

²We do not base our findings on Whitefield's failure to file a written Motion to Intervene at least 3 days prior to the hearing. The expedited nature of our schedule was such that such a requirement would be unreasonable.

248 (Popup)

¹Transcript, March 13, 1985 hearing at 16-19 and 22-23.

249 (Popup)

²Id. at 19.

250 (Popup)

³Id. at 18.

251 (Popup)

⁴Staff was granted an extension to May 10, 1985 to file their testimony.

252 (Popup)

¹No Commission member was present for the hearing. Pursuant to RSA 363:17 and 27, the Commission assigned a Staff member to preside over the hearing.

253 (Popup)

²This rule provides that the Commission may designate an employee as a staff advocate when the employee "will participate in an adjudicative proceeding in a way which makes likely a commitment to a particular result."

254 (Popup)

¹By letter of June 17, 1985, Whitefield notified the Commission that it had decided not to pursue intervention because, inter alia it was able to satisfy its concerns by reviewing the record of the June 3, 1985 proceeding.

255 (Popup)

²At the time of the contract and subsequently, the Commission had established rates for the purchase of electricity by PSNH pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. § 824a-3, (PURPA) and the Limited Electrical Energy Producers Act (LEEPA), RSA 362-A:4. See e.g., Re Small Energy Producers and Cogenerators, supra; Re Small Energy Producers and Cogenerators, 65 NH PUC 291 (1980). Pursuant to LEEPA at RSA 362-A:4 and the regulations of the Federal Energy Regulatory Commission

(FERC) at 18 C.F.R. 292.301 (b), this Commission's rates and other terms and conditions for the purchase and sale of electricity by electric utilities from small power producers and cogenerators (jointly SPPs or Qualifying Facilities) are subordinate to the terms and conditions of voluntarily negotiated contracts. See, *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th at p. 135. ("Nothing in this order will prevent any person from negotiating and entering into a contract for the purchase and sale of electric energy at rates and on terms and conditions other than those or in addition to those contained herein.")

256 (Popup)

³As required by PURPA and LEEPA, the Commission rates are based on the "avoided costs" of the purchasing electric utility. The FERC regulations define "avoided costs" as "... the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(b)(6).

257 (Popup)

⁴The Commission went on to define the test of economic efficiency as the purchasing utility's avoided cost. *Id.*

258 (Popup)

¹This crossing was apparently constructed without this Commission's authority.

259 (Popup)

²In conjunction therewith, Lincoln constructed a gravel road east of and parallel to the railroad tracks, within the railroad right of way, for a distance of approximately 500 feet which runs up to the incinerator.

260 (Popup)

¹Unless otherwise explicitly indicated, references to Seabrook in this Order are directed at Seabrook Unit I and common facilities. We do not intend that a general Seabrook reference apply to Seabrook Unit II.

261 (Popup)

²This analysis is reinforced by the requirement that rates for the purchase of SPP power be based on the purchasing utility's incremental (avoided) cost. See, RSA Chapter 362-A; Public Utility Regulatory Policies Act, Section 210, 16 U.S.C.A. §824a-3; 18 C.F.R. §292.101(b)(6); *Re Small Energy Producers and Cogenerators*, 69 NH PUC 352, 61 PUR4th 132 (1984).

262 (Popup)

³This assertion is inconsistent with the assertion that the Commission erred by granting financing authority greater than that needed to complete Seabrook I at the cost projected by the Commission (*infra*).

263 (Popup)

⁴The \$4,087 per installed kw total cost is an average of the cost to all of the joint owners. Since the cost of financing for each joint owner is different, the cost to a particular joint owner may vary from that which would exist if the average total cost is divided by the joint owner's

ownership share. See e.g., *Re Public Service Co. of New Hampshire*, 70 NH PUC 367 (1985). Since the calculations contained in Exhs. R-3, R-4, R-21A, R-21B and R-21C are NHEC costs, rather than the average project cost to all joint owners, it is improper to extrapolate the NHEC's cost per installed kw to determine the total cost of Seabrook.

264 (Popup)

⁵The \$870 per installed kw is calculated by dividing the incremental cost of \$1 billion by the 1,150,000 kw of Seabrook capacity.

265 (Popup)

⁶As noted in the Decision (70 NH PUC at p. 440, n. 67) the \$1.3 billion incremental cost assumption is comparable to PSNH's \$1 billion assumption when appropriate adjustments are made to the dates on which incremental cost calculations commence.

266 (Popup)

⁷Accord, *Re Walnut Hill Teleph. Co.*, Docket No. 83-010-U, April 10, 1985 (Ark.P.S.C.), reported in Vol. 115, PUBLIC UTILITIES FORTNIGHTLY, page 67, June 13, 1985.

267 (Popup)

⁷Accord, *Re Walnut Hill Teleph. Co.*, Docket No. 83-010-U, April 10, 1985 (Ark.P.S.C.), reported in Vol. 115, PUBLIC UTILITIES FORTNIGHTLY, page 67, June 13, 1985.

268 (Popup)

¹An indication of the degree of risk that venture capital investors attach in putting up new money for the completion of the Seabrook project can be found in the NU MAINE CO Corporation filing with the Federal Energy Regulatory Commission. (Exhibit 152, DF 84-200.) Under this proposal new investors would receive a 40% rate of return — 30% for debt and 50% for preferred stock. (Id. at 13.) Certainly the kind of risks that venture capitalists may wish to take are not appropriate for a Cooperative with no equity investors if they can be avoided.

269 (Popup)

¹The 11.75% calculation is fully set forth in the Report accompanying the Order. It is based upon an analysis of the testimony and exhibits presented at the hearing as well as Pennichuck's then recently filed 1984 annual report. RSA 378:27 specifically authorizes the Commission to utilize "the reports of the utility filed with the commission" in determining whether to award temporary rates.

270 (Popup)

²RSA 378:8, entitled Burden of Proof, provides as follows:

When any public utility shall seek the benefit of any order of the commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.

271 (Popup)

²RSA 378:8, entitled Burden of Proof, provides as follows:

When any public utility shall seek the benefit of any order of the commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.

272 (Popup)

³As stated infra, the Commission found that the difference between 11.47 and 11.68 was not substantial.

273 (Popup)

⁴Re Pennichuck Water Works, 65 NH PUC 363 (1980).

274 (Popup)

¹This agreement was submitted pursuant to Commission Report and Order No. 17,517 (70 NH PUC 133).

275 (Popup)

¹This trigger mechanism was approved in Report and Order No. 16,499 (68 NH PUC 437).

276 (Popup)

²As a practical procedure, PSNH forecasts ECRM based on economic dispatch within its own system. However, the actual dispatch is controlled by NEPOOL which is determined on an economic basis taking into account generating facilities throughout New England. PSNH cannot forecast NEPOOL's dispatch.

277 (Popup)

¹The 12.94% was calculated on the basis of Moody's average public utility yields for debt for May, 1985.

278 (Popup)

²Id.

279 (Popup)

¹An example of relevant updated information would be income derived from yellow pages. If that income has been significantly underestimated, it would be appropriate to consider further regulatory measures.

280 (Popup)

¹CNGC's Preferred Stock yields 5 1/2%.

281 (Popup)

²As an unregulated enterprise, a non-utility affiliate will have the opportunity to earn a return which would exceed that allowed by the Commission.

282 (Popup)

³As is apparent, we have also deleted the calculation of ENI's investment in related and unrelated non-utility business on an individual basis. This is based on the assumption that the aggregate calculation will fully reflect any business which individually exceeds 15% of ENI's total assets.

283 (Popup)

4

[Equation below may extend beyond size of screen or contain distortions.]

(Total unrelated & related nonutility investment)

----- < 15%

(Total ENI assets from balance sheet)

284 (Popup)

4

[Equation below may extend beyond size of screen or contain distortions.]

(Total unrelated & related nonutility investment)

----- < 15%

(Total ENI assets from balance sheet)

285 (Popup)

⁵Of course, if after investigation in a properly noticed proceeding, the Commission finds that all or a portion of the reorganization costs were imprudently incurred, those imprudently incurred costs will be allocated entirely to the Companies' investors.

286 (Popup)

¹See Re Public Service Co. of New Hampshire, 69 NH PUC 415 (1984) (Restructured Term Loan, Eurodollar and PruLease Agreements and new UE&C Agreement); Re Public Service Co. of New Hampshire, 68 NH PUC 179 (1983) (PruLease Agreement); Re Public Service Co. of New Hampshire, 66 NH PUC 553 (1981) (Eurodollar Loan Agreement); Re Public Service Co. of New Hampshire, 66 NH PUC 151 (1981) (short term borrowing authority covering UE&C Agreement of June 20, 1984); Re Public Service Co. of New Hampshire, 62 NH PUC 336 (1977) (Term Loan Agreement).

287 (Popup)

²The cost of the instant financing is estimated to be \$445,000, with legal services representing a \$400,000 share of that cost. Long-term arrangements would, presumably, eliminate the need to incur these costs on an annual basis.

288 (Popup)

³The concern with the UE&C Note is not sufficient to cause us to deny the requested approval. We believe that the Company should retain maximum flexibility to manage appropriately the construction of the Seabrook facility. Thus, the UE&C Note balances financial

flexibility against construction management flexibility. On the basis of the instant record, we believe that it is appropriate to allow PSNH management to make the initial decision about where the need for flexibility is greatest. However, we also adopt CAP's [Community Action Program] recommendation that we encourage PSNH to take advantage of the Note's prepayment terms, if appropriate, so as to attain maximum flexibility in construction management." Re PSNH, DF 84168, supra, 69 NH PUC at p. 418. Commissioner Aeschliman's dissent in that Order was based on the instant provision.

289 (Popup)

⁴The \$525 million securities have not yet been marketed due, in part, to our condition that PSNH demonstrate that the "joint owners have received regulatory authorization to finance their respective ownership shares of Seabrook 1 and/or there is reasonable assurance that each participant will finance its share to fulfill contractual commitments to pay on a timely basis its share of Seabrook 1 construction costs. ..." (70 NH PUC at p. 269, 66 PUR4th at p. 441.

290 (Popup)

⁵We recognize that New Hampshire Yankee will at some point be an entity separate from PSNH. However, we cannot ignore the fact that PSNH, as a 35.56942% owner of New Hampshire Yankee, will have a substantial voice in New Hampshire Yankee management.

291 (Popup)

⁶A failure to make the above statement in this or other financing Orders cannot lead to the inference that the cost of the financing will be deemed just and reasonable for ratemaking purposes.

292 (Popup)

¹The hearing was subsequently rescheduled for July 24, 1985 by a secretarial letter issued on July 8, 1985.

293 (Popup)

²Mr. Sullivan and Ms. Newell adopted the prefiled testimony and exhibits of Daniel D. Lanning, the Commission's Assistant Finance Director (Exh. F).

294 (Popup)

³The difference between the \$53,000 approximate figure proffered by the Staff and the \$54,790 figure adopted by the Commission is attributable to corresponding adjustments to payroll tax expense and uncollectibles. As discussed below, there is no dispute about the appropriateness of these types adjustments.

295 (Popup)

⁴Certainly, when the process gets overly complex as may have occurred in this case, we must question whether it is appropriate in the future to adopt this or other mechanisms to address assertions of attrition.

296 (Popup)

⁵In its July 31, 1985 Memorandum, the Company argued that a step adjustment is a substitute for attrition and, thus, the effects of attrition should be recognized in evaluating a

proposed step adjustment. While we recognize that the step adjustment and attrition were tied together both in the Stipulation Agreement at 5-6 and in past orders, e.g., *Re Gas Service, Inc.*, 67 NH PUC 193, 197-199, 47 PUR4th 262, 266-268 (1982), we believe that the tests set forth above adequately ensure that a step adjustment accurately reflects changes in cost and thereby minimizes the effect, if any, of attrition.

297 (Popup)

⁶The reference to a step increase is an obvious misnomer since the mechanism is elsewhere referred to as (and is intended to be) a step adjustment; a term that implies that rates could either go up or down depending on the changes to underlying costs.

298 (Popup)

⁷As noted above, the authorization Order was issued on April 19, 1985.

299 (Popup)

⁸We recognize that the EnergyNorth, Inc. corporate structure may foreclose Commission review pursuant to RSA Chapter 369 of new equity infusions into Gas Service. This circumstance is troubling and may warrant more restrictive language in future step adjustments, to the extent that such step adjustments are accepted.

300 (Popup)

⁹As noted previously, the inclusion of average short-term debt in the capital structure would reduce the cost of capital to 12.78% (Exh. D) and produce a negative step adjustment (Transcript of July 24, 1985 at 139-140).

301 (Popup)

¹Opinion of Justices, 101 N.H. 549, 556, 137 A.2d 726, 731 (1958).

302 (Popup)

¹The Commission also provided "...that before the securities approved herein may be issued and sold appropriate representation and proof of satisfaction of the aforementioned condition must be presented to the commission for its review, approval, and further order as may be necessary...." (Id. 70 NH PUC at p. 269, 66 PUR4th at p. 441.)

303 (Popup)

²Those hearings were held subject to a jurisdictional objection of the Seacoast Anti-Pollution League (SAPL). That objection was subsequently adjudicated by the Supreme Court. The Court's Order will be discussed, *infra*.

304 (Popup)

³The Court may have mistakenly referred to Condition 1 when, in fact, it meant to refer to the hearings to consider removing Condition 2. In any event, as will be discussed *infra*, we will provide all parties the opportunity to examine witnesses previously heard in the proceedings pertaining to both conditions.

305 (Popup)

⁴Letter of Conservation Law Foundation of New England, Inc. (CLF) dated August 9,

1985 and Letter of SAPL dated August 9, 1985.

306 (Popup)

⁵41 Tr. 8226-27.

307 (Popup)

⁶Although the Order of Notice by its terms was a favorable ruling on a SAPL objection, it would be misleading to state that the reason it was issued was solely because SAPL objected. Our independent analysis led us to conclude that we could not consider lifting Condition 1 without further notice and hearing and, accordingly, such notice would have been issued even if SAPL had not objected.

308 (Popup)

⁷This is not intended to be a ruling on PSNH's analysis that the weight of the evidence necessary to satisfy the two conditions differs. 39 Tr. 7536-37. We shall address appropriately the proper standards of proof for the various conditions in our order adjudicating the merits of the instant issues.

309 (Popup)

⁸On August 13, 1985, PSNH filed a letter over the signature of Frederick Plett which indicated that the Company could continue funding the project under the present conditions at \$9 million per week for approximately an additional three weeks in September, 1985 without exhausting the "bank" balance and suffering the adverse consequences described in testimony.

310 (Popup)

⁹It is true that Rule Puc 203.11 requires that requests for postponement be filed at least 7 days prior to the hearing except for good cause shown. Obviously, good cause exists if the Commission issues a 6-day notice.

311 (Popup)

¹Richter held, inter alia, that the Company could not impose certain standby fees because they were inconsistent with certain deed covenants entered into by the property owners and the seller — Town and Country Homes (TCH). TCH was the entity that preceded the Company and it is not disputed that there is an identity of TCH and Company management.

312 (Popup)

²The Company's hearsay contention that it was advised to adopt a rate structure that included illegal standby fees by the Commission's Chief Engineer does not meet the burden of demonstrating that the recovery of the standby fee refund is just and reasonable. 1 Tr. 105-110. Even if the assertion is accepted, it underscores the Commission's belief that a rate structure which included standby fees was just and reasonable. The Company's inability to implement successfully such a rate structure did not arise from any limitation on the Commission's ability to establish such a rate, but rather from management's conduct in agreeing to the deed covenants. See, *Richter v. Mountain Springs Water Co.*, supra, 122 N.H. at p. 852.

313 (Popup)

³It is true that the Commission issued Order 17,083 partly as a result of Company

objections. However, those objections were directed at certain alleged procedural deficiencies (See e.g., Company's July 15, 1985 Reply Memorandum at 2); there were no objections directed at any alleged substantive deficiencies in the framework of analysis established by the Commission. See also, Docket No. DR 82-359, Report and Supplemental Order No. 16,859 (69 NH PUC 25).

314 (Popup)

⁴Originally the Company estimated that rate case expenses would be \$7,000 "\&... for outside consultants." Exh. 3 at paragraph 11. Counsel updated and clarified the breakdown of rate case expense in the Company's July 12, 1985 Memorandum at 22.

315 (Popup)

⁵The instant proceeding is the first permanent rate filing since that filed on April 2, 1976. Re Mountain Springs Water Co., 66 NH PUC at p. 493, remanded on other grounds, Re Mountain Springs Water Co., 123 N.H. 653, — A.2d — (1983). If one were to apply the Company's rationale to this particular utility, the appropriate amortization period would be 9 years.

316 (Popup)

⁶There is no federal income tax obligation on debt returns because interest expense is a deduction from income.

317 (Popup)

¹⁰The comparison to the rates of all other New Hampshire water utilities cannot be determinative because rates are generally based on cost, rather than on an imputed market value. However, the Commission, consistent with its regulatory responsibilities, cannot ignore such a comparison for the purpose of determining whether rates are just and reasonable. For example, in this Order, the Commission has expressed its concern about production costs, property tax expense, legal fees and the time necessary to manage the Company properly. Comparisons based on our general knowledge of the industry, RSA 374:4, give us the ability to determine whether the rates established by the Commission are "\&...adequate, under efficient and economical management, to maintain\&...[the public utility's] credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 689, PUR1923D 11, 21, 67 L.Ed. 1176, 1183, 43 S.Ct. 675 (1923). (Emphasis Supplied). See also, New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 209, 44 PUR3d 498, 183 A.2d 237 (1962).

318 (Popup)

¹See, Re Greggs Falls Hydroelectric Project, 70 NH PUC 138 (1985) Public Utility Regulatory Policies Act of 1978 16 U.S.C.A. § 824a-3, Section 210, the regulations of the Federal Energy Regulatory Commission (FERC) at 18 C.F.R. §§ 292.101, et seq. and the Limited Electrical Energy Producers Act (LEEPA), RSA 362-A:4.

319 (Popup)

¹Subject to Commission and statutory requirements. (70 NH PUC at p. 639.)

320 (Popup)

²The business plan would be similar to that which ENI Management provides its Board of Directors.

321 (Popup)

³As is apparent from the above rationale, our concern is directed more at the holding company structure than at the instant affiliation. Thus, we should directly state that, even if the proposed affiliation is not consummated, we would, after due notice, consider the imposition on ENI of a requirement such as that set forth as modified Condition 4 herein.

322 (Popup)

¹The procedural history leading up to Order 17,558 is set forth at length in that Order, (70 NH PUC at pp. 167-178, 66 PUR4th at pp. 352-362) and need not be repeated here.

323 (Popup)

²Unless otherwise explicitly provided, all references to Seabrook herein shall mean Seabrook Unit No. 1 and common facilities. References to Seabrook 1 include common facilities.

324 (Popup)

³It is the issue of whether the joint owners have resolved financing uncertainties that is addressed in the instant Order.

325 (Popup)

⁴PSNH represented at the July 16, 1985 hearing that, "In this proceeding we do not intend to attempt to have the Commission remove condition one or to satisfy condition one ... " 39 Tr. 7530. PSNH Counsel went on to state: "It may well be that the evidence that we present here will go a long distance toward satisfying the Commission stated concerns with regard to conditions number one....You will have all the evidence we have on regulatory equivocacy (sic) today. We are holding nothing back...." 39 Tr. 7532-33.

326 (Popup)

⁵The testimony of Mr. Landergan was sponsored by SAPL. All other testimony was sponsored by PSNH.

327 (Popup)

⁶At the conclusion of its August 8, 1985 hearing, the Commission established a briefing schedule which concluded on August 13, 1985. No briefs were filed by any party.

328 (Popup)

⁷On August 23, 1985, the Court issued a further Order which clarified the procedure with respect to the issues remanded to the Commission. The Court provided: "In accordance with RSA 541:15, the PUC is to report its action on remand to this court within 20 days of its receipt of additional evidence. Upon receipt of the PUC's report, this court will issue a supplemental scheduling order regarding the procedure to be followed for amendments of the pleadings or other incidental proceedings in this court pursuant to RSA 541:16."

329 (Popup)

⁸The 96.14141% is the sum of the joint owners who have secured regulatory financing approvals or have the capability to continue payment of their respective shares of construction without further regulatory approval (75.86161%), the EUA purchase of certain Maine and Vermont shares (11.26721%), the share of VEG&T (0.41259%) and the portion of MMWEC's share which already financed (8.6%).

330 (Popup)

⁹From August 1, 1985, project management expects to achieve the hot functional milestone on schedule and to reach commercial operation before the end of 1986, at a remaining cash cost of \$558 million, including \$150 million for allowances and contingencies. Exh..A-31. Excluding allowances and contingencies, costs to go to complete Seabrook I construction are estimated at \$408 million. The \$600 million cost to complete for financial planning purposes allows 50% for allowances and contingencies. 41 Tr. 8016, 8017, 8033; Exh. A-7 at 6.

331 (Popup)

¹⁰Such a situation could well occur if Fitchburg, a 0.86519% owner, becomes the only joint owner unable to meet its obligations to finance to completion.

332 (Popup)

¹¹The Company's schedules are all based on the assumption that full funding will be retroactive to August 1, 1985 in accordance with the August 14, 1985 resolution of the joint owners. Exh. A-48. Since we are herein only lifting Condition 2 retroactive to September 1, 1985 pending the marketing of the proposed financing, we have reduced all numbers in the range of the immediate cost of lifting Condition 2 by \$4.5 million.

333 (Popup)

¹²The \$42.2 million difference between the two scenarios reflects increased cash expenditures of \$42.2 million. The remaining \$0.5 million is attributable to corresponding requirements to book increased amounts of Allowance for Funds Used During Construction (AFUDC) to the cost of the plant. Exh. A-46 at R-3, Attachment A.

334 (Popup)

¹³These figures are not directly comparable because the \$42.2 figure includes some AFUDC in addition to cash cost to go obligations. Although this distinction weights the analysis in favor of the Intervenor, it does not change the result. Thus, for simplicity, we have continued to use the \$42.2 million maximum figure.

335 (Popup)

¹⁴It is true that the increased expenditures would accelerate the onset of a new liquidity crisis if the Intervenor prevail on appeal. However, the evidence supports a finding that this contingency would make such a liquidity crisis inevitable in any event. See e.g., Exh. A-46 at R-9 and R-10.

336 (Popup)

¹⁵Such higher rates are not a certainty and, in fact, if the Intervenor prevail on Appeal

with a concomitant cancellation of Seabrook recovery from ratepayers could be prohibited by RSA 378:30-a. See also, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984)

337 (Popup)

¹⁵Such higher rates are not a certainty and, in fact, if the Intervenor prevail on Appeal with a concomitant cancellation of Seabrook recovery from ratepayers could be prohibited by RSA 378:30-a. See also, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984)

338 (Popup)

¹The participation of United Illuminating in the MMWEC financing plans raises questions about the acceptability of this involvement by the Connecticut Commission. The Connecticut Commission in its order approving United Illuminating's financing conditioned that approval on the requirement that none of the proceeds of UI's financings be used for purposes other than financing UI's ownership interest. The Company was specifically prohibited from making any expenditure to finance another Joint Owners' Seabrook 1 ownership without prior DPUC approval. (Exhibit A-14 at 12, 13)

339 (Popup)

²The filing indicates that it is Mr. Hildreth's opinion that if equity were to be raised in the venture capital market that the return required would be 40% or more. (Exhibit A-47, supra at 20.)

340 (Popup)

³It should also be noted that MMWEC's Seabrook cost is significantly less than PSNH's because it has been financed by tax-exempt municipal debt.

341 (Popup)

⁴PSNH Motion For Further Order Regarding Level of Seabrook Construction Contributions, June 28, 1985, at 3.

342 (Popup)

⁵The contrast in PSNH's attitude toward contingency planning for adverse developments and NEES' attitude expressed in the same day of testimony is striking. NEES is preparing for numerous adverse contingencies which might affect its cash position. (43 Tr. 8433, 8434)

343 (Popup)

¹491,000,000 pounds less 10,000,000 pounds.

344 (Popup)

²The Commission assigned its Executive Director and Secretary as examiner for this hearing pursuant to RSA 363:17.

345 (Popup)

¹Note: Parts of the cogeneration operation are not within the purview of this Commission (See RSA 362-A:2) and as such are considered nonutility operations.

346 (Popup)

²Previously allowed rate of return in DR 82-239.

347 (Popup)

³As the New Hampshire Assistant Attorney General pointed out at the October 2, hearing, CSC earned a profit up until December 31, 1984. It is only in the last few months that CSC has shown a net loss.

348 (Popup)

⁴The petition for permanent rates were [sic] filed on May 10, 1985. CSC did not file a petition for temporary rates until September 17, 1985. Following the suspension of rates a customer would not be officially noticed of a change in rates until a) the date CSC formally petition's for temporary rates, or b) the date the rates are permitted to go into effect under bond, i.e., six months after the purposed effective date of the permanent filing. RSA 378:6.

349 (Popup)

¹As noted above, AB was granted intervention status only with respect to rate structure issues, namely revenue allocation and rate design. AB is a signatory to the Settlement Agreement in that regard. It did not take part in the hearings.

350 (Popup)

²RSA 378:18, entitled Special Contracts for Service, provides as follows: Nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest, and the commission shall by order allow such contract to take effect.

351 (Popup)

³15.75% is 1% lower than Mr. Moul's original recommendation of 16.75% as set forth in his prefiled testimony (Exhibit 2). 16.75% was likewise the midpoint between a RRD rate of 17% and a DCF rate of 16.5%. The lowering of Mr. Moul's recommendation resulted primarily from his inclusion of certain 1985 data in each of the calculations.

352 (Popup)

⁴In his original prefiled testimony, Mr. Moul computed the Barometer Group's yield to be 9.2% based upon the same computation using the time period February, 1984 to January, 1985.

353 (Popup)

⁵The projected growth rates in earnings and dividends per share are those of United Water Resources. It is the only barometer Group Company regularly reported in Value Line.

354 (Popup)

⁶As Dr. Voll explains on p. 13 of her testimony (Exhibit 9), the formula as shown does not exactly produce the 13.17% because of rounding in the computations of average price and average dividends.

355 (Popup)

⁷The cornerstone of modern investment theory is the Efficient Market Hypothesis as described in most college level investment textbooks. See, for example, F.K. Reiley, Investment Analysis and Portfolio Management (Hinsdale Ill: Dryden Press, 1979); WF Sharpe, Investments, 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall, 1981); and R. Brealey and S. Myers, Principles of Corporate Finance 2nd ed. (NY McGraw-Hill, 1984).

356 (Popup)

⁸It is necessary to be cautious in updating only parts of the analysis. Mr. Moul's supplemental testimony updated the price and dividend results of his and Dr. Voll's barometer and sample companies. However, it is clear that growth expectations also change over time and changes in one component of the analysis may be balanced by changes in another. See the discussion re: United Water Resources, I Tr. 126-129.

357 (Popup)

⁹The estimate is derived by using the current dividend (\$2.68), an average of a current price of \$40.00, the 1984 average price of \$27.25 (\$33.625) and the average of the five year growth rates of dividends and earnings (4.65): $\$2.68 / \$33.625 + 4.65 = 12.62\%$. I Tr. 119-123, II Tr. 48-49, and 99-100.

358 (Popup)

10

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

Component	Cost	Weighted	
Ratio	Rate	Cost	
Common Equity	.322	13.17	4.24
Preferred Stock	.081	10.32	.84
Long Term Debt	.572	10.71	6.13
Short Term Debt	.025	9.50	.23
	1.000	11.44	

359 (Popup)

¹Upon the Commission's request Concord refiled their calculation of the appropriate level to initiate the trigger. Based on the revised calculations, utilizing an entire CGA period, Concord continues to recommend a fifteen (15) percent trigger level. The Commission, however, must establish a standard trigger level for all gas companies which utilize a semi-annual CGA. Whereas all gas companies but Concord have testified to a ten (10) percent trigger level it is therefore appropriate to establish said trigger at the level which best represents the majority.

360 (Popup)

²The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)] \div [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

361 (Popup)

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)]\ divided\ by\ [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

362 (Popup)

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)]\ divided\ by\ [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

363 (Popup)

¹The formula for the trigger mechanism will be as follows: $10\% < [(known\ over/under\ collection) + (estimated\ over/undercollection\ for\ remainder\ of\ period)]\ divided\ by\ [(known\ gas\ costs) + (estimated\ gas\ costs\ for\ remainder\ of\ period)]$.

364 (Popup)

¹The financing of the project through completion of construction is now estimated at \$340 Million rather than \$525 Million. (See 70 NH PUC at p. 806.) As of August 1, 1985, the estimated construction cost to go was \$600 Million. (See 70 NH PUC at p. 804 n. 9.)

365 (Popup)

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366 (Popup)

²The conservation alternative was evaluated in both the demand and the supply analysis because conservation affects demand through price elasticity and because a conservation program was offered as a supply alternative by Witness Lovins. This is an example of the complex interrelationship between the demand and the supply analysis which we recognized in the course of our evaluation in Order 17,558.

367 (Popup)

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368 (Popup)

¹For example, the Commission knows that large numbers of small power producers have filed for long term rates at the 10.5/KWH rate set in 1984. (Re Public Service Co. of New Hampshire, 69 NH PUC 352, 61 PUR4th 132 [1984].)

369 (Popup)

¹For example, the Commission knows that large numbers of small power producers have filed for long term rates at the 10.5/KWH rate set in 1984. (Re Public Service Co. of New Hampshire, 69 NH PUC 352, 61 PUR4th 132 [1984].)

370 (Popup)

²70 NH PUC at pp. 290, 291, 66 PUR4th at p. 460.

371 (Popup)

²70 NH PUC at pp. 290, 291, 66 PUR4th at p. 460.

372 (Popup)

³See, 70 NH PUC at pp. 285-291, 66 PUR4th at pp. 456-461.

373 (Popup)

³See, 70 NH PUC at pp. 285-291, 66 PUR4th at pp. 456-461.

374 (Popup)

⁴70 NH PUC at p. 296, 66 PUR4th at p. 466.

375 (Popup)

⁴70 NH PUC at p. 296, 66 PUR4th at p. 466.

376 (Popup)

⁵As explained in my prior opinion, the large differentials in the phase-in scenarios come in the later years 1991-1997, and the differentials are even larger because of the carrying costs during the rate phase-in. See 70 NH PUC at pp. 288294, 66 PUR4th at pp. 458-464.

377 (Popup)

⁵As explained in my prior opinion, the large differentials in the phase-in scenarios come in the later years 1991-1997, and the differentials are even larger because of the carrying costs during the rate phase-in. See 70 NH PUC at pp. 288294, 66 PUR4th at pp. 458-464.

378 (Popup)

⁶Exhibit 95, Schedule 13 and Exhibit 119.

379 (Popup)

⁷There is some problem with the high cost scenario because it uses a lower total plant cost than I think is appropriate, i.e., \$4.9 billion vs. \$5.3 billion. (The \$4.9 billion figure is cited in Exhibit 167, staff data request set 5, response 4 at 2.) This occurs because the Company in these financial forecasts uses a plant completion date of October 31, 1986. Consequently, although the plant costs at the \$1 Billion to go level are included, AFUDC consistent with a longer schedule is not. This is a problem, but I do not think it is so significant as to invalidate the results of my analysis, because under the excess capacity adjustment the additional equity AFUDC would be excluded from rate base.

380 (Popup)

⁸Exhibit 167E Response 4, Attachment E at 20, assumes \$1 billion cost to go, No UNITIL, Unit 2 recovery and 60% capacity factor. I have adjusted the results to exclude Unit 2 recovery as explained in the appendix.

381 (Popup)

⁹Exhibit 126 at 20, assumes \$882 million cost to go, No UNITIL, No Unit 2 recovery, 60% capacity factor.

382 (Popup)

¹⁰The apparent reason that the anticipated rates in 1988 are lower than 1987 is the tax effect of a write-off in that year.

383 (Popup)

¹¹Under the Trawicki pessimistic case where a higher amount of financing is used, the possible exclusion drops to \$800 million. (Exhibit 95 at 31, and Schedule 10)

384 (Popup)

¹This was the only previous occasion in which the statute has been invoked by Civil Defense.

385 (Popup)

¹An example of a semi-annual CGA filing is contained in Exhibit 1.

386 (Popup)

²Because it is not an issue in this proceeding, we make no findings as to the merits of a forward-looking monthly CGA which, like the semi-annual CGA, provides for a reconciliation of over and undercollections. While it is perhaps likewise an inherently better method than the historical monthly CGA because of the reconciliation mechanism, our findings regarding the current stability of the propane market would in all likelihood lead us to conclude that it is not an appropriate adjustment mechanism to be utilized at this time.

387 (Popup)

³The semi-annual CGA contains a "trigger mechanism" which identifies excessive over or undercollections during a period. This allows for a mid-period adjustment in the event a company is overcollecting or undercollecting by 10% of its total estimated gas costs for the period. Thus, the trigger removes the possibility of an adverse financial impact resulting from a company carrying an excessive undercollection until it can be recovered in the next corresponding CGA period. For a full description of the CGA trigger mechanism, see Re Keene Gas Corp., 70 NH PUC 873 (1985) (DR 85-350).

388 (Popup)

¹The line drop is attached to a pole located on a lot owned by Mr. Wagner on the mainland. The circuit breaker is housed in a small, weather-tight house. Mr. Wagner plans to construct a camp on this site.

389 (Popup)

¹The PSNH cost of capital is relevant to the determination of the PSNH wholesale rates, which will be the probable cost of purchased power to the NHEC.

390 (Popup)

²The PSNH load forecast is relevant to the determination of the PSNH wholesale rate, which will be the probable cost of purchased power to the NHEC.

391 (Popup)

³While the FERC is not legally constrained in considering whether to allow recovery of abandoned plant costs in whole rates, *Re Sinclair Machine Products*, 126 N.H. — (1985), we believe for the reasons cited *infra* at n. 6 that the FERC will be guided by the state policy articulated at RSA 378:30-a, *Re Public Service Co. of New Hampshire*, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

392 (Popup)

⁴An additional scenario at Exhibit R-21C was also a part of record in this proceeding. That exhibit was based on Intervenor assumptions labeled as "Request 10" in *Re PSNH*, DF 84-200, Exh. 174. We did not adopt Exhibit R-21C in our calculus because it combined every pessimistic assumption identified by the Intervenors and the evidence did not support a finding that the Request 10 (Exhibit R-21C) combination of assumptions is likely to occur. The level of projected rates under Exhibit R-21C is substantially different from the projected level of rates in Exhibit R-21A; the exhibit that best captures the assumptions found by the Commission to be reasonably probable.

393 (Popup)

⁵If this Commission and the FERC adopt a phase-in of rates in identical terms, the cost of the NHEC's purchased power reflected in the wholesale rates and the NHEC's retail rates will be lower over the first 5 to 6 years and higher over the next 10 years. (70 NH PUC 886.) (Table 1 based on Exh. 99A and 27 (Graph 3).

394 (Popup)

⁶As we noted in Order 17,638, we find it probable that the FERC will exclude the same level of investment from rate base for wholesale rate purposes as this Commission will exclude for retail rate purposes. This finding is reinforced by the recent decision in *Mid-Tex Electric Co-op., Inc. v. Federal Energy Regulatory Commission*, — U.S. App.D.C. —, 70 PUR4th 62, 773 F.2d 327 (1985). *Mid-Tex* involved an appeal of the FERC regulation allowing utilities to include in rate base a limited amount of CWIP. 18 C.F.R. §35.26. The Court remanded the matter to the FERC and *inter alia* directed the FERC to consider whether to investigate the effect of the rule on retail ratepayers in states which do not allow CWIP to be included in rate base for retail ratemaking purposes. The court's directive is an expression of importance of comity in the federal/state relationship and, accordingly, the importance of New Hampshire state regulatory policy in the federal ratemaking process. *Cf.*, *Re New England Power Co.*, 27 FERC 63,080 (1984).

395 (Popup)

⁷The record indicates that the sell back agreement between the NHEC and PSNH (Exh. R-8) 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.

396 (Popup)

⁸The conservation alternative was evaluated in both the demand and the supply analysis because conservation affects demand through price elasticity and because a conservation

program was offered as a supply alternative by Witnesses Lovins and Flavin. This is an example of the complex interrelationship between the demand and the supply analysis which we recognized in the course of our evaluation in Order 17,638.

397 (Popup)

⁹In the absence of substantial evidence that the synergism of discrete alternatives and other conservation measures will substitute for Seabrook capacity and energy, we cannot responsibly abandon Seabrook for conjectural and inadequate sources of power to meet demand. In the aggregate, based on record evidence and cold hard analysis, there is no reasonable substitute for Seabrook I." (70 NH PUC at p. 586).

398 (Popup)

¹⁰There is a relationship between the need for power and the supply alternatives. Thus, to some extent, the supply alternatives have been previously addressed in the Need For Power discussion, *supra*.

399 (Popup)

¹¹See also, Order 17,638 (70 NH PUC at p. 477): "We further point out that the debt resulting from our authorization to borrow consistent with NHEC's petition will not exceed the fair cost of the 25 megawatts of Seabrook capacity which, together with other capacity and purchased power from PSNH, will be reasonably requisite for present and future use to supply reliable electric service at reasonable cost to the NHEC's ratepayers and the New Hampshire economy. *Re Easton, supra; Re New Hampshire Gas & E. Co., 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl 602 (1936). See also, Re PSNH, DF 84-200, supra, 70 NH PUC at p. 245, 66 PUR4th at pp. 421, 423.*"

400 (Popup)

¹¹See also, Order 17,638 (70 NH PUC at p. 477): "We further point out that the debt resulting from our authorization to borrow consistent with NHEC's petition will not exceed the fair cost of the 25 megawatts of Seabrook capacity which, together with other capacity and purchased power from PSNH, will be reasonably requisite for present and future use to supply reliable electric service at reasonable cost to the NHEC's ratepayers and the New Hampshire economy. *Re Easton, supra; Re New Hampshire Gas & E. Co., 88 N.H. 50, 57, 16 PUR NS 322, 184 Atl 602 (1936). See also, Re PSNH, DF 84-200, supra, 70 NH PUC at p. 245, 66 PUR4th at pp. 421, 423.*"

401 (Popup)

¹The problem created by Ms. Smith's combination of assumptions is illustrated by the fact that scenarios combining to UNITIL with Seabrook 2 recovery show that it is advantageous for the Cooperative to take its Seabrook entitlement directly in the years 1988 and 1989. With some analysis it is clear that it is the effect of Seabrook2 recovery on the PSNH wholesale rates in those years that causes this result rather than the UNITIL load loss. (See Technical Appendix, Separate Opinion, DF 84-200, *supra* at 20 for an explanation of the impact of Seabrook 2 recovery.) Thus, one can conclude that without the Seabrook 2 recovery as modeled in these scenarios that it would be advantageous for the Cooperative to sell back its Seabrook entitlement in all years even with the loss of UNITIL. However, it would be easy to

erroneously conclude that the UNITIL assumption was causing this effect in 1988 and 1989 because of the combination of assumptions used by Ms. Smith.

402 (Popup)

²This is the reason that I did not include the NEPOOL projected rates on the chart and tables in my prior opinion. (Opinion of Commissioner Aeschliman, DF 83-360, supra.)

403 (Popup)

¹The B&M argued that the purpose of RSA 373:1 is to prevent landowners from being deprived of access to their land, and thus, being deprived from the enjoyment of it. They contended that unless access is otherwise unavailable, the Commission has no statutory authority to order a crossing. 120 N.H. at 462.

404 (Popup)

¹\$4,213 Originally recorded in Account

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

```
No. 2308.1
-400 The imposed value of land
$3,813 Adjusted Account No. 2308.1
x .02 Depreciation Rate for the well
$ 76.26 Annual Depreciation expense
-84.26 Annual Depreciation rate based on
original value
$ 8.00 Reduction in depreciation expense
```

405 (Popup)

¹\$4,213 Originally recorded in Account

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

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No. 2308.1
-400 The imposed value of land
$3,813 Adjusted Account No. 2308.1
x .02 Depreciation Rate for the well
$ 76.26 Annual Depreciation expense
-84.26 Annual Depreciation rate based on
original value
$ 8.00 Reduction in depreciation expense
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406 (Popup)

¹Mr. Lanning's prefiled testimony was not introduced into testimony.

407 (Popup)

¹Counsel for MSWC represented that, given the history of these proceedings, positions have "hardened" and that MSWC would not trust District personnel "as far as we can throw them". Counsel for the District argued that the billing violations were sufficiently egregious to justify a revocation of the franchise.

408 (Popup)

¹Squam Lakes Association has argued that the language in RSA 374-C:2 which includes

small energy producers within the definition of "public utilities" for the purpose of that Chapter should be read to reflect the legislature's intent to only confer public utility status by specific statutory language. We do not accept the Squam Lakes argument. The language in RSA 374-C:2 was adopted in 1981 at a time when RSA 362-A:2 exempted small power producers from all statutes and regulations governing public utilities. The current RSA 362-A:2 language, enacted in 1983, must be accepted by the Commission as best reflecting the intention of the legislature.

409 (Popup)

¹See discussion therein at pp. 6-11 regarding the interrelationship of this docket and DE 85-161. In essence, it provides that the increase allowed therein will not take effect until a Commission decision is issued in DE 85-161.

410 (Popup)

¹In response to a query regarding CAP's position in the reopened hearing, CAP's counsel represented: "I was under the impression this was a continuation of the original docket of 84-95. And therefore appearing here as a party to those proceedings. I don't plan to have an active role because it concerns mostly business customers." Transcript of October 16, 1985 at 4.

411 (Popup)

¹After the foreclosure, the property was sold by CBT and resold a number of times, the most recent transaction being the sale to the Coop by FIA.

412 (Popup)

²RSA 498:5-a provides as follows:

498:5-a Real and Personal Property; Disputed Titles. An action may be brought in the superior court by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the same, either in fee, for years, for life or in reversion or remainder, or to have any interest in the same, or any lien or encumbrance thereon, adverse to the plaintiff, or in whom the land records disclose any interest, lien, claim or title conflicting with the plaintiff's claim, title or interest, whether or not the plaintiff is entitled to the immediate or exclusive possession of such property, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the same. An action may also be brought in the superior court by the holder of a tax collector's deed who desires to quiet his title to the property conveyed under such deed. The petition in either such action shall describe the property in question and state the plaintiff's claim, interest or title and the manner in which the plaintiff acquired such claim, interest or title and shall name the person or persons who may claim such adverse estate or interest.

413 (Popup)

³Penstock's apparent position in this regard can be found in a document entitled "Proposed Stipulation Between the Parties Setting Forth A Procedure To Facilitate the Resolution of Issues Raised In This Condemnation Proceeding" submitted with its memorandum of law on October 29, 1985. That stipulation was not signed by the Coop.

414 (Popup)

¹The savings will vary depending on electricity usage.

415 (Popup)

²The non-targeted rate had as one of its objectives, the conservation of electricity. (68 NH PUC at pp. 220-221.) PSNH argued that increased energy sales after Seabrook completion will have the effect of lowering per kwh costs because Seabrook fixed costs can be spread over a greater number of kwh energy sales.

416 (Popup)

³We are herein addressing only the roles of CAP and DHR. We are not in this part of our Report addressing the administrative costs to be paid by PSNH ratepayers to CAP. As discussed infra that issue turns on our evaluation of the likely participation rate in a targeted lifeline program.

417 (Popup)

⁴If the 21.7% pilot results continue to be applicable, then 78.3% of PSNH's eligible lowincome customers would be hurt. Exh. TL-16 at 19.

418 (Popup)

⁵The experience of the Wisconsin Public Service Commission with a targeted lifeline rate reinforces the need to act on the basis of empirical data rather than intuitively rational judgments. There, a targeted lifeline program was abandoned because it was not providing sufficient benefits to low income customers and because other programs, such as conservation, provide more meaningful benefits. Exh. TL-28; Re Madison Gas Docket No. 3270-UR-13, July 26, 1985.

419 (Popup)

⁶We understand that the BIA in brief asked us to disregard their second argument (i.e., that a social program is inconsistent with the law) if we decide not to impose the cost of the program on non-residential ratepayers. This Commission has the responsibility to evaluate all arguments placed before it and must affirmatively satisfy itself that it has the legal authority to grant the relief requested. Thus, we could not ignore the BIA second argument.

420 (Popup)

¹Electric heating customers may not be terminated during the winter if their accumulated arrearage is \$300 or less.

421 (Popup)

²Low income customers are defined as those with incomes at or below 150% of the federal poverty guidelines.

422 (Popup)

³The Commission has approved other proposals when utilities have implemented programs to address directly the bill-paying problems of ratepayers. See e.g., Re Exeter & Hampton Electric Co., 68 NH PUC 660 (1983). The Petitioners were not familiar with this alternative program already adopted in this jurisdiction.